

Alistair Records, LLC v Adams
2011 NY Slip Op 33995(U)
December 21, 2011
Supreme Court, New York County
Docket Number: 603695/09
Judge: Judith Gische
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Gische
Justice

PART 10

Alistair Records, Inc.
- v -
Blair H. Adams

INDEX NO. 603695/09
MOTION DATE _____
MOTION SEQ. NO. 03
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

FILED

Cross-Motion: Yes No

DEC 22 2011

Upon the foregoing papers, it is ordered that this motion

NEW YORK
COUNTY CLERK'S OFFICE

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

Dated: 12/21/11

J. GISCHE
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**

-----X
Alistair Records, LLC¹,

Plaintiff (s),

-against-

Glen H. Adams,

Defendant (s).
-----X

DECISION/ORDER
Index No.: 603695/09
Seq. No.: 003

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

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

FILED

Papers	Numbered
Alistair Records w/LKR affirm, DS affid, exhs	1
Adams' opp w/MMN affirm, exhs	2
So-ordered stip re: counterclaims (12/1/11)	3

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NEW YORK
COUNTY CLERK'S OFFICE

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

This action arises out of a recording contract between plaintiff ("Alistair") and defendant Glen H. Adams, professionally known as "Chanj" ("Adams"). In connection with prior motion practice by Adams, the court granted Adams summary judgment, dismissing the complaint against him. It also granted his motion for a default judgment in on his 2nd counterclaim and directed entry of a money judgment against Alistair in the principal sum of \$6,000 because Alistair failed to serve a timely reply. The court, however, denied Adams' motion for entry of a default judgment on his 1st counterclaim and dismissed that claim (Order, Gische J., 5/20/11) ("prior order"). The remaining counterclaims (3rd through 7th) were ordered to continue. Alistair opposed the motion on

¹The court ordered the caption amended (Order, Gische J., 5/20/11).

the merits and sought to interpose a late reply to the counterclaims. The court denied that application, noting there was no cross claim for such relief and for other reasons articulated in the prior order, including lack of a meritorious defense (see prior order).

Alistair now seeks to reargue the prior motion and have the court vacate its prior order only as it pertains to the court's decision on summary judgment and entry of a default judgment on Adams' 2nd counterclaim. At oral argument of this motion, the parties stipulated to Adams' withdrawing the remaining counterclaims (i.e 3rd through 7th).

A motion for leave to reargue may be granted on a showing that the court overlooked or misapprehended the facts or the law (CPLR 2221; Williams P. Pahl Equip. Corp. v. Kassis, 182 A.D.2d 22 [1st Dept. 1992]). A motion for renewal "shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination" (CPLR 2221 [e][2]).

In sum and substance, Alistair blames its previous attorney for why it did not timely interpose a reply Adams' counterclaims. Alistair also disagrees with the court's decision, stating that it overlooked certain procedural defects in Adams' motion and that the court misapplied the law. With the exception of Mr. Scott's affidavit dated April 14, 2011, none of the facts or arguments presented by Alistair are new. A party is charged, however, with the duty to exercise due diligence in making their factual presentation clear in the original motion. A motion to reargue is not another opportunity for a party who has not done so to try again (see Prime Income Asset Management, Inc. v. American Real Estate Holdings L.P., 82 A.D.3d 550 [1st Dept 2011]; Leone Properties,

LLC v. Board of Assessors for Town of Cornwall, 81 A.D.3d 649 [2nd Dept 2011]).

Even crediting Mr. Scott's statement, that the failure to reply to the counterclaims is attributable to prior counsel's oversight, the court addressed this issue in its prior order stating that even if Alistair had excusable default, it did not have a meritorious claim, judging by the arguments that would have been presented as reply had that been permitted.

Therefore, the court exercises its discretion to deny reargument. There is no basis for renewal either. Accordingly, the motion by Alistair to renew and reargue is denied in its entirety. The court adheres to its original decision and the order is fully enforceable. Stays, if any are vacated forthwith. Since Adams has withdrawn his 3rd through 7th counterclaims, this case is now completed and the clerk shall mark it as "disposed."

Any relief requested but not specifically addressed is hereby denied. This constitutes the decision and order of the court.

Dated: New York, New York
December 21, 2011

So Ordered:



Hon. Judith J. Gische, JSC

FILED

DEC 22 2011

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COUNTY CLERK'S OFFICE