

Cuomo v Henry Meinhard Mem.

2010 NY Slip Op 33215(U)

October 20, 2010

Sup Ct, NY County

Docket Number: 401666/10

Judge: Judith J. Gische

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
HON. JUDITH J. GISCHE

PRESENT: _____ J.S.C. _____

PART 10

Index Number : 401666/2010
CUOMO, ANDREW M.
VS.
HENRY MEINHARD MEMORIAL
SEQUENCE NUMBER : 001
DEFAULT JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. 001

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

FILED
OCT 22 2010
COUNTY CLERK'S OFFICE
NEW YORK

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

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

Dated: OCT 20 2010

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.

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

-----x

ANDREW M. CUOMO, Attorney General of
the State of New York

Plaintiff,

-against-

HENRY MEINHARD MEMORIAL,

Defendant.

-----x

Decision/Order

Index No.: 401666/10
Seq. No. : 001

Present:

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

FILED
OCT 22 2010
COUNTY CLERK'S OFFICE
NEW YORK
Numbered

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

Papers

Pltf's n/m [§ 3215] w/APD affid, exhs 1

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

This is an action to dissolve a not-for-profit corporation and to distribute its remaining assets. Plaintiff, Andrew M. Cuomo, Attorney General of the state of New York ("Cuomo"), is responsible for overseeing the activities of not-for-profit corporations. Defendant, Henry Meinhard Memorial ("Meinhard"), is a not-for-profit corporation that was incorporated in New York State in 1919. Plaintiff now moves, pursuant to CPLR § 3215, for an order directing the Clerk of Court to enter a default judgment in its favor and against defendant.

Plaintiff served the summons and verified complaint on defendant through the Secretary of State on June 30, 2010. N-PCL § 306(b). No one has appeared or answered on behalf of defendant, and the time to do so has expired.

Discussion

Plaintiff is entitled to a default judgment, provided it otherwise demonstrates that it has a *prima facie* cause of action. Gagen v. Kipany Productions Ltd., 289 A.D.2d 844 (3d Dept. 2001). A default in answering the complaint constitutes an admission of the factual allegations therein and the reasonable inferences which may be made therefrom. Rokina Optical Co., Inc. v. Camera King, Inc., 63 N.Y.2d 728 (1st Dept. 1984). An application for a default judgment must be supported by either an affidavit of facts made by one with personal knowledge of the facts surrounding the claim [Zelnick v. Biderman Industries U.S.A., Inc., 242 A.D.2d 227 (1st Dept. 1997); and CPLR § 3215 (f)] or a complaint verified by a person with actual knowledge of the facts surrounding the claim. Hazim v. Winter, 234 A.D.2d 422 (2d Dept. 1996); and CPLR § 105 (u).

Plaintiff asserts two causes of action against defendant: (1) defendant is no longer able to carry out its purposes; and (2) defendant has failed to file annual reports. Plaintiff alleges, *inter alia*, that defendant has failed to function as a charitable organization for more than fifty years and has failed to carry out its purposes as set forth in its certificate of incorporation (N-PCL § 1102[a][2][E]). Plaintiff further alleges that defendant's failure to file annual reports constitutes a willful failure under N-PCL § 520, which should result in dissolution and the distribution of assets.

Meinhard was founded by Morton H. Meinhard ("Morton") in 1919, who died in 1931 and left a trust for his wife. Morton's wife died in 1953 and left trusts for the benefit of certain individuals, with the remainder to be distributed to certain charities. Plaintiff alleges that two of those trusts have now terminated, leaving approximately \$945,000.00

to the defendant. Plaintiff alleges that the trustees of those two trusts have suggested putting the money towards a program proposed by Montefiore Medical Center, to be named "The Meinhard Child and Family Services Program", as such a program would be consistent with defendant's mission.

Plaintiff's motion is denied without prejudice to renew on proper papers that support the history plaintiff has set forth in the affidavit of Assistant Attorney General, Andrew P. Davis ("Davis"). The court finds that plaintiff has not provided sufficient information to determine the viability of the underlying motion. Plaintiff's application is based only on an attorney's affidavit; there are no documents including the trust instruments, there is no information supporting its claims, and plaintiff has not identified where the money is presently located or whether it has been distributed by the trusts.

Plaintiff's papers should, at a minimum, include the operative documents indicating the funding for the defendant, identify the trustees who plaintiff claims in agreement, and provide affidavits of these trustees stating that they consent to using the funds as indicated. Plaintiff is also directed to serve its motion on the trustees and any known officers, directors, board members of defendant, or provide a statement that they searched with due diligence and none exist.

Conclusion

In accordance herewith, it is hereby:

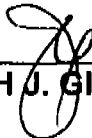
ORDERED that plaintiffs' motion for entry of a default judgment against defendant, HENRY MEINHARD MEMORIAL, is denied without prejudice to renew on proper papers; and it is further

ORDERED that any requested relief not expressly addressed herein has nonetheless been considered by the court and is denied; and it is further

ORDERED that this shall constitute the decision and order of the court.

Dated: New York, New York
October 20, 2010

So Ordered:



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

FILED

OCT 22 2010

COUNTY CLERK'S OFFICE
NEW YORK