

Wassfam L.L.C. v Canon Corp. Solutions, Inc.

2011 NY Slip Op 30104(U)

January 14, 2011

Supreme Court, New York County

Docket Number: 111166/2010

Judge: Judith J. Gische

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

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

PART 10

Index Number : 111166/2010

WASSFAM L.L.C.

vs
CANON CORPORATE SOLUTIONS

Sequence Number : 001

MONEY 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


MOTION IS DECIDED IN ACCORDANCE WITH
THE ACCOMPANYING MEMORANDUM DECISION

FILED

JAN 19 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: JAN 14 2011


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

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

REFERENCE *Heart*

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG. *Determine*

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
Wassfam L.L.C.,

Plaintiff (s),

-against-

Canon Corporate Solutions, Inc. and
Ying Wai Wong,

Defendant (s).
-----X

DECISION/ ORDER
Index No.: 111166-10
Seq. No.: 001

PRESENT:
Hon. Judith J. Gische

FILED

JAN 19 2011

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's n/m (3215) w/JBI affirm, MC affid, exhs, proof of service 1

-----X

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

GISCHE J.:

This is an action for breach of a commercial lease. Wassfam, L.L.C. is the owner of the building located at 320 West 37th Street, New York, New York ("building") and the landlord of defendant Canon Corporate Solutions ("tenant") who leased the 4th and 10th floors in the building. Ying Wai Wong ("guarantor") personally guaranteed the tenant's obligations under the lease, including the payment of rent and additional rent.

Plaintiff has filed proof it served the tenant through the Secretary of State. Such service (on August 26, 2010) complies with the requirements of BCL 306 since the tenant is a domestic corporation. Plaintiff has also filed proof it personally served the guarantor with the summons and complaint on October 4, 2010. The guarantor is not in

active military service. Furthermore, each defendant also received additional notice of this action, as required under CPLR 3215 [g]. The motion presently before the court, for entry of a default judgment against the defendants, jointly and severally, in the principal amount of \$46,595.09 with interest from April 1, 2010. Despite such notice and additional notice, neither defendant has answered or appeared in this action and their time to do so has expired. This motion is also submitted on default.

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]). The following is alleged in the verified complaint, which is supported in this motion by the sworn affidavit of Michele Campbell, an employee of plaintiff's managing agent.

Tenant has defaulted in paying rent and additional rent due under a written lease agreement dated December 5, 2007, modified in January 2009 (collectively "lease"). The lease is still in effect and does not expire until December 31, 2012. The unpaid rent (\$46,595.09) is for the period commencing April 1, 2010 through and including August 1, 2010. It is for unpaid water sprinkler charges, electric, real estate taxes, fixed rent and other charges.

Since these arrears have not been paid, not only is the landlord entitled to a money judgment against the tenant, the judgment is joint and several with the guarantor, who personally guaranteed the tenant's obligations under the lease.

Accordingly, plaintiff's motion for entry of a default judgment against the tenant on the first cause of action and the guarantor on the second cause of action is granted.

Pursuant to the lease agreement and under the guaranty, each defendant is

liable to plaintiff for plaintiff's costs and expenses, including legal fees and disbursement in enforcing the lease. The issue of what reasonable legal fees plaintiff may recover from the defendants (i.e. third cause of action) is hereby severed and set down for hearing before and determination by a special referee who will resolve the reference framed herein.

Conclusion

In accordance with the foregoing,

It is hereby

ORDERED that plaintiff Wassfam, L.L.C.'s motion for a default judgment on its first cause of action against defendant Canon Corporate Solutions, Inc. is granted; and it is further

ORDERED that plaintiff Wassfam, L.L.C.'s motion for a default judgment on its second cause of action against is granted; and it is further

ORDERED that the Clerk shall enter a money judgment against defendants Canon Corporate Solutions, Inc. and Ying Wai Wong in the principal amount of Forty Six Thousand Five Hundred Ninety Five and 09/100 Dollars (\$46,595.09), with interest from April 1, 2010, plus the costs and disbursements of this action, as taxed by the clerk of the court, and that plaintiff shall have execution thereof; and it is further

ORDERED that the issue of what reasonable legal fees plaintiff may recover from the defendants (i.e. third cause of action) is hereby severed and set down for hearing before and determination by a special referee who will resolve the reference framed herein; and it is further

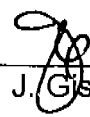
ORDERED that plaintiff shall serve a copy of this decision and order on the Office of the Special Referee so that the reference can be assigned and scheduled for a hearing; and its further

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

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

Dated: New York, New York
January 14, 2011

So Ordered:



Hon. Judith J. Gische, JSC

FILED

JAN 19 2011

NEW YORK
COUNTY CLERK'S OFFICE