

Hillel Assoc., L.P. v 265 E. Houston, LLC

2010 NY Slip Op 33520(U)

December 22, 2010

Supreme Court, New York County

Docket Number: 108209/10

Judge: Judith J. Gische

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

PRESENT: _____

PART 10

Index Number : 108209/2010
HILLEL ASSOCIATES, L.P.
vs
265 EAST HOUSTON, LLC
Sequence Number : 001
DEFAULT JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. 001
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

FILED

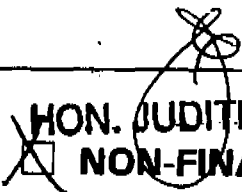
DEC 29 2010

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

NEW YORK
COUNTY CLERK'S OFFICE

The case is set for a preliminary
conference on 2/3/11 @ 9:30am

Dated: 12/22/10


HON. JUDITH J. GISCHE ^{J.S.C.}

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

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

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

-----X
HILLEL ASSOCIATES, L.P.,

Plaintiff,

-against-

265 EAST HOUSTON, LLC, MICHAEL DiFORZO,
JOHN SCHENONE, CENTRAL CONSTRUCTION
MANAGEMENT LLC, BIG APPLE TESTING INC.,
SHAABAN ENGINEERING, LLC, SOUTHERN
CONSULTING ENGINEERING, P.C., SOUTHERN
CONSULTING INC., and ANFLO INDUSTRIES INC.

Defendants.

DECISION/ ORDER
Index No.: 108209/10
Seq. No.: 001

PRESENT:
Hon. Judith J. Gische

JSC
FILED

DEC 29 2010

NEW YORK
COUNTY CLERK'S OFFICE

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

Papers	Numbered
Pitf n/m (3215[a][b]) w/DJ affirm, SM affid, exhs	1

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

GISCHE J.:

This is an action to recover damages to property arising from alleged negligent acts by the defendants 265 East Houston, LLC ("265"), Michael DiForzo ("DiForzo"), John Schenone ("Schenone"), Central Construction Management LLC ("CCM"), Big Apple Testing Inc ("BAT"), Big Apple Testing Laboratories Inc. ("BAT Labs"), Shaaban Engineering, LLC ("Shaaban"), Southern Consulting Engineering, P.C. ("SCE"), Southern Consulting Inc. ("SC Inc."), and Anflo Industries Inc. ("Anflo"); as well as, alleged trespass by defendant 265. Plaintiff, Hillel Associates, L.P. ("Hillel") now moves, pursuant to CPLR § 3215, for an order directing the Clerk of the Court to enter a default judgment in its favor and against defendants

Schenone, BAT Labs, SCE and SC Inc. Neither Schenone, BAT Labs, SCE nor SC Inc. have submitted any opposition, despite due proof of service of the instant motion. Therefore, this motion is considered and decided on default against Schenone, BAT Labs, SCE and SC Inc.

Plaintiff has provided proof that it served defendants Schenone, BAT Labs, SCE and SC Inc. with the summons and verified complaint. This action was commenced by the filing of a summons and complaint with the court on June 22, 2010. Thereafter the operative documents were served upon the parties as follows:

John Schenone:

An attempt to obtain personal jurisdiction of Schenone was made on July 7, 2010 pursuant to "deliver and mail" of CPLR § 308(2). At that time, the summons and verified complaint were served upon a "Jane Smith", who identified herself as Schenone's co-worker, at 265 East Houston, LLC, 37-24 24th Street, Suite 209, Long Island City, New York 11101. Pursuant to CPLR § 308(2), "deliver and mail" was completed within 20 days by a first class mailing of the summons with notice and verified complaint to Schenone's place of business, located at 265 East Houston, LLC, 37-24 24th Street, Suite 209, Long Island City, New York 11101. A copy of the instant motion and the supporting papers, which include the summons and complaint, were served upon the defendant by first class-mail on October 27, 2010 (CPLR § 3215 [g][3]). Schenone has not submitted any opposition, despite due proof of service of the instant motion.

Big Apple Testing Laboratories Inc.:

A copy of the summons and verified complaint were served upon BAT Labs by service on Carol Vogt, a clerk in the office of the Secretary of State, on June 23, 2010 (BCL § 306). A copy of the instant motion and the supporting papers, which include the summons and complaint, were served upon the defendant by first class-mail on October 27, 2010 (CPLR § 3215 [g][4]). BAT Labs has not submitted any opposition, despite due proof of service of the instant motion.

Southern Consulting Engineering, P.C.:

A copy of the summons and verified complaint were served upon SCE by service on Carol Vogt, a clerk in the office of the Secretary of State, on June 23, 2010 (BCL § 306). A copy of the instant motion and the supporting papers, which include the summons and complaint, were served upon the defendant by first class-mail on October 27, 2010 (CPLR § 3215 [g][4]). SCE has not submitted any opposition, despite due proof of service of the instant motion.

Southern Consulting Inc.:

A copy of the summons and verified complaint were served upon SC Inc. by service on Carol Vogt, a clerk in the office of the Secretary of State, on June 23, 2010 (BCL § 306). A copy of the instant motion and the supporting papers, which include the summons and complaint, were served upon the defendant by first class-mail on October 27, 2010 (CPLR § 3215 [g][4]). SC Inc. has not submitted any opposition, despite due proof of service of the

instant motion.

Pursuant to the relief requested, the motion is granted only to the extent that the court finds that Schenone, BAT Labs, SCE and SC Inc. have defaulted in answering. Plaintiff shall be entitled to proceed to an inquest to prove liability and damages against Schenone, BAT Labs, SCE and SC Inc. The Inquest shall be held simultaneously with the trial on the underlying case against defendants 265, DiForzo, CCM, BAT, Shaaban, and Anflo since many of the issues raised at the trial and inquest will be identical.

In accordance with the foregoing,

IT IS HEREBY

ORDERED that plaintiff's motion is granted to the extent that the court holds that defendants John Schenone, Big Apple Testing Laboratories Inc., Southern Consulting Engineering, P.C., and Southern Consulting Inc. are in default answering the complaint; and it is further


ORDERED that the court directs an Inquest to be held at the same time as the trial of the underlying case; and it is further

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

Dated: New York, New York
December 22, 2010

So Ordered:

FILED
DEC 29 2010



Hon. Judith J. Glische, J.S.C.