

**Calzaturificio Peron SRI v Yorke-Dyna-Mold Shoes,  
Inc.**

2011 NY Slip Op 31250(U)

May 10, 2011

Supreme Court, New York County

Docket Number: 600816/2009

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 : 600816/2009  
CALZATURIFICIO PERON SRL  
vs.  
YORKE DYNA-MOLD SHOES, INC.  
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

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

**FILED**

**MAY 11 2011**

**NEW YORK  
COUNTY CLERK'S OFFICE**

Dated: 5/10/11

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: PART 10**

-----X  
Calzaturificio Peron SRI,

Plaintiff (s),

-against-

Yorke Dyna-Mold Shoes, Inc. d/b/a  
Yorke Fashion Comfort Centre,

Defendant (s).  
-----X

**DECISION/ORDER**

Index No.: 600816-09  
Seq. No.: 001

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

**FILED**

**MAY 11 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):*

<b>Papers</b>	<b>Numbered</b>
Pltf's n/m (3215) w/IG affirm, AM affid, exhs, AOS .....	1

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

This is an action brought by plaintiff to recover the sum of \$62,345.60 from defendant for the unpaid balance of the agreed to price for shoes sold and delivered by plaintiff to defendant. Plaintiff's motion is brought more than one year after defendant's default. However, plaintiff has provided the affirmation by its attorney and principal ("Masenadore"), explaining the nature of the delay. Plaintiff made timely attempts to enter judgment through the judgment clerk who rejected the judgments. The notes of the judgment clerk have been provided. One defect was that plaintiff did not prove "Yorke Fashion Comfort Centre," the entity that plaintiff sent its bills to, is the assumed name of Yorke Dyna-Mold Shoes, Inc. Another problem had to do with a discrepancy between the sum demanded in the complaint and plaintiff's proof.

The foregoing defects have now been addressed and fixed. Plaintiff has also provided an acceptable explanation for its delay in bringing this motion. Therefore, the motion will be considered on its merits.

The summons and complaint were filed March 17, 2009. Defendant was served through its managing agent on March 26, 2009. This motion was further notice of this action (CPLR 3215) since it was mailed to defendant more than 20 days prior to entry of judgment and it contains a copy of the summons and complaint. Despite such notice and additional notice, defendant has not answered the complaint; its time to do so has expired and not been extended by the court.

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]). Therefore, plaintiff is entitled to the relief sought in its verified complaint which is for breach of contract (1<sup>st</sup> COA), account stated (2<sup>nd</sup> COA) and goods sold and delivered (3<sup>rd</sup> COA).

The following is established by the complaint, the documents provided and the sworn affidavit of Masenadore:

Defendant purchased and plaintiff provided shoes manufactured in Italy. Shipments commenced in April 2007. The parties agreed that in addition to the purchase price, defendant would also pay for the freight charges.

Plaintiff delivered the shoes to defendant and defendant accepted the shoes. Plaintiff sent two invoices to "York Fashion Comfort Centre." York Fashion Comfort Centre is the assumed named of defendant Yorke Dyna-Mold Shoes, Inc., as evidenced by the certificate of assumed name provided by plaintiff. Defendant kept

each of these invoices (dated November and December 2007) without objection. A copy of plaintiff's statement of account dated July 9, 2008 shows a balance due of \$62,345.60. Plaintiff, however, agrees to waive a UPS charge it added and concedes it inadvertently included an amount for interest. Therefore, plaintiff seeks a money judgment in the principal sum of \$57,312.60 plus interest from December 20, 2007.

Plaintiff has proved the essential elements of its claim by establishing the identity of the goods sold and delivery thereof and is entitled to entry of a default judgment on its 2<sup>nd</sup> COA for goods sold and delivered (Hatzlachh Supply Co., Inc. v. Bank of America New York, 188 A.D.2d 298 [1<sup>st</sup> Dept. 1992]).

No copy of any contract is provided and the terms of any oral contract are not fully specified. In any event, any claim for breach of contract appears to be redundant of the claims for goods sold and delivered. The 1<sup>st</sup> COA for breach of contract is, therefore, severed and dismissed.

The 3<sup>rd</sup> COA, for an account stated, is identical to the 2<sup>nd</sup> COA. It is, therefore, severed and dismissed as well.

The clerk shall enter judgment in favor of plaintiff against defendant Yorke Dyna-Mold Shoes, Inc. d/b/a Yorke Fashion Comfort Centre on the 2<sup>nd</sup> COA in the principal sum of \$57,312.60 plus interest from December 20, 2007 together with the costs and disbursements of this action as taxed by the court and plaintiff shall have execution thereof.

### **Conclusion**

In accordance with the foregoing,

*It is hereby*

**Ordered** that plaintiff's motion for entry of a default judgment against defendant Yorke Dyna-Mold Shoes, Inc. d/b/a Yorke Fashion Comfort Centre is granted on the 2<sup>nd</sup> cause of action; and it is further

**Ordered** that the Clerk shall enter a money judgment in favor of plaintiff Calzaturificio Peron SRI against defendant Yorke Dyna-Mold Shoes, Inc. d/b/a Yorke Fashion Comfort Centre in the principal sum of Fifty Seven Thousand Three Hundred Twelve and 60/100 Dollars (\$57,312.60) plus interest from December 20, 2007 together with the costs and disbursements of this action, as taxed by the court and plaintiff shall have execution thereof; and it is further

**Ordered** that the 1<sup>st</sup> and 3<sup>rd</sup> causes of action are severed and dismissed; and it is further

**Ordered** that any relief requested but not addressed is hereby denied; and it is further

**Ordered** that this constitutes the decision and order of the court.

Dated: New York, New York  
May \_10, 2011

So Ordered:

**FILED**

Hon. Judith J. Gische, JSC

**MAY 11 2011**

NEW YORK  
COUNTY CLERK'S OFFICE