

**Law Office of James E. Hurley Jr. v Beulah Church
of God in Christ Jesus Inc.**

2012 NY Slip Op 30927(U)

April 9, 2012

Sup Ct, New York County

Docket Number: 12584/2007

Judge: Judith J. Gische

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

HON. JUDITH J. GISCHE

PRESENT: _____
Justice

PART 10

Index Number : 102584/2007
HURLEY JR., ESQ. JAMES E.
vs.
BEULAH CHURCH OF GOD IN CHRIST
SEQUENCE NUMBER : 007
OTHER RELIEFS

INDEX NO: _____

MOTION DATE _____

MOTION SEQ. NO. 007

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

**MOTION IS DECIDED IN ACCORDANCE WITH
THE ACCOMPANYING MEMORANDUM DECISION.**

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

FILED

APR 1 2012

COUNTY CLERK'S OFFICE
NEW YORK

Dated: April 9, 2012

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

- 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 10**

-----X
LAW OFFICE OF JAMES E. HURLEY JR.,

Plaintiff,

-against-

BEULAH CHURCH OF GOD IN CHRIST JESUS
INC.,

Defendant.
-----X

DECISION/ORDER
Index No. 102584-2007
Seq. No: 007

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):

Papers	Numbered
Pltf's n/m w/ PP affirm, exhs	1

Upon the foregoing papers, the Decision and Order of the court is as follows:

This is an action by the plaintiff, LAW OFFICE OF JAMES. E. HURLEY JR. ("Plaintiff"), to recover unpaid legal fees from his former client, the defendant, BEULAH CHURCH OF GOD IN CHRIST JESUS, INC. ("Defendant"). The court granted summary judgment in favor of Plaintiff (Order, Gische J., 9/18/09) ("Prior Order"), and subsequently corrected the Prior Order on October 7, 2009 (Order, Gische J., 10/7/09) ("Amended Order"). Plaintiff now seeks an order directing the clerk to enter the judgment it was awarded pursuant to the Prior Order. This motion is submitted to this court without opposition.

Consequently, it is decided on default.

The court's decision and order is as follows:

FILED

APR 1 2010

COUNTY CLERK'S OFFICE
NEW YORK

Discussion

In the court's Amended Order, Plaintiff was granted summary judgment, ordering the Clerk of Court to enter a money judgment in favor of Plaintiff and against Defendant for Thirty One Thousand Four Hundred Eighteen Dollars (\$31,418.00) for professional legal services rendered from September 13, 2005 through December 28, 2006 plus interest. Pursuant to Uniform Rule §202.48[a], Plaintiff was required to submit the proposed judgment to the Clerk of Court within 60 days after the signing and filing of the decision (Uniform Rule §202.48[a]). Thus, to timely file with the Clerk of Court, Plaintiff should have submitted the judgment to the Clerk of Court by December 6, 2009. Here, Plaintiff acknowledges his failure to timely submit the judgment within 60 days of the signing or filing.

"Failure to submit the order or judgment timely shall be deemed an abandonment of the motion or action, unless for good cause shown" (Id.). Plaintiff asserts that its failure to timely file with the Clerk of Court is attributable to law office failure and should be excused. Under certain circumstances, law office failure provides a reasonable excuse for why a party failed to comply with an order. (see Goldman v. Cotter, 10 A.D.3d 289, 291 [1st Dept 2004]).

While it is within the sound discretion of the court to determine whether the submitted excuse is sufficient, law office failure is not an absolute excuse for noncompliance with time requirements. (see Id.; Nayarro v. A. Trenkman Estate, Inc., 279 A.D.2d 257, 258 [1st Dept 2001]; De Vito v. Marine Midland Bank, N.A., 100 A.D.2d 530 [2d Dept. 1984]; Travelers Property Casualty Company of America v. Consolidated Edison, 2008 NY Slip Op 33458U [N.Y. Sup. Ct. 2008]). "Mere allegation of law office

* 4]

failure, without any supporting facts to explain and justify the failure, would be insufficient to establish excusable default" (Tandy Computer Leasing v. Video X Home Library, 124 A.D.2d 530 [1st Dept. 1986]).

In her affirmation, Plaintiff's attorney, Pragna Parikh, cites "tantamount law office failure" as the cause for delay in submitting the judgment to the Clerk of Court. She fails, however, to articulate any reasons that amount to law office failure. Plaintiff, a practicing attorney who represented himself in this action, does not elaborate why he delayed in taking steps to have the judgment entered. Without excusable default, the court cannot excuse Plaintiff's noncompliance with §202.48[a]'s time requirements.

Even were the court persuaded that Plaintiff's delay is excusable, Plaintiff improperly served this motion on Defendant pursuant to CPLR § 2013[b]. While service upon Defendant directly is valid when commencing an action, thereafter, once defendant has appeared by counsel, Plaintiff is required to serve subsequent pleadings upon the opposing party's attorney (see CPLR § 2013; Cooky's Island Steak Pub v. Yorkville Elec. Co., 130 Misc.2d 869 [N.Y. Cty. Ct. 1986]). Here Defendant, a corporation, is represented by counsel and there has been no substitution of counsel filed with the court. Therefore, Plaintiff's failure to serve Defendant's counsel constitutes insufficient service upon the Defendant.

Plaintiff also improperly seeks enforcement of the Prior Order although it was later amended on October 7, 2009. Although the corrections on the Amended Order were *de minimus*, once the court amended the Prior Order, the Prior Order was superceded.

[* 5]

Accordingly, Plaintiff's motion to enforce the Prior Order and directing the clerk to enter judgment in his favor is denied without prejudice to renew. Such renewal shall, at a minimum, consist of a complete explanation for the delay in entering judgment and proof of proper service on the defendant. Such renewal shall be no later than **90 days** from the date this decision/order appears scanned in SCROLL.

Conclusion

In accordance herewith, it is hereby:

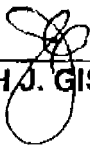
ORDERED that the motion by Plaintiff seeking to enforce the Order entered on September 18, 2009 is denied without prejudice to renew no later than **90 days** from the date this decision/order appears scanned in SCROLL; and it is further

ORDERED that any requested relief not expressly addressed herein 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
April 9, 2012

So Ordered:


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

FILED

APR 10 2012

COUNTY CLERK'S OFFICE
NEW YORK