

**Cabrini Care at Home, Inc. v Kingsbridge Hgts. Care
Ctr., Inc.**

2010 NY Slip Op 33151(U)

November 3, 2010

Supreme Court, New York County

Docket Number: 100042/10

Judge: Judith J. Gische

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

PRESENT: HON. JUDITH J. GISCHE
J.S.C. Justice

PART 10

Index Number : 100042/2010
CABRINI CARE AT HOME, INC.
VS.
KINGSBRIDGE HEIGHTS CARE CENTER
SEQUENCE NUMBER : 001
DEFAULT JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. 601
MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

motion (s) and cross-motion(s)
decided in accordance with
the annexed decision/order
of even date.

FILED

NOV 09 2010
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 11/3/10

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

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE
 SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

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

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

-----X
Cabrini Care at Home, Inc.

Plaintiff (s),

-against-

Kingsbridge Heights Care Center, Inc.
d/b/a Kingsbridge Heights Rehabilitation
Care Center Long Term Health Care
Program,

Defendant (s).

-----X

DECISION/ ORDER
Index No.: 100042/10
Seq. No.: 001

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

FILED

NOV 09 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
Pltff's n/m (CPLR 3215) w/MF affirm, PY affid, exhs	1
Proof of service	2

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

GISCHE J.:

Plaintiff ("Cabrini") is in the business of providing home health aids, personal care workers, homemakers and housekeepers to patients. Cabrini entered into a service contract with defendant Kingsbridge Heights Center, Inc. a domestic corporation doing business as "Kingsbridge Heights Rehabilitation Care Center Long Term Health Care (collectively "Kingsbridge") to provide home attendants, etc., to Kingsbridge patients. Plaintiff contends that Kingsbridge has defaulted under the contract by not paying for services that Cabrini provided (1st cause of action). Cabrini has also asserted a claim for quantum meruit (2nd cause of action) and account stated (3rd cause

of action).

Cabrini served the summons and complaint upon Kingsbridge on January 15, 2010 by personal service upon the Secretary of State (BCL § 306). In accordance with the requirements of CPLR § 3215 [g][4], Cabrini served a copy of the summons and complaint on defendant by first class mail. Cabrini now seeks entry of a default judgment against Kingsbridge because it has not answered the complaint or appeared in this action and its time to do so has not been extended by the court. This motion for entry of a default judgment is before the court on default, although there is due proof of service.

A default in answering the complaint is deemed to be an admission of 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]). Therefore plaintiffs are entitled to the relief sought in the verified complaint supported by the sworn affidavit of Pamela Yaco, Cabrini's vice president, a person with personal knowledge of the facts.

Pursuant to the service contract between the parties dated January 1, 2008, defendant agreed to pay Cabrini for its home health care services. Although Cabrini sent invoices for its services, Kingsbridge did not make payment. The invoices Cabrini has provided on this motion are for the period commencing March 31, 2008 through September 18, 2009. According to Yaco, Kingsbridge owed \$73,921.94, but made two payments, one for \$9,191 and the other for \$11,644.29, which plaintiff has credited to the amount owed. Thus, Cabrini seeks a money judgment against Kingsbridge for \$51,856.90 from January 31, 2008. According to Cabrini, although Kingsbridge is not the signatory on the contract, it is doing business under the assumed name of

[* 4],
"Kingsbridge Heights Rehabilitation Care Center Long Term Health Care Program" and are, therefore, one and the same entity.

Cabrini's motion is granted on its claim for breach of contract and also on its account stated claim because defendant has not come forward with any defense or dispute regarding the correctness of the account (Jim-Mar Corp. v. Aquatic Constr., 195 A.D.2d 868 (3d Dept. 1993) *lv. den.* 82 N.Y.2d 660 [1993]; M & A Const. Corp. v. McTague, 21 A.D.3d 610 [3rd Dept. 2005]). Thus, plaintiff is entitled to a money judgment against Kingsbridge Heights Care Center, Inc. d/b/a Kingsbridge Heights Rehabilitation Care Center Long Term Health Care Program in the principal sum of \$51,856.90. The motion for interest from January 31, 2008 is however only granted to the extent that interest shall run from May 15, 2009, a single reasonable intermediate date from which to calculate interest (CPLR § 5001 [b]).

Conclusion

In accordance with the foregoing,

It is hereby

ORDERED that plaintiff's motion for entry of a default judgment against defendant is granted on its 1st cause of action for breach of contract and on its 3rd cause of action for account stated; the 2nd cause of action for *quantum meruit* is severed and dismissed; and it is further

ORDERED that it the clerk shall enter judgment in favor of plaintiff Cabrini Care at Home, Inc. against Kingsbridge Heights Care Center, Inc. d/b/a Kingsbridge Heights Rehabilitation Care Center Long Term Health Care Program in the principal sum of Fifty

One Thousand Eight Hundred Fifty Six and 90/100 Dollars (\$51,856.90) with interest from May 15, 2009; and it is further

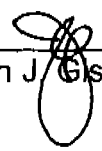
ORDERED that any relief requested but not specifically addressed is hereby denied; and it is further

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

Dated: New York, New York
November 3, 2010

So Ordered:

FILED
NOV 09 2010
NEW YORK
COUNTY CLERK'S OFFICE



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