

**Citistaffing, L.L.C. v Oiring**

2015 NY Slip Op 30680(U)

April 24, 2015

Supreme Court, New York County

Docket Number: 162369/14

Judge: Cynthia S. Kern

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: Part 55

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CITISTAFFING, L.L.C.,

Plaintiff,

-against-

Index No. 162369/14

**DECISION/ORDER**

MOISHE OIRING and GENESIS ADULT DAY  
CARE INC.,

Defendants.

-----X

**HON. CYNTHIA KERN, J.S.C.**

**Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for :** \_\_\_\_\_

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Answering Affidavits .....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Plaintiff Citistaffing, L.L.C. commenced the instant action against Moishe Oiring (“Mr. Oiring”) and Genesis Adult Day Care Inc. (“Genesis”) (hereinafter collectively referred to as “defendants”) seeking to collect on unpaid invoices. Plaintiff now moves for an Order pursuant to CPLR § 3212 granting it summary judgment on its claim for an account stated. For the reasons set forth below, plaintiff’s motion is granted in part and denied in part.

The relevant facts are as follows. In or around June 2014, Mr. Oiring entered into an agreement with plaintiff for plaintiff to provide payroll services and provide the funds to pay various employees of Genesis, Mr. Oiring’s company. Plaintiff asserts that between June 10, 2014 and September 29, 2014, it performed said services for Mr. Oiring and paid Mr. Oiring’s employees in the amount of \$54,698.67. Plaintiff further alleges that although it sent Genesis

invoices, which were not objected to, there remains a balance due and owing of \$47,768.82.

On a motion for summary judgment, the movant bears the burden of presenting sufficient evidence to demonstrate the absence of any material issues of fact. *See Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986). Once the movant establishes a *prima facie* right to judgment as a matter of law, the burden shifts to the party opposing the motion to “produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim.” *See Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980).

In the instant action, plaintiff has established its *prima facie* right to summary judgment on its account stated claim as against Genesis only. “An account stated is an agreement between the parties to an account based upon prior transactions between them with respect to the correctness of the separate items composing the account and the balance due, if any, in favor of one party or the other.” *Herick, Feinstein LLP v. Stamm*, 297 A.D.2d 477 (1<sup>st</sup> Dept 2002) (quoting *Chrisholm-Ryder Co. v. Sommer & Sommer*, 70 A.d.2d 429, 431 (4<sup>th</sup> Dept 1979)). It is well settled that “[e]ither retention of bills without objection or partial payment may give rise to an account stated” entitling the moving party to summary judgment in its favor. *Morrison Cohen Singer and Weinstein, LLP v. Waters*, 13 A.D.3d 51, 52 (1<sup>st</sup> Dept 2004); *see also American Express Centurion Bank v. Williams*, 24 A.D.3d 577 (2<sup>nd</sup> Dept 2005).

Here, plaintiff has established its *prima facie* right to summary judgment on its claim for an account stated against Genesis by presenting copies of the invoices sent to Genesis between June 2014 and September 2014, which show that Genesis made partial payments on the account with plaintiff totaling \$6,929.85, leaving a balance due and owing of \$47,768.82. Additionally, plaintiff presents the affidavit of Lindsey Heacock, plaintiff’s Manager of Temporary Staffing, who affirms that “[a]t no time did [defendants] or anyone else on behalf of the Defendants object

to or refute any of the invoices or the balance due” but instead they merely “promise[d] payments for the balance due.” Taken together, these documents clearly establish plaintiff’s right to judgment as a matter of law on its account stated claim against Genesis.

In opposition, defendants have failed to raise an issue of fact sufficient to defeat plaintiff’s motion for summary judgment on its account stated claim against Genesis.

Defendants’ assertion that there is “nothing upon which [plaintiff] can rely to base [the] motion for summary judgment on an account stated or upon any other theory of recovery” is without merit as plaintiff has provided the court with all of the invoices at issue along with an affidavit of its employee affirming that the invoices were sent to defendants, that plaintiff received no objection to them and that defendants made partial payment on said invoices. Defendants’ assertion that plaintiff’s motion should be denied on the ground that plaintiff failed to attach the invoices at issue to its complaint so that defendant could respond to each one is also without merit as there is no requirement that plaintiff attach the invoices to the complaint. As an initial matter, it is sufficient that the invoices are provided when the plaintiff makes its motion for summary judgment on its account stated claim. Additionally, if defendants wanted to object to the invoices on the grounds that they never received said invoices or that said invoices are not genuine, defendants could have done so in opposition to the motion for summary judgment. Instead, defendants have not disputed that they received the invoices or that they made partial payment thereon but only that the invoices were improperly provided to the court in the litigation. Finally, the fact that plaintiff served defendants with a Notice to Admit demanding that defendants admit the indebtedness evidenced by each invoice and that defendants have move to strike said Notice to Admit is insufficient to raise an issue of fact to defeat the instant motion for summary judgment against Genesis. Accordingly, as it is undisputed that Genesis retained

