

DISTRICT COURT OF THE COUNTY OF SUFFOLK, FIRST DISTRICT

Present:

HON PHILIP GOGLAS Motion Date AUGUST 22, 2011

JUDGE

AMERICAN SECURITY TECHNOLOGIES, INC.  
d/b/a WORLD WIDE SECURITY

Plaintiff, PEO'S/PLTF'S/PET'S ATTY:

AGAINST

MAHMOUD ELSAID

DEFT'S/RESP'S/ATTY

Defendant.

Upon the following papers numbered 1 to 2 read on this motion by plaintiff for summary judgment on the first and third causes of action Notice of Motion/Order to Show Cause and supporting papers 1 ; Notice of Cross Motion and supporting papers    ; Answering Affidavits and supporting papers    ; Replying Affidavits and supporting papers    ; Filed papers    ; Other exhibits 2 .  
(and after hearing counsel in support of and opposed to the motion) it is,

**ORDERED** that the motion is decided as follows:

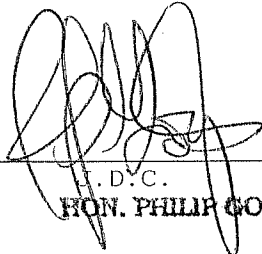
The affidavit of plaintiff's President along with the copy of the Standard Alarm Agreement executed by the defendant sufficiently supports plaintiff's motion for summary judgment on its first cause of action seeking to recover the remaining payments due under the contract as liquidated damages (see, JMD Holding Corp. V. Congress Financial Corp. 4 NY3d 373). Furthermore, the defendant's answer fails to raise any triable issue of fact which would warrant denial of summary judgment as he does not deny liability for the outstanding obligation and his claim of financial hardship does not excuse his performance under contract (see, 407 East 61<sup>st</sup> Garage, Inc. v. Savoy Fifth Ave. Corp., 23 NY2d 275; American Honda Finance Corp. v. Francois, 2002 WL 1535784 2002 N.Y. Slip Op. 40293[U] [App. Term, 2<sup>nd</sup> & 11<sup>th</sup>]). In addition, since paragraph nine (9) of the agreement defendant executed in favor of plaintiff contains a provision for the payment of 33% attorney's' fees in the event the plaintiff has to institute legal action to recover any amounts due under the agreement, defendant is liable for said fees (see, Matter of A.G. Ship Maintenance Corp. v. Lezak, 69 NY2d 1, 5). Consequently, the Court finds that plaintiff is entitled to reasonable attorney's fees in the amount of \$738.28 (see, Coniglio v. Regan, 186 AD2d 708, 709).

Accordingly, plaintiff's motion for summary judgment is granted without opposition and the Court determines damages in the amount of \$2,237.20 with interest February 1, 2011 plus attorney's fees as asserted in the third cause of action in the amount of \$738.28 plus costs and disbursements. The second cause of action is severed and dismissed.

Submit judgment.

Dated: AUG 25 2011

Mailed: AUG 30 2011

  
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D.C.  
HON. PHILIP GOGLAS