

Jordache Enters. Inc. v Menaged

2011 NY Slip Op 32020(U)

July 18, 2011

Sup Ct, NY County

Docket Number: 114579/10

Judge: Judith J. Gische

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

HON. JUDITH J. GISCHE

PRESENT: _____ J.S.C.

PART 10

Index Number : 600142/2009
JORDACHE ENTERPRISES INC.
 vs.
MENAGED, JEFFREY
 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

FILED

JUL 19 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: 7/18/11

HON. JUDITH J. GISCHE 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

JORDACHE ENTERPRISES INC., and
JORDACHE LIMITED,

Plaintiffs,

-against-

JEFFREY MENAGED

Defendant.

Decision/Order

Index No.: 114579/10

Seq. No. : 001

Present:

Hon. Judith J. Gische

J.S.C.

FILED

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

JUL 19 2011

Papers

Pltfs' n/m [default] w/RAS affirm, EBA affid, exhs

NEW YORK
COUNTY CLERK'S OFFICE
Numbered
..... 1

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

Plaintiffs move for entry of a default judgment against defendant for acknowledgment of indebtedness by partial payment and account stated. CPLR § 3215. Plaintiffs served defendant with a copy of the summons and verified complaint on November 16, 2010, through defendant's roommate, Esther Sevaídos, a person of suitable age and discretion, followed by a mailing on the same date. CPLR § 308(2). Plaintiffs also complied with the additional service requirements by mailing a copy of the summons on January 7, 2011. CPLR 3215 § (g)(3)(i). Defendant has not opposed this motion or otherwise appeared in this action within the time provided for in the CPLR. Defendant's time to do so has not been extended by the court. Therefore, defendant has defaulted in this action and the motion will be considered without opposition.

Plaintiff is entitled to a default judgment against the defendant, 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). The defendant's 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).

Discussion

The complaint contains two causes of action for acknowledgment of indebtedness by partial payment (COA1) and account stated (COA2).

Plaintiff has provided the affidavit of Eddie Ben 'Aderet, Executive Vice President of Plaintiff. Mr. Ben 'Aderet states that on November 20, 2007, Jordache Limited, a subsidiary of Jordache Enterprises, Inc., loaned monies to defendant, payable to American Express, in the sum of \$67,977.87. Mr. Ben 'Aderet states that defendant issued a payment of \$10,000.00 on April 7, 2008 and a payment of \$10,000.00 August 5, 2008 to plaintiffs, but that defendant has failed to make any further payments and \$47,977.97 is due and owing. Plaintiffs have provided emails between plaintiffs and defendant reflecting defendant's indebtedness.

An account stated represents an agreement between the parties reflecting amounts due on prior transactions. Jim-Mar Corp. v. Aquatic Constr., 195 A.D.2d 868 (3d Dept. 1993), *lv. denied* 82 N.Y.2d 660 (1993). Where either no account has been presented or there is any dispute regarding the correctness of the account, the cause of action fails. M& A Const. Corp. v. McTague, 21 A.D.3d 610 (3d Dept. 2005).

Furthermore, partial payment may establish a *prima facie* entitlement to judgment as a

matter of law. Montalbano, Condon & Frank, P.C. v. Rodi, 54 A.D.3d 1012 (2nd Dept. 2008).

Based on the foregoing, plaintiffs have established a *prima facie* cause of action for acknowledgment of indebtedness by partial payment and account stated against defendant. Accordingly, plaintiffs are entitled to entry of default judgment against defendant on its complaint. Although plaintiffs seek interest from November 10, 2007, the date the check was issued, defendant made subsequent payments to re-pay the loan. Therefore, plaintiffs are entitled to a money judgment in the amount of \$47,977.87 with interest at the statutory rate from November 16, 2010, the date defendant was served with a copy of the summons and verified complaint.

Conclusion

In accordance herewith, it is hereby:

ORDERED that the motion by plaintiffs, JORDACHE ENTERPRISES INC., and JORDACHE LIMITED, for a default judgment in its favor and against defendant, JEFFREY MENAGED, is hereby granted; and it is further

ORDERED that the Clerk shall enter a money judgment in favor of plaintiffs, JORDACHE ENTERPRISES INC., and JORDACHE LIMITED, and against defendant, JEFFREY MENAGED, for Forty-Seven Thousand Nine Hundred Seventy-Seven Dollars and Eighty-Seven Cents (\$47,977.87) with interest from November 16, 2010, at the statutory rate, plus 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 any requested relief not expressly addressed 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
July 18, 2011

So Ordered:



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

FILED

JUL 19 2011

NEW YORK
COUNTY CLERK'S OFFICE