

**Han Soo Lee v Riverhead Bay Motors**

2014 NY Slip Op 33661(U)

December 18, 2014

Supreme Court, New York County

Docket Number: 113585/03

Judge: Saliann Scarpulla

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

EA  
12/22/14  
E

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

**HON. SALIANN SCARPULLA**

**PRESENT:** \_\_\_\_\_  
*Justice*

**PART** 39

Index Number : 113585/2003  
LEE, HAN SOO  
VS.  
RIVERHEAD BAY MOTORS  
SEQUENCE NUMBER : 011  
DEFAULT JUDGMENT

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for \_\_\_\_\_

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____	No(s) _____
Answering Affidavits — Exhibits _____	No(s) _____
Replying Affidavits _____	No(s) _____

Upon the foregoing papers, it is ordered that this motion is

decided per the memorandum decision dated 12/18/14  
which disposes of motion sequence(s) no. 011

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

**FILED**  
DEC 22 2014  
NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 12/18/14

RECEIVED  
DEC 22 2014  
GENERAL CLERK'S OFFICE  
NYS SUPREME COURT CIVIL

RECEIVED  
DEC 22 2014  
HON. SALIANN SCARPULLA  
GENERAL CLERK'S OFFICE  
NYS SUPREME COURT CIVIL

1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 39

----- X  
HAN SOO LEE and SOON OK JANG,

Plaintiffs,

Index Number: 113585/03  
Submission Date: 10/7/14  
Motion Seq. No. 011

- against -

**DECISION and ORDER**

RIVERHEAD BAY MOTORS, RIVERHEAD POOH  
LLC, YODA, LLC, MANHATTAN SKYLINE  
MANAGEMENT CORP. and QUEENS IRON WORKS  
& STORE FRONT, INC.,

Defendants.

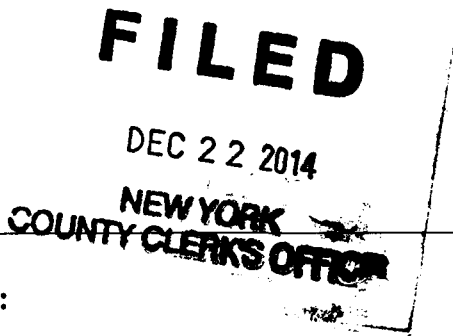
----- X

Plaintiffs' Present Attorneys:  
Law Office of Kenneth A. Wilhelm  
445 Park Avenue, 9<sup>th</sup> Floor  
New York, NY 10022

Plaintiffs' Former Attorneys:  
Edward H. Suh and Associates, P.C.  
264 E. 94<sup>th</sup> Street  
New York, NY 10128

Papers considered in review of movant Edward H. Suh and Associates, P.C.'s motion to reargue and the Law Office of Kenneth A. Wilhelm's cross-motion:

Notice of Motion . . . . .	1
Aff. in Supp . . . . .	2
Notice of Cross-Motion. . . . .	3
Aff. in Opp. . . . .	4
Reply Aff. . . . .	5
Reply on Cross-Motion . . . . .	6



**HON. SALIANN SCARPULLA, J.:**

This motion arises out of a fee dispute between plaintiffs' former attorneys Edward H. Suh and Associates, P.C. ("Suh") and plaintiffs' present attorneys Law Office of Kenneth A. Wilhelm ("the Wilhelm Firm"). After conducting a hearing to determine the division of legal fees between Suh and the Wilhelm Firm, I issued an October 14, 2011 order directing the Wilhelm Firm to pay Suh \$50,000 from the \$1,047,423.30 legal fees

earned in this action (“the order”). Suh now moves for an order directing entry of a judgment against the Wilhelm Firm in the amount of \$50,000, with 9% interest from February 28, 2012.

Suh contends that the Wilhelm Firm has failed to pay the \$50,000 as ordered, and that it is entitled to interest pursuant to CPLR § 5002. The Wilhelm Firm argues that Suh may not collect interest because CPLR § 5002 is inapplicable, and the relevant provision, CPLR § 2222, does not provide for any interest. The Wilhelm Firm cross-moves for an order compelling Suh to execute a general release for \$50,000 in exchange for a tender of \$50,000, or in the alternative, permitting a deposit of \$50,000 into Court pending the final resolution of this matter.

CPLR § 5003 provides that “[e]very money judgment shall bear interest from the date of its entry,” and that “[e]very order directing the payment of money which has been docketed as a judgment shall bear interest from the date of such docketing.” The order that I issued on October 14, 2011 is clearly one that directed the payment of money, and therefore CPLR § 5003 is controlling as to whether any interest has accrued.<sup>1</sup> In order for interest to accrue under CPLR § 5003, the order directing payment of money must be “docketed as a judgment.”

---

<sup>1</sup> CPLR § 5002 does not apply because it governs “interest to verdict, report or decision, in any action, from the date the verdict was rendered or the report or decision was made to the date of entry of final judgment.” The sum awarded in the order did not result from a report or decision leading to the entry of a final judgment in this action.

CPLR § 2222 sets forth the mechanism by which an order directing the payment of money may be docketed as a judgment. CPLR § 2222 states that “[a]t the request of any party the clerk shall docket as a judgment an order directing the payment of money.”

Although Suh submits a copy of the order entered on October 11, 2011, Suh does not present any evidence that it requested the order to be docketed as a judgment until March 19, 2014. In an affirmation, Edward H. Suh, states that he presented the order to the Clerk of the Court to be docketed as a judgment on March 19, 2014, but he was informed that a motion would be required to enter a judgment against the Wilhelm Firm. CPLR § 2222, however, does not require a motion for an order directing the payment of money to be docketed as a judgment, except for matrimonial orders. *Cardo-Racolin v. Racolin*, 163 Misc.2d 853, 853-855 (Sup. Ct. New York County 1994) (noting that CPLR 2222 omits the requirement that there be a court direction for docketing an order as a judgment except in matrimonial cases). I therefore direct the Clerk of the Court to docket the order as a judgment against the Wilhelm Firm in the amount of \$50,000, with interest from March 19, 2014.

The Wilhelm Firm argues that the Court should not grant interest to Suh because Suh caused the delay in payment by appealing the order to the Appellate Division, First Department. The record reveals, however, that both Suh and the Wilhelm Firm appealed the order, and thus, Suh did not itself cause the delay in payment such that it should be estopped from collecting interest. The Wilhelm Firm, in fact, admits that enforcement of

the order was not stayed during the pending appeal, and the Wilhelm Firm was therefore required to comply with the order, which it has yet to do more than three years later.

In its cross-motion, the Wilhelm Firm seeks an order compelling Suh to execute a general release for \$50,000, or in the alternative, an order permitting it to deposit \$50,000 into Court. As Suh has established its entitlement to interest, there is no reason to compel Suh to execute a general release in the amount of \$50,000. I further deny the Wilhelm Firm's cross-motion to deposit sums into Court because it failed to make an unconditional tender prior to making its cross-motion. CPLR § 5021(a)(3); *Vick v. Albert*, 50 A.D.3d 438, 439 (1st Dep't 2008).

In accordance with the foregoing, it is

ORDERED that plaintiffs' former attorneys Edward H. Suh and Associates, P.C.'s motion for an order directing entry of a judgment against the Wilhelm Firm in the amount of \$50,000, with 9% interest from February 28, 2012 is granted only to the extent set forth above; and it is further

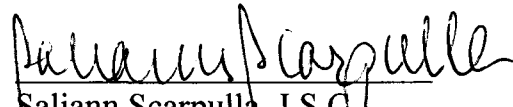
ORDERED that plaintiffs' present attorneys Law Office of Kenneth A. Wilhelm's cross-motion for an order compelling Suh to execute a general release for \$50,000 in exchange for a tender of \$50,000, or in the alternative, permitting deposit of \$50,000 into Court pending the final resolution of this matter is denied, without prejudice to renew in the event that Suh refuses the tender of the amount due on the judgment; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of movant Edward H. Suh and Associates, P.C. and against the Law Office of Kenneth A. Wilhelm in the amount of \$50,000, with interest at the statutory rate from March 19, 2014 until the date of satisfaction of the judgment.

This constitutes the decision and order of the Court.

Dated: New York, New York  
December 18, 2014

ENTER:

  
Saliann Scarpulla, J.S.C.

**FILED**  
DEC 22 2014  
NEW YORK  
COUNTY CLERK'S OFFICE