

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE MARGUERITE A. GRAYS
Justice

IAS PART 4

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MERRIAM MASHATT, As Trustee of the
HUSSAIN A. MASHATT Amended and
Restated Trust,

Index
No.: 20596/2008

Plaintiff(s)

Motion
Date: August 11, 2011

-against-

Motion
Cal. No.: 97

FADHEL ALSAHLANI and M.S. & BP, LLC.

Motion
Seq. No.: 9

Defendant(s).

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The following papers numbered 1-6 read on this motion by plaintiff for an Order entering judgment in favor of plaintiff and against defendants, jointly and severally, for \$183,000.00, plus interest from the date of the breach, based on defendants' uncured breach of the Settlement Stipulation of August 11, 2011, and defendants' failure to comply with the Order of the Court dated August 22, 2014.

PAPERS
NUMBERED

Notice of Motion - Affid.-Exhibits.....	1- 4
Answering Affidavits - Exhibits	5
Reply Affidavits - Exhibits	6

Upon the foregoing papers it is ordered that this motion by plaintiff is determined as follows:

This breach of contract action was settled by the parties on August 11, 2011 by Stipulation on the record by the respective attorneys for plaintiff and for defendants for the amount of \$279,000.00 payable in monthly installments to plaintiff by defendants. The Stipulation of Settlement also required defendants to execute a confession of judgment in favor of plaintiff to be held in escrow in the event of a default by defendants. The Stipulation further provided that in the event of a default by defendants, the parties would select an independent broker to list the subject business for sale. It is undisputed that defendants defaulted in making the monthly payments and tendering a properly executed confession of judgment to plaintiff. Plaintiff previously made a motion (seq. #5) for entry of a judgment against defendants for their breach of the Stipulation of Settlement. In an attempt to resolve

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the motion, a conference was held on June 13, 2014 before the Court, after which an Order dated August 22, 2014 was issued, directing that defendants provide plaintiff with a proper Confession of Judgment and General Release and that the parties proceed pursuant to the default provisions of the Stipulation of Settlement. By subsequent Order of the Court dated March 19, 2015, plaintiff was advised to move for entry of judgment against defendants based upon defendants failure to comply with the August 22, 2014 Order.

It appears from the record herein that defendants sold all of the assets of the subject gas station business and consented to the termination of the franchise in or about May 2015. However, the record is silent as to any proceeds of the sale.

The record herein further demonstrates that defendants have neither complied with the August 11, 2011 Stipulation of Settlement or the August 22, 2014 Order of this Court, nor set forth any explanation whatsoever for its repeated non-compliance therewith. There has never been any allegation that the Stipulation of Settlement was the result of fraud, collusion, mistake or accident which could relieve defendants from the consequences of the Stipulation (*Marquez v. Rodriguez*, 299 AD2d 551 [2002]; *Quality Ceramic Tile & Marble Co., Ltd. v. Cherry Valley Limited Partnership*, 259 AD2d 607 [1999]), and defendants have been represented by an attorney at all relevant times (*Kazimierski v. Weiss*, 252 AD2d 481; *Bossom v. Bossom*, 141 AD2d 794).

Defendants' flouting of stipulations and Court Orders can not be countenanced by this Court, and the May 11, 2016 Order of the Appellate Division, Second Department, clearly can not be read to permit defendants to default on a stipulation of settlement and fail to comply with an Order of this Court with impunity. As the Court of Appeals stated in an action where a party failed to comply with a Court Order, "If the credibility of Court Orders and the integrity of our judicial system are to be maintained, a [party] cannot ignore Court Orders with impunity" (*Kihl v Pfeffer*, 94 NY2d 118, 124 [1999]). Thus, inasmuch as defendants failed to comply with the August 22, 2014 Order of this Court, the circumstances set forth in the record before the court support warrant granting the instant motion.

Accordingly, plaintiff's motion is granted and judgment is entered in favor of plaintiff and against defendants in the amount of \$183,000.00, plus statutory interest from October 1, 2012¹.

Dated: **DEC 12 2016**


MARGUERITE A. GRAY
J.S.C.

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Plaintiff's Affirmation submitted in support of the instant motion avers that defendants defaulted on the Stipulation of Settlement by failing to make the October 1, 2012 monthly payment, and all payments thereafter.