

**Porzio, Bromberg & Newman, P.C. v Sobe
Entertainment Intl, LLC**

2010 NY Slip Op 31978(U)

July 21, 2010

Supreme Court, New York County

Docket Number: 102472-2009

Judge: Judith J. Gische

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

PRESENT: JUDITH J. GISCHE
Justice

PART 10

Porzio Bromberg + Newman
PC

INDEX NO. 102472-09

MOTION DATE _____

MOTION SEQ. NO. 002

- v -

Sobe Entertainment Int'l LLC

MOTION CAL. NO. _____

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

MOTION IS DECIDED IN ACCORDANCE WITH THE ACCOMPANYING MEMORANDUM DECISION.

FILED

JUL 27 2010

NEW YORK COUNTY CLERK'S OFFICE

JUL 21 2010

Dated: _____

HON. JUDITH J. GISCHE

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

-----x
Porzio, Bromberg & Newman, P.C.,

Plaintiff (s),

-against-

Sobe Entertainment International, LLC,

Defendant (s).
-----x

DECISION/ ORDER
Index No.: 102472-2009
Seq. No.: 002

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

FILED
JUL 27 2010
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):

Papers	Numbered
Pltf n/m (CPLR 3215) w/ AIY affirm, proof of service, exhs	1
AVW affirm (sep back) w/exhs	2

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

GISCHE J.:

This is an action for breach of contract, account stated and quantum meruit brought by plaintiff Porzio, Bromberg & Newman, P.C., a law firm ("plaintiff") against defendant Sobe Entertainment International, LLC ("defendant"), its client who allegedly has unpaid legal fees of \$137,619.15 due and owing. This is plaintiff's second motion for entry of a default judgment against defendant. The prior motion was denied without prejudice for reasons set forth in the court's decision and order dated February 16, 2010, entered February 22, 2010 ("prior order"). This motion complies with the time restrictions set forth in the prior order as it was brought within 90 days of that decision.

Since the court in its prior order already addressed and decided that the

defendant had defaulted in answering the complaint or appearing in this action, the issue that remains to be decided is whether plaintiff has now proved its prima facie case. The prior motion was denied because: 1) the complaint was unverified and therefore, the motion for a default judgment had to be supported by an affidavit by someone with knowledge, 2) although an attorney's affirmation was provided, and this is an action to recover legal fees, it was unclear if the affirming lawyer had worked personal knowledge of the facts (i.e. had worked on defendant's cases) and; 3) what services were provided.

These deficiencies have now been corrected. The following claims have been established through the complaint and the affidavit of Adrian V. White, Esq., the attorney who worked on defendant's matters and therefore, a person with personal knowledge:

Defendant is in the entertainment business; Sobe hired plaintiff for legal services. The parties entered into a retainer agreement dated November 7, 2005. Ms. White executed the retainer on behalf of the plaintiff.

The terms of the retainer are that defendant would pay a flat retainer fee of \$12,500 per month instead of Ms. White's normal hourly rate of \$500 per hour. The retainer would be applied to any work the firm did for defendant and plaintiff would separately bill for any additional expenses, such as airfare, etc. The contract, which could be terminated by either side in writing, also notified defendant that it had the right to arbitrate any fee dispute.

Defendant paid the monthly retainer until May 2007 which is when payments stopped. The last payment, in the amount of \$25,000, was applied to the monthly

* 4]

retainer through December 2006 which had not been paid. Defendant continued to rely upon plaintiff to provide legal services, including drafting contracts, preparing memos, drafting recording agreements, researching issues in the entertainment field, making calls, and advising the client on trademark and other legal issues. The time sheets submitted show in detail all the work did for the defendant. Furthermore, although her agreement with defendant was for a flat monthly fee, Ms. White kept a record of her time showing she spent 302.3 hours on SoBe matters from January 2007 through November 2007, roughly equivalent to \$151,150 in legal services based upon her usual and customary hourly rate of \$500.00 per hour. The retainer agreement, however, capped defendant's actual exposure to \$137,500 plus expenses, for a total sum due of \$137,535.64, the amount demanded in the complaint.

Since plaintiff has established its prima facie case, and 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 NY2d 62 [2003]), plaintiff's motion for entry of a default judgment in the sum demanded (\$137,535.64), plus the costs and disbursements of this action as taxed by the court.

Conclusion

It is hereby

Ordered that plaintiff's motion for entry of a default judgment against defendant is granted in all respects; and it is further

Ordered that the clerk shall enter judgment in favor of plaintiff Porzio, Bromberg & Newman, P.C. against defendant SoBe Entertainment International LLC on its first cause of action for breach of contract in the principal sum of One Hundred Thirty Seven

* 5]
Five Hundred Thirty Five and 64/100 Dollars (\$137,535.64), plus the costs and disbursements of this action, as taxed by the court; and it is further

Ordered that since the 2nd (account stated) and 3rd (quantum meruit) causes of action seek relief that is redundant of the breach of contract action, those causes of action are hereby severed and dismissed; and it is further

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

Dated: New York, New York
July 21, 2010

So Ordered:



Hon. Judith J. Gische, JSC

FILED
JUL 27 2010
NEW YORK
COUNTY CLERK'S OFFICE