

**Sovereign Bank v Green Bean Trading Corp.**

2011 NY Slip Op 30006(U)

January 3, 2011

Supreme Court, New York County

Docket Number: 116524/2009

Judge: Judith J. Gische

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

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

PART 10

Index Number : 116524/2009  
**SOVEREIGN BANK**  
vs.  
**GREEN BEAN TRADING CORP.**  
SEQUENCE NUMBER : 001  
DEFAULT JUDGMENT

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 001  
MOTION CAL. NO. \_\_\_\_\_

this motion to/for \_\_\_\_\_

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

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

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

PAPERS NUMBERED  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Cross-Motion:  Yes  No

**FILED**

Upon the foregoing papers, it is ordered that this motion

JAN 04 2011

NEW YORK  
COUNTY CLERK'S OFFICE

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

Dated: 1/2/11

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

Plaintiff,

**-against-**

GREEN BEAN TRADING CORP., and  
YONG S. KIM,

Defendants.  
-----X

**DECISION/ ORDER**  
Index No.: 116524/09  
Seq. No.: 001

**PRESENT:**  
Hon. Judith J. Gische

**FILED**  
J.S.C.

**JAN 04 2011**

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

NEW YORK  
COUNTY CLERK'S OFFICE

<b>Papers</b>	<b>Numbered</b>
Pltf's n/m [3215] w/PAL affirm, KAM affid, exhs . . . . .	1

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

This is an action brought for repayment of a line of credit in the principal amount of \$75,000.00. Sovereign Bank issued a loan evidenced by a promissory note (the "Note") signed by Green Bean Trading Corp. ("Green Bean"), and personally guaranteed by Yong S. Kim ("Kim"). Presently before the court is plaintiff's motion for an order to sever and dismiss Kim from this action and for a default judgment against Green Bean.

This motion was submitted to the court on default, though due proof of service of the motion on each defendant has been provided. Kim was personally served by plaintiff on December 24, 2009 at his residence. CPLR § 308(1). Green Bean was served through the Secretary of State on March 22, 2010 and plaintiff mailed a copy of the summons and complaint to Green Bean on June 7, 2010. BCL § 306(b). Plaintiff has also complied with the additional notice requirements of CPLR § 3215(g)(4)(i) by mailing a copy of the summons

20 days prior to filing for a default judgment.

Green Bean has not opposed or otherwise appeared in this action within the time provided for in the CPLR, nor has its time to do so been extended by the court. Therefore, Green Bean has defaulted in this action.

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)].

The following facts have been established by the plaintiff in the summons and complaint and through the sworn affidavit of Kathleen A. McCarthy (McCarthy"), who is a Vice President of plaintiff.

### **Discussion**

Plaintiff asserts three causes of action against defendants: (1) breach of contract against Green Bean; (2) breach of a personal guaranty against Kim; and (3) replevin. Plaintiff claims that on December 13, 2007, pursuant to the Note, defendants borrowed \$75,000.00. In the Note, Green Bean agreed to pay monthly interest payments and to complete paying off the loan no later than December 13, 2010. Kim, the President of Green Bean, guaranteed

the Note. Plaintiff has also perfected its security interest in the loan.

On March 10, 2009, plaintiff sent defendants a letter notifying them of their default on the Note. Now plaintiff seeks payment of the entire unpaid principal balance because the Note specifically allows plaintiff to accelerate the entire unpaid principal balance plus accrued unpaid interest upon default. As of November 9, 2010, defendants owed a principal amount of \$36,823.15 plus interest that has accrued under the Note in the amount of \$6,059.00, plus late fees of \$310.59. Plaintiff is also entitled to costs and disbursements of this action. Plaintiff's request of \$300.00 for "other fees" is denied because plaintiff does not explain where this amount comes from.

The above claims establish the elements of a *prima facie* cause of action for non-payment. Plaintiff has waived its second cause of action for breach of the personal guaranty against Kim, which is hereby, severed and dismissed. Plaintiff's third cause of action for replevin is duplicative of its first for breach of contract, therefore, plaintiff's third cause of action is severed and dismissed. Accordingly, plaintiff's motion for a default judgment is granted against Green Bean based on its first cause of action for breach of contract.

#### Legal Fees

In general, each party to a litigation is required to pay its own legal fees, unless there is a statute or an agreement providing that the other party shall pay same. AG Ship Maintenance Corp. v. Lezak, 69 N.Y.2d 1 (2d Dept. 1986). Here, the Note expressly provides that defendant is liable for plaintiff's attorneys' fees. Plaintiff provides the affirmation of Patricia A. Lauch, Esq., who states that plaintiff's reasonable attorney's fees total \$4,153.75.

#### Conclusion

*In accordance herewith, it is hereby:*

**ORDERED** that plaintiff, SOVEREIGN BANK's motion for entry of a default judgment against defendant, GREEN BEAN TRADING CORP., is granted as to its first cause of action; and it is further

**ORDERED** that plaintiff's second cause of action against defendant, YONG S. KIM, has been waived and is, hereby, severed and dismissed; and it is further

**ORDERED** that plaintiff's third cause of action is hereby severed and dismissed; and it is further

**ORDERED** that the clerk shall enter judgment in favor of plaintiff and against defendant, GREEN BEAN TRADING CORP., in the sum of Thirty-Six Thousand Eight Hundred Twenty-Three and 15/100 Dollars (\$36,823.15), plus interest that has accrued under the Note in the amount of Six Thousand Fifty-Nine Dollars (\$6,059.00), and late fees in the amount of Three Hundred Ten and 59/100 Dollars (\$310.59), plus costs and disbursements, as taxed by the clerk; and it is further

**ORDERED** that the clerk shall enter a separate money judgment for the reasonable attorney's fees from defendant, GREEN BEAN TRADING CORP., in the sum of Four Thousand One Hundred Fifty-Three and 75/100 Dollars (\$4,153.75); 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  
January 3, 2011

So Ordered:

**FILED**

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

**JAN 04 2011**