

<b>Disoni LLC v Montas</b>
2020 NY Slip Op 33028(U)
September 11, 2020
Supreme Court, New York County
Docket Number: 651440/2018
Judge: Andrew Borrok
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM

*Justice*

-----X

DISONI LLC C/O DIVINA ESPINAL

Plaintiff,

- v -

MIGUEL MONTAS,

Defendant.

-----X

INDEX NO. 651440/2018

MOTION DATE 08/25/2020

MOTION SEQ. NO. 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46

were read on this motion to/for

STRIKE PLEADINGS

Disoni LLC c/o Divina Espinal (**Disoni**) filed this action for breach of contract against Miguel Montas alleging that Mr. Montas failed to comply with his obligations under a certain promissory note (the **Note**), dated September 28, 2016, by Mr. Montas and in favor of Disoni, and Security Agreement (the **Security Agreement**), of even date therewith, pursuant to which Disoni agreed to loan the principal sum of \$27,000 to Mr. Montas and Mr. Montas personally guaranteed repayment of the loan (NYSCEF Doc. No. 43). Disoni alleges that Mr. Montas breached the Note and the Security Agreement by failing to make installment payments of principal and interest as they became due (NYSCEF Doc. No. 32). Disoni further alleges that it made additional loans of \$25,000 and \$20,000, and that Mr. Montas owes a total of \$72,000 (NYSCEF Doc. No. 31).

Disoni filed the instant motion on March 18, 2020 seeking an order (1) pursuant to CPLR § 3124, compelling Mr. Montas to produce documents responsive to its Document Requests, (2)

pursuant to CPLR § 3126(1) deeming Disoni's allegations contained in the complaint resolved in Disoni's favor, (3) pursuant to CPLR § 3126(2) for an order prohibiting Mr. Montas from giving testimony supporting his allegations or opposing Disoni's allegations, (4) pursuant to CPLR § 3126(3), striking Mr. Montas's answer and ordering an inquest on damages, or (5) pursuant to CPLR § 3212, granting summary judgment in favor of Disoni and against Mr. Montas in the sum of \$72,000. The motion is unopposed.

Rule 12 of the Rules of the Commercial Division provides “[t]he failure of counsel to appear for a conference may result in a sanction authorized by section 130.2.1 of the Rules of the Chief Administrator or section 202.27, including dismissal, the striking of an answer, an inquest or the direction of judgment, or other appropriate sanction” (202 NYCRR § 202.70 [12]). In addition, Rule 13 requires strict compliance with all discovery obligations and provides that non-compliance with a discovery order may result in the imposition of sanctions under CPLR § 3126 (*id.*, § 202.70 [13]).

Here, Disoni served copies of the summons and complaint on Mr. Montas by delivering the same to Mr. Montas's home address on April 20, 2018 (NYSCEF Doc. No. 33). Disoni also mailed copies of the summons and complaint to Mr. Montas's home address by First-Class Mail on April 30, 2018 (*id.*). Mr. Montas failed to timely file an answer or notice of appearance or otherwise make a motion. On September 24, 2018, Disoni filed a motion for default judgment (NYSCEF Doc. No. 34). However, pursuant to a stipulation, dated October 8, 2018, Disoni withdrew its motion for default judgment and agreed to a 30-day extension of Mr. Montas's time to file an answer (NYSCEF Doc. No. 35).

Mr. Montas filed an answer on October 26, 2018 (NYSCEF Doc. No. 36). The parties appeared for a preliminary conference on August 2, 2019. In accordance with the discovery schedule set by the court at the Preliminary Conference, on September 5, 2019, Disoni served its Notice for Discovery and Inspection (the **Document Requests**) (NYSCEF Doc. No. 37). Mr. Montas has failed to serve any responses or objections or produce any responsive documents.

On December 11, 2019, Mr. Montas's counsel moved by order to show cause to be relieved as counsel. By decision and order, dated January 7, 2020, the court granted the motion to be relieved as counsel, ordered the withdrawing counsel to forward notice to Mr. Montas directing him to appoint substitute counsel within 30 days or notify the court if he intends to represent himself, issued a stay of the proceedings for a period of 40 days, and scheduled a status conference for February 27, 2020 at 11:30 AM (NYSCEF Doc. No. 41). Mr. Montas failed to retain new counsel or appear pro se at the status conference on February 27, 2020. The court scheduled another status conference for March 13, 2020 at 11:30 AM and ordered that "if the defendant fails to appear for the next [conference], then the plaintiff may move for all appropriate relief" (NYSCEF Doc. No. 42). Mr. Montas once again failed to appear for the status conference on March 13, 2020, and the court ordered that "the plaintiff may move for all appropriate relief . . . by 4/3/2020" (NYSCEF Doc. No. 28).

As a result of Mr. Montas' repeated and unexplained failures to appear at court-ordered status conferences and comply with his discovery obligations, Disoni's motion is granted pursuant to CPLR § 3126 and Rules 12 and 13 of the Rules of the Commercial Division, Mr. Montas' answer is stricken, and this matter will be set down for an inquest on damages.

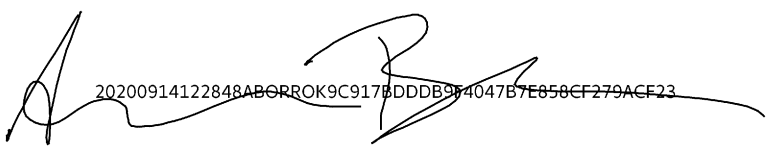
Accordingly, it is

ORDERED that Disoni LLC’s motion (mtn. seq. no. 003) is granted; and it is further

ORDERED that an assessment of damages against Mr. Montas is directed; and it is further

ORDERED that a copy of this order with notice of entry be served by the movant upon the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who is directed, upon the filing of a note of issue and a certificate of readiness and the payment of proper fees, if any, to place this action on the appropriate trial calendar for the assessment of damages herein directed; and it is further

ORDERED that such service upon the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)).

  
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**ANDREW BORROK, J.S.C.**

**9/11/2020**  
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**DATE**

**CHECK ONE:**       CASE DISPOSED       NON-FINAL DISPOSITION  
                           GRANTED                       DENIED                       GRANTED IN PART                       OTHER  
**APPLICATION:**       SETTLE ORDER                       SUBMIT ORDER  
**CHECK IF APPROPRIATE:**       INCLUDES TRANSFER/REASSIGN       FIDUCIARY APPOINTMENT       REFERENCE