

IPFS Corp. v Iron Lady Enters., Inc.

2018 NY Slip Op 33321(U)

December 19, 2018

Supreme Court, New York County

Docket Number: 652460/2018

Judge: Debra A. James

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

-----X

IPFS CORPORATION,

Plaintiff,

- v -

IRON LADY ENTERPRISES, INC., THRUWAY INSURANCE
BROKERAGE, INC., and ELBERT SHAMSIDEEN,

Defendants.

INDEX NO. 652460/2018

MOTION DATE 12/11/2018

MOTION SEQ. NO. 001

DECISION AND ORDER

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 15, 16, 17, 18, 19
were read on this motion to/for JUDGMENT - SUMMARY IN LIEU OF COMPLAINT

ORDER

Upon the foregoing documents, it is

ORDERED that the plaintiff's motion for summary judgment in lieu of complaint is granted on default against defendants Iron Lady Enterprises, Inc. and Thruway Insurance Brokerage, Inc. only, and the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendants Iron Lady Enterprises, Inc. and Thruway Insurance Brokerage, Inc. on the judgment confirming an arbitration award on default in the State of Pennsylvania, Court of Common Pleas, in IPFS Corporation v Iron Lady Enterprises, Inc., Case ID 170502721 on February 22, 2018, in the sum of \$25,152.72, with interest at the rate of 9.9% per annum from the date of February 22, 2108, until the date of the decision on this motion, and thereafter at the statutory rate, as calculated by the Clerk,

together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the action and such judgment against Iron Lady Enterprises, Inc. and Thruway Insurance Brokerage, Inc. is severed, and the Clerk shall enter judgment thereon, and the action shall continue against defendant Elbert Shamsideen, and it is further

ORDERED that the plaintiff's motion for summary judgment in lieu of complaint against defendant Elbert Shamsideen is held in abeyance; and it is further

ORDERED that this matter having come on before this court on December 11, 2018, on the motion for summary judgment in lieu of complaint of the plaintiff, and the plaintiff having appeared by Sara M. Lewis, Esq., and the defendant Elbert Shamsideen having appeared pro se, and, pursuant to CPLR 4212, the court having on its own motion determined to consider the appointment of a referee to hear and report, and it appearing to the court that an appointment is appropriate, it is now hereby

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to hear and report to this court on the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose:

(1) the issue of whether personal jurisdiction was conferred over the individual defendant in the State of Pennsylvania Court

of Common Pleas, in IPFS Corporation v Iron Lady Enterprises, Inc.,
Case ID 170502721; and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR unless otherwise indicated, and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/supctmanh at the "References" link), shall assign this matter at the initial appearance to an available JHO/Special Referee to hear and report as specified above; and it is further

ORDERED that counsel shall immediately consult one another and counsel for plaintiff/petitioner shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (accessible at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed with the hearing, on the date fixed by the Special Referee Clerk for the initial appearance in the Special Referees Part, subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part;

and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue(s) specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly; and it is further

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts; and it is further

ORDERED that, unless otherwise directed by this court in any Order that may be issued together with this Order of Reference to Hear and Report, the issues presented in any motion identified in third paragraph hereof shall be held in abeyance pending submission of the Report of the JHO/Special Referee and the determination of this court thereon, and it is further

ORDERED that the parties shall appear for oral argument on the motion to confirm or disaffirm the Report of the JHO/Special Referee on March 5, 2019, 2:30 PM.

DECISION

Defendant Elbert Shamsideen, who is not an attorney, may not represent the corporate defendants, which must appear by attorney pursuant to CPLR 321(a), and thus relief is granted against such defendants on default. Plaintiff's counsel contends that defendant Shamsideen consented to the jurisdiction of the Pennsylvania court, but this court finds no such consent annexed to plaintiff's supporting papers. See C. Mahendra (N.Y.), LLC v National Gold & Diamond Center, Inc., 125 AD3d 454 (1st Dept. 2015). Nor does defendant Shamsideen's affidavit, wherein he states that at the time of service, his place of employment was no longer at the Yonkers address where process was made, establish that the Pennsylvania court had personal jurisdiction over him by consent or otherwise. See Repwest Ins. Co. v Country Wide Insurance Co., 166 AD3d 61 (1st Dept. 2018).

12/19/2018
DATE

Debra A. James
DEBRA A. JAMES, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE