

Canon Fin. Servs., Inc. v Alianza Dominicana Inc.

2013 NY Slip Op 33995(U)

June 7, 2013

Supreme Court, New York County

Docket Number: 653876/2012

Judge: Shirley Werner Kornreich

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

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CANON FINANCIAL SERVICES, INC.,

Index No.: 653876/2012

Plaintiff,

DECISION & ORDER

-against-

ALIANZA DOMINICANA INC. d/b/a
ALIANZA DOMINICANA, INC.,

Defendant.

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SHIRLEY WERNER KORNREICH, J.:

Plaintiff Canon Financial Services, Inc. (Canon) moves for summary judgment against defendant Alianza Dominicana Inc. (Alianza) pursuant to CPLR 3212. Plaintiff's motion is granted, on default, for the reasons that follow.

Factual Background

Canon is the assignee of a Total Solution Lease Agreement (the Lease) between Alianza and non-party Reliable Office Systems that was entered into in April 2011, whereby Alianza was loaned six Canon brand copiers for \$226,366.80, payable in 63 consecutive monthly installments of \$4,230. The Lease provided that upon default, the lessor is entitled to (1) collect the entire unpaid balance plus the contractually defined Purchase Option amount; (2) repossess the copiers; and (3) costs and attorneys' fees. Alianza did not make the required payments under the Lease and has been in default since June 1, 2012.

Canon commenced this action on November 9, 2012. The Complaint asserts causes of action for breach of contract, an account stated, unjust enrichment, and replevin and seeks: (1) the \$226,366.80 due under the Lease; (2) \$56,591.70 in attorneys' fees; (3) litigation costs; and

(4) an Order of Replevin to repossess the copiers. Alianza retained counsel and filed an Answer on February 8, 2013. Canon filed the instant motion for summary judgment on March 29, 2013, and executed a stipulation extending the time for Alianza to oppose the motion to May 10, 2013. Alianza did not file opposition papers and is therefore in default.

Discussion

Summary judgment may be granted only when it is clear that no triable issue of fact exists. *Alvarez v Prospect Hosp.*, 68 NY2d 320, 325 (1986). The burden is upon the moving party to make a *prima facie* showing of entitlement to summary judgment as a matter of law. *Zuckerman v City of New York*, 49 NY2d 557, 562 (1980); *Friends of Animals, Inc. v Associated Fur Mfrs., Inc.*, 46 NY2d 1065, 1067 (1979). A failure to make such a *prima facie* showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. *Ayotte v Gervasio*, 81 NY2d 1062, 1063 (1993). If a *prima facie* showing has been made, the burden shifts to the opposing party to produce evidentiary proof sufficient to establish the existence of material issues of fact. *Alvarez*, 68 NY2d at 324; *Zuckerman*, 49 NY2d at 562. The papers submitted in support of and in opposition to a summary judgment motion are examined in the light most favorable to the party opposing the motion. *Martin v Briggs*, 235 AD2d 192, 196 (1st Dept 1997). Mere conclusions, unsubstantiated allegations, or expressions of hope are insufficient to defeat a summary judgment motion. *Zuckerman*, 49 NY2d at 562. Upon the completion of the court's examination of all the documents submitted in connection with a summary judgment motion, the motion must be denied if there is any doubt as to the existence of a triable issue of fact. *Rotuba Extruders, Inc. v Ceppos*, 46 NY2d 223, 231 (1978).

Canon has established its *prima facie* case by submitting evidence of Alianza's default on its obligations under the Lease. Canon is entitled to summary judgment on the \$226,366.80 due under the Lease because it has established an account stated by submitting an invoice for such amount that was sent to Alianza in 2012. *See Stephan B. Gleich & Assocs. v Gritsipis*, 87 AD3d 216, 223 (2d Dept 2011). As for the \$56,591.70 that Canon seeks in attorneys' fees and litigation costs, said amount must be substantiated before a Special Referee. Finally, summary judgment is granted on Canon's right to repossess the copiers. Canon is directed to submit a proposed Order of Replevin on notice. The Clerk will not be directed to enter judgment until the Referee's report is confirmed (unless the request for fees and costs is waived) and the Order of Replevin is approved by the court. Accordingly, it is

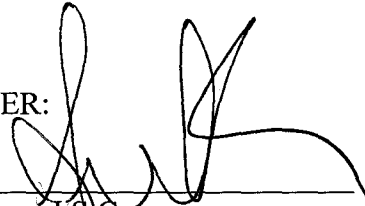
ORDERED that the motion for summary judgment by plaintiff Canon Financial Services, Inc. against defendant Alianza Dominicana Inc. d/b/a Alianza Dominicana, Inc. is granted on default as follows: (1) said plaintiff is entitled to collect the \$226,366.80 due under the Lease, with interest from June 1, 2012 to the date judgment is entered; (2) the calculation of said plaintiff's attorneys' fees and litigation costs is referred to a Special Referee to hear and report with recommendations, unless the parties consent to a determination by the Special Referee, in which case the Special Referee may hear and determine said issues; and (3) said plaintiff is directed to submit a proposed Order of Replevin for repossession of the copiers; and it is further

ORDERED that pending receipt of the report and a motion pursuant to CPLR 4403, final determination of that branch of the motion is held in abeyance, unless the parties consent to a determination by the Special Referee; 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 119) to arrange a date for the reference to a Special Referee and the Clerk shall notify all parties of the date of the hearing before the Special Referee.

Dated: June 7, 2013

ENTER:



J.S.C.