Harold Levinson Associates, Inc., appellant, v Sam's Surprise, Inc., respondent. (Index No. 19975/00)

2001-09358

SUPREME COURT OF NEW YORK, APPELLATE DIVISION, SECOND DEPARTMENT

300 A.D.2d 543*; *752 N.Y.S.2d 566*; *2002 N.Y. App. Div. LEXIS 12797

November 21, 2002, Submitted
December 23, 2002, Decided

COUNSEL: [***1] Kenneth J. Weinstein, Garden City, N.Y. (Lesley A. Reardon of counsel), for appellant.

Madu, Edozie, & Madu, P.C., New York, N.Y. (Sam O. Maduegbuna of counsel), for respondent.

JUDGES: SANDRA J. FEUERSTEIN, J.P., NANCY E. SMITH, CORNELIUS J. O'BRIEN, GLORIA GOLDSTEIN, JJ. FEUERSTEIN, J.P., SMITH, O'BRIEN and GOLDSTEIN, JJ., concur.

OPINION

[*543] [**566] DECISION & ORDER

In an action, inter alia, to recover on an account stated, the plaintiff appeals, as limited by its brief, from so much of an order of the Supreme Court, Nassau County (O'Connell, J.), dated September 11, 2001, as denied its motion for summary judgment with leave to renew upon completion of discovery.

ORDERED that the order is affirmed insofar as appealed from, with costs.

[*544] Contrary to the plaintiff's contention, the account stated is vague and cursory as there is no indication of the invoices upon which the defendant failed to make payments or that the defendant is indebted to [**567] the plaintiff in the amount alleged in the complaint (see *Goodman, Rakower & Agiato v Lieberman, 226 A.D.2d 343, 344, 640 N.Y.S.2d 764*). [***2] As such, there exists an issue of fact as to whether the defendant has an outstanding debt owed to the plaintiff. Accordingly, the Supreme Court properly denied plaintiff's motion for summary judgment with leave to renew upon completion of discovery (see generally *Sillman v Twentieth Century-Fox Film Corp., 3 N.Y.2d 395,404*).

FEUERSTEIN, J.P., SMITH, O'BRIEN and GOLDSTEIN, JJ., concur.