

Increv Corp. v Scriplogix, LLC

2011 NY Slip Op 30153(U)

January 21, 2011

Sup Ct, New York County

Docket Number: 116521/09

Judge: Judith J. Gische

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

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

PRESENT:

PART 10

Index Number : 116521/2009

INCREV CORP.

INDEX NO. _____

vs

SCRIPLOGIX, LLC

MOTION DATE _____

Sequence Number : 002

MOTION SEQ. NO. 002

SUMMARY JUDGMENT

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 ...

PAPERS NUMBERED

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

JAN 24 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: JAN 21 2011


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: PART 10

-----X
INCREV CORPORATION,

Plaintiff,

-against-

SCRIPLOGIX, LLC,

Defendants.
-----X

Decision/Order

Index No.: 116521/09

Seq. No. : 002

Present:

Hon. Judith J. Gische

J.S.C.

FILED

JAN 24 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
Numbered

Papers

Pit's n/m [SJLC] w/ PIF affirm, SC affid, exhs	1,2,3,4
Affirm of service	5
Def's opp w/BCC affirm, exhs	6
Pltf's reply	7

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

This is plaintiff's motion for summary judgment in lieu of a complaint based upon a validly entered foreign judgment which remains unpaid. CPLR § 3213. Defendant opposes the motion.¹

CPLR § 3213 is intended to be an efficient and effective means of securing a judgment on claims that are presumptively meritorious. Interman Indus. Products, Ltd.

¹Plaintiff previously brought a motion for the same relief, on default, which was denied by this court for improper service. Plaintiff was given 60 days to renew its motion (Decision/Order, Hon. Judith J. Gische, February 22, 2010). Although the current motion is brought after 60 days, defendant does not raise the this in opposition and, therefore, the court will consider the motion on its merits.

v. R.S.M. Electron Power, Inc., 37 N.Y.2d 151 (1975). A motion for summary judgment in lieu of complaint is available when the "action is based upon an instrument for the payment of money only or upon any judgment." CPLR § 3213. Summary judgment in lieu of a complaint is proper when: (1) the instrument itself, and (2) proof of non-payment, without more, make out a prima facie cause of action. Seaman-Andwall Corp. v. Wright Machine Corp., 31 A.D.2d 136 (1st Dept. 1968), *aff'd* 29 N.Y.2d 617 (1971).

A default judgment entered in a sister state is entitled to full faith and credit in New York. See CPLR § 5401. Review by the courts is limited to determining whether the rendering court had jurisdiction, which includes due process considerations. Fiore v. Oakwood Plaza Shopping Center, Inc., 78 N.Y.2d 572 (1991) *citing* Parker v. Hofer, 2 N.Y.2d 612, *cert denied* 355 U.S. 833. Thus, inquiry into the merits of the underlying dispute is foreclosed and the facts have bearing only in the limited context of jurisdictional review. Parker v Hofer, *supra*, at 616-17.

Discussion

This action is based upon a judgment obtained by plaintiff in the Superior Court of the State of California in the amount of \$66,097.48. Plaintiff has provided a copy of the Judgment dated September 1, 2009. It has not been appealed and remains unsatisfied, despite due demand thereof.

Defendant contends that the judgment is unenforceable against it because the California court lacked personal jurisdiction over it because it was improperly served and the underlying contract was unsigned by plaintiff.

The court finds that the California court had jurisdiction over defendant. Defendant was served with the summons and complaint on April 16, 2009 through Mary Drummond, an authorized agent to accept such service. Furthermore, plaintiff has provided the court with letters from defendant requesting an additional 30 days to answer the complaint. Defendant, therefore, received the complaint and was aware of the case pending in the Superior Court of California. Defendant had a full and fair opportunity to argue the merits in the California courts. It has not appealed that court's decision or taken steps to vacate its default in that court.

The court finds that the instrument at issue here, the California Judgment, is for payment of money only, within the meaning of CPLR § 3213, and there are no material issues of fact precluding summary judgment. Accordingly, plaintiff's motion for summary judgment in lieu of complaint is granted.

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 NY2d 1 (1986). Here, the contract, on which the underlying Judgment is based, does not have a provision for attorney's fees. Accordingly, the portion of plaintiff's motion that requests attorney's fees is denied.

Conclusion

In accordance herewith, it is hereby:

ORDERED that plaintiff INCREV CORPORATION's motion pursuant to CPLR §

3213 for summary judgment in lieu of complaint based on the Judgment against defendant SCRIPLOGIX, LLC is granted and plaintiff is entitled to a money judgment in its favor and against defendant, SCRIPLOGIX, LLC, for the unpaid sum of Sixty-Six Thousand, Ninety-Seven and 48/100 Dollars (\$66,097.48), plus costs and disbursements; and it is further


ORDERED that the portion of plaintiff's motion requesting attorney's fees is denied; and it is further

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

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

Dated: New York, New York
January 21, 2011

So Ordered:



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

FILED

JAN 24 2011

NEW YORK
COUNTY CLERK'S OFFICE