

**Business Resource & Inv. Serv. Ctr. Inc. v Society
Coffee & Juice, Inc.**

2016 NY Slip Op 32506(U)

December 19, 2016

Supreme Court, New York County

Docket Number: 652452/2011

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

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Business Resource and Investment Service Center
Inc.,

Index No.
652452/2011

Plaintiff,

- v -

**DECISION
and ORDER**

Mot. Seq. 002

Society Coffee and Juice, Inc., Uptown Space
LLC, 8TH Avenue Social Club and Karl Williams,

Defendants.
-----X

HON. EILEEN A. RAKOWER, J.S.C.

This is an action to recover for default on a loan. Plaintiff, Business Resource & Investment Center, Inc. ("Plaintiff"), commenced this action seeking to recover money it had loaned to defendants Society Coffee and Juice, Inc., Uptown Space LLC, 8TH Avenue Social Club and Karl Williams (collectively, "Defendants").

On September 6, 2011, Plaintiff filed its summons and complaint. On April 6, 2012, Defendants interposed an Answer.

On December 10, 2012, a Stipulation of Settlement ("Stipulation") was entered in this action. Paragraph 4 of the Stipulation states:

In the event payments are not made as set forth in paragraph "1" herein, then after written notice to defendant(s) attorney and defendant(s) of such default and the failure to cure the default in payment within ten (10) days of the date such notice is mailed, then judgment may be entered in the amount of \$111,517.35 plus interest at the legal rate of interest (9%) percent per annum from January 1, 2013 plus attorney fees in the amount of twenty

(\$20,000) thousand dollars plus costs and disbursements as taxed by the clerk. The defendant(s) shall be given credit for all payments under this stipulation upon execution.

Presently before the Court is Plaintiff's motion for an Order directing the clerk to enter judgment against Defendant and in favor of Plaintiff in the amount of \$111,517.35, plus interest at the legal rate of interest from January 1, 2013, plus attorneys' fees in the amount of \$20,000, plus costs and disbursements as taxed by the clerk." Plaintiff submits the attorney affirmation of Joshua Stiers; the pleadings; a copy of the Stipulation; and letters from Steven Cohen, Esq., advising of Defendants' default. Plaintiff states, "Defendants have not made payments according to the stipulation." The Court notes that while Plaintiff seeks the entry of judgment in the full settlement, paragraph 9 of Stiers' affirmation states, "Defendants have failed to cure such defaults and are heavily in arrearage, currently owing \$22,200.00 under the stipulation."

The letters of default, which span from April 2013 to May 23, 2016, are mailed to different recipients at different times. These letters are dated April 1, 2013 (mailed to The Lal Firm LLC), October 11, 2013 (mailed to Society Coffee and Juice, Inc.), October 11, 2013, December 12, 2013 (mailed to The Lal Firm LLC), December 12, 2013 (mailed to Society Coffee and Juice, Inc.), December 12, 2013 (mailed to 8th Avenue Social Club LLC); December 12, 2013 (mailed to Karl Williams); December 12, 2013 (mailed to Uptown Space, LLC); December 27, 2013 (mailed to Society Coffee and Juice, Inc., cc'd: 8th Avenue Social Club LLC, Karl Williams, Uptown Space, LLC); December 27, 2013 (mailed to Uptown Space, LLC); December 27, 2013 (mailed to Society Coffee and Juice, Inc., cc'd: 8th Avenue Social Club LLC, Karl Williams, Uptown Space, LLC); January 29, 2014, March 19, 2014 (mailed to The Lal Firm LLC, cc'd: 8th Avenue Social Club LLC, Karl Williams, Uptown Space, LLC, and Society Coffee and Juice, Inc.), April 21, 2014 (mailed to The Lal Firm, LLC, cc'd Karl Williams); May 22, 2014 (mailed to Society Coffee and Juice, Inc.), August 4, 2014 (cc'd The Lal Firm, LLC), October 30, 2014 (mailed to The Lal Firm, LLC), January 28, 2015 (mailed to Society Coffee and Juice), January 28, 2015 (mailed to The Lal Firm, LLC), January 28, 2015 (mailed to Uptown Space, LLC, 8th Avenue Social Club LLC), January 28, 2015 (mailed to Karl Williams); February 5, 2015 (Society Coffee and Juice, Inc.), February 5, 2015 (mailed to Uptown Space, LLC, 8th Avenue Social Club LLC), February 5, 2015 (mailed to Karl Williams), February 5, 2015 (mailed to The Lal Firm, LLC), September 1, 2015, September 24, 2015, November 2, 2015, January 27, 2016, May 2, 2016 (mailed to The Lal Firm, LLC, cc'd Society Coffee and

Juice), May 23, 2016 (mailed to The Lal Firm), and July 6, 2016 (mailed to The Lal Firm, LLC, cc'd Society Coffee and Juice, 8th Avenue Social Club LLC).

The return date of Plaintiff's motion was September 15, 2016, and was marked fully submitted on that date. After the motion was fully submitted, on October 3, 2016, Defendants filed opposition. Defendants request in the papers that the Court extend Defendants' time to submit their opposition, and deny Plaintiff's motion. Plaintiff requests that the Court reject the opposition. Defendants do not provide a reasonable excuse for their delay in failing to timely respond to Plaintiff's motion, nor do they provide a meritorious defense to the motion.

Turning to the merits of Plaintiff's submission, Plaintiff has provided proof of the Stipulation entered into between the parties, Defendants' default, and Plaintiff's notices of default to Defendants. Despite notice of the default and time to cure, Defendants have failed to do so. Accordingly, Plaintiff has established entitlement to a judgment as to the issue of liability.

However, based on Plaintiff's notices of default attached to its motion, it appears that Defendants have made some payments pursuant to the Stipulation. Plaintiff's May 23, 2016 letter advising Defendants of their default, "Since April 2015, your client has defaulted on 3 different payments and is currently in arrearages for the monthly payments for August 2015, January 2016, and April 2016 ... To make matters worse, most of your client's monthly payments reach this office after the 15th of each month ...".

Wherefore, it is hereby

ORDERED that Plaintiff's motion for default judgment is granted against Defendants as to liability; and it is further

ORDERED that calculation of the amount owed taking into account the payments made by Defendants pursuant to the Stipulation referred to a Special Referee to hear and report with recommendations; and it is further

ORDERED that a copy of this order with notice of entry shall be served on the Clerk of the Reference Part (Room 119A) to arrange for a date for the reference to a Special Referee and the Clerk shall notify all parties, including defendants, of the date of the hearing.

This constitutes the decision and order of the court. All other relief requested is denied.



Dated: DECEMBER 19, 2016

DEC 19 2016

HON. EILEEN A. RAKOWER J.S.C.

Check one: FINAL DISPOSITION X NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE