

**CBS Outdoor, Inc. v Barkhoy**

2009 NY Slip Op 32865(U)

December 4, 2009

Supreme Court, New York County

Docket Number: 601659-2009

Judge: Judith J. Gische

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. JUDITH J. GISCHE  
*Justice*

PART 10

CBS Outdoor Inc

INDEX NO.

601659/09

MOTION DATE

MOTION SEQ. NO.

1

MOTION CAL. NO.

Ransom Barkley

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE WITH  
THE ACCOMPANYING MEMORANDUM DECISION.**

**FILED**

DEC 08 2009

NEW YORK  
COUNTY CLERK'S OFFICE

Dated:

December 4, 2009

HON. JUDITH J. GISCHE J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 10

-----X  
CBS Outdoor, Inc., a Delaware  
corporation

Plaintiff,

-against-

Ramson Barkhoy, an individual  
d/b/a Juice it Up,

Defendant.  
-----X

**Decision/Order**

Index No.: 601659-2009  
Seq. No. : 001

Present:  
Hon. Judith J. Gische  
J.S.C.

**FILED**  
DEC 08 2009  
NEW YORK  
COUNTY CLERK'S OFFICE

Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this (these) motion(s):

<b>Papers</b>	<b>Numbered</b>
Pltf's motion [§3215] w/NB affid, JML affirm, non-mil affirm, exhs .....	1
Affirm of Mailing (sep back) .....	2

-----X

*Upon the foregoing papers, the decision and order of the court is as follows:*

This is a breach of contract action brought by CBS Outdoor, Inc. ("plaintiff"), a Delaware corporation authorized to do business in the State of New York, arising from its agreement with defendant Ramson Barkhoy ("Barkhoy"), an individual, d/b/a Juice it Up for Outdoor Advertising ("agreement") .

Plaintiff now seeks entry of a default judgment against Barkhoy in the principal sum of \$22,900 plus interest of 18% per annum from the date of default (November 20, 2006). Plaintiff has established that on June 8, 2009, it served Barkhoy with the summons and verified complaint by delivering it to his place of business (the same address listed in the agreement) and leaving it with his co-worker who accepted service.

Plaintiff then mailed the summons and complaint to Barkhoy on June 17, 2009.

Pursuant to paragraph 19 of the agreement, the parties agreed that New York is the exclusive jurisdiction and venue for any claims arising from the agreement. Therefore, the manner in which plaintiff served Barkhoy complies with the requirements of CPLR §308[2]. Plaintiff also complied with the additional notice requirements of CPLR §3215[g] by mailing another copy of the summons and complaint to Barkhoy.

Despite such notice and additional notice, Barkhoy has not answered the complaint or appeared in this action. This motion for a default judgment is timely, having been brought within one (1) year of Barkhoy's default. Though proof of service of this motion has been filed, Barkhoy has not filed opposition to it and therefore, it is before the court on default as well.

Since a defaulting party is deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them (Woodson v. Mendon Leasing Corp., 100 N.Y.2d 62 [2003]), plaintiff is entitled to the relief sought in the verified complaint provided it demonstrates that it has a prima facie cause of action.

The following facts have been established by the plaintiff in the complaint, and through the sworn affidavit of Neil Best, plaintiff's Director of Credit and Collections:

Plaintiff's agreement with "Juice it Up" is dated September 19, 2006 and was signed by Barkhoy. He agreed to pay \$24,700 for advertising over the course of thirteen (13) four (4) week periods, starting November 6, 2006 and ending November 4, 2007. Plaintiff sent monthly invoices, each in the amount of \$1,900. Defendant kept each invoice, did not object to any of them, but did not pay any of them either.

Pursuant to paragraph ten (10) of the agreement, any bill not paid "shall constitute an account stated unless [a] written objection is made by the Advertiser within fifteen (15) days from the rendering thereof." Paragraph 10 also provides for the imposition of interest on all unpaid invoices after thirty (30) days at the rate of 1½ % per month (18% per year). Defendant presently has an unpaid balance of \$22,800. The interest on the unpaid balance is \$10,022.50, through October 16, 2009, the date of this motion. Plaintiff is, therefore, entitled to a money judgment in the principal amount of \$22,800 with interest of \$10,022.50 through October 16, 2009.

Although the complaint also seeks attorneys fees which are recoverable under the agreement, no request is made for such relief in the motion or supporting affidavits or affirmations. Therefore, the claim for legal fees is hereby severed and dismissed, without prejudice.

### **Conclusion**

It is hereby

**ORDERED** that plaintiff's motion for entry of a default judgment against Ramson Barkhoy, an individual, doing business as Juice it Up is granted on default; and it is further

**ORDERED** that plaintiff is entitled to and the Clerk shall enter a money judgment against Ramson Barkhoy, an individual, doing business as Juice it Up in the principal amount of Twenty Two Thousand Eight Hundred Dollars (\$22,800) with interest of Ten Thousand Twenty Two and 50/100 Dollars (\$10,022.50) through October 16, 2009; and it is further


ORDERED that the claim for legal fees is hereby severed and dismissed, without prejudice; and it is further

ORDERED that any relief requested that has not been addressed has nonetheless been considered and is hereby expressly denied; and it is further

ORDERED that this constitutes the decision and order of the court.

Dated: New York, New York  
December 4, 2009

So Ordered:

  
\_\_\_\_\_  
Hon. Judith J. Gische, J.S.C.

**FILED**  
DEC 08 2009  
NEW YORK  
COUNTY CLERK'S OFFICE