

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

HAROLD WEISBERG,

Plaintiff,

v.

DIMONDSTEIN BOOK COMPANY, INC.

Defendant

1845-77
333
INDEX NO. 176

VERIFIED COMPLAINT

Plaintiff, by James Hiram Lesar, his attorney, respectfully
alleges:

AS AND FOR A FIRST CAUSE OF
ACTION, ON AN ACCOUNT STATED:

*Dimondstein
or in favor
self to
form complaint*

1. Plaintiff Harold Weisberg resides at Route 12, Frederick, Maryland. At all times relevant to this complaint he has been a resident of the State of Maryland.
2. Defendant Dimondstein Book Company, Inc. ("Dimondstein") is now, and at all times relevant to this complaint has been, a New York corporation with its principal offices located in New Rochelle, New York.
3. This Court has jurisdiction over this action. McKinney's Judiciary Law, §140-b. Constitution of the State of New York, Article 6, Section 7.

*Insufficient
K. W. for
self*

4. On June 6, 1966, and dates subsequent thereto, defendant Dimondstein became indebted to plaintiff upon a balance of account for goods sold and delivered.

5. On or about May 17, 1971, Dimondstein requested that plaintiff furnish a current statement of account.

6. On or about July 18, 1971, plaintiff mailed an itemized statement of account to Dimondstein. Dimondstein received said statement of account and accepted the same and has ever since retained it without making any objection thereto or to any item thereof.

7. On the basis of information then available to plaintiff, said statement was a just and true account and an accurate statement showing the full amount of goods sold and delivered to the defendant by the plaintiff as of that date.

8. Said statement of account showed a balance of \$3,962.71 due to plaintiff from Dimondstein over and above all sums received from Dimondstein and for which Dimondstein was entitled to credit. A copy of said statement of account is attached hereto as Plaintiff's Exhibit 1.

9. By reason of the failure of Dimondstein to pay the account stated, plaintiff was damaged in the amount of \$3,962.71, plus interest.

1. Receipt
2. Hq. Lm.

AS AND FOR A SECOND CAUSE OF
ACTION, FOR BREACH OF CONTRACT:

D 10. Plaintiff repeats and realleges each and every allegation contained in paragraphs one through eight of the complaint, inclusive, and incorporates each herein.

D 11. Dimondstein agreed to buy the goods delivered to it which are reflected on the itemized account which is attached hereto as Plaintiff's Exhibit 1.

D 12. Dimondstein breached this contractual agreement by failing to pay for the \$3,962.71 worth of goods listed on Plaintiff's Exhibit 1.

D *except* 13. On or about August 17, 1968, Dimondstein received a shipment of 1,000 books which is not reflected on the statement of account which is attached hereto as Plaintiff's Exhibit 1. This shipment of 1,000 books was shipped by the printer by mistake to Bookazine, a New York distributor, which then turned the shipment over to Dimondstein. Plaintiff mistakenly billed Bookazine rather than Dimondstein.

D 14. Dimondstein further breached its contract with plaintiff by failing to pay him the \$2,475.00 it owed for the shipment of 1,000 books which it received through Bookazine.

D 15. As a result of the foregoing breaches, plaintiff was damaged in the amount of \$6,437.71, plus interest.

AS AND FOR A THIRD CAUSE OF ACTION, FRAUD:

16. Plaintiff repeats and realleges each and every allegation contained in paragraphs one through fifteen of the complaint, inclusive, and incorporates each herein.

J 17. Dimondstein intentionally and fraudulently concealed from plaintiff the fact that it had received a shipment of 1,000 of his books on or about August 17, 1968.

J 18. As a consequence of this fraud, plaintiff mistakenly billed Bookazine, which had had the books mistakenly shipped to it delivered to Dimondstein.

J 19. As a further consequence of Dimondstein's concealment of the fact that it had received this shipment of 1,000 books, plaintiff did not learn of it until 1973.

J 20. Although plaintiff has demanded that Dimondstein pay him for the shipment of 1,000 books which it received on or about August 17, 1968, Dimondstein has failed to do so.

J 21. As the result of Dimondstein's fraudulent concealment and failure to pay for this shipment of books, plaintiff was damaged in the amount of \$2,475.00, plus interest.

WHEREFORE, plaintiff demands judgment against the defendant as follows:

1. On the first cause of action, for the sum of \$3,962.71, plus interest; and
2. On the third cause of action, for the sum of \$2,475.00,

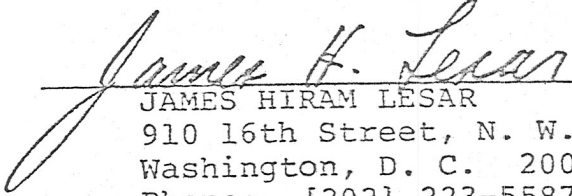
plus interest: or

3. In the alternative, on the second cause of action, for the sum of \$2,475.00, plus interest;

4. Punitive damages in the amount of \$5,000 for fraudulently concealing the fact that defendant owed plaintiff the additional sum of \$2,475.00 for goods delivered to it but mistakenly routed through another distributor;

5. For the costs and disbursements of this action, including reasonable attorney fees.

DATED: February 23, 1977

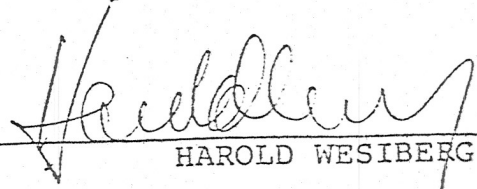

 JAMES HIRAM LESAR
 910 16th Street, N. W.
 Washington, D. C. 20006
 Phone: [202] 223-5587

Attorney for Plaintiff

V E R I F I C A T I O N

DISTRICT OF COLUMBIA

Harold Weisberg, being first duly sworn on oath says that he has read the foregoing Complaint, that to the best of his knowledge and belief the allegations made therein are true, and that said Complaint is a just and true statement of the amount owing by defendant to plaintiff, exclusive of all set-offs and just grounds of defense.


 HAROLD WEISBERG

Subscribed and sworn to before me this 23rd day of February,
1977.

Don M. Burns
NOTARY PUBLIC IN AND FOR
THE DISTRICT OF COLUMBIA

My commission expires *December 14, 1981*.



PLAINTIFF'S EXHIBIT 1

July 18, 1971

STATEMENT OF ACCOUNT

Diamondstein Book Co., Inc.
38 Portman Road
New Rochelle, N. Y.

1966:

June 6	500 copies WHITEWASH - 4.95 less 50%	1,237.50	
July 5	500 " "	1,237.50	2,475.00
23	credit - check	500.00	
29	500 Copies WHITEWASH	1,237.50	3,212.50
Aug. 15	credit - check	737.50	
30	" "	737.50	
	" 120 books not rec'd	297.00	1,440.50
Sep. 15	1000 copies WHITEWASH	2,475.00	3,915.50
Oct. 4	Credit - check	500.00	3,415.50
Dec. 5	" "	940.50	2,475.00

1967:

Jan.	1000 copies WWII	2,475.00	4,950.00
July	500 @ " PHOTOGRAPHIC WW	1,237.50	6,187.50
Sept.	credit - returns	2217.60	3,969.90

1968:

	credit - returns	14.85	3,955.05
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1969:

Jan.	1 copy WHITEWASH - PO#135	3.83	3,958.88
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1970:

Aug.	1 copy WW - PO#3930	3.83	3,962.71
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Balance due	-----	4,962.71	
			3,962.71

SUPREME COURT : STATE OF NEW YORK
COUNTY OF WESTCHESTER

HAROLD WEISBERG

Plaintiff

against

DIMONDSTEIN BOOK COMPANY, INC.

Defendant

Stipulation Extending Time To Answer

It is hereby stipulated that the time for the
defendant to answer, or make any motion with relation to the complaint in this action be and the same
hereby is extended to and including the 13th day of April 19 77

Dated, March 31, 19 77

James H. Lerner
Attorney for Plaintiff

Exhibit "B"

STATE OF NEW YORK, COUNTY OF

ss.:

INDIVIDUAL VERIFICATION

he is the read the foregoing that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true. , being duly sworn, deposes and says that in the within action; that he has and knows the contents thereof;

Sworn to before me, this day of 19

STATE OF NEW YORK, COUNTY OF

ss.:

CORPORATION VERIFICATION

he is the of the read the foregoing to his own knowledge, except as to the matters herein stated to be alleged upon information and belief, and as to those matters he believes it to be true. Deponent further says that the reason this verification is made by deponent and not by the is because the said is a corporation, and deponent an officer thereof, to wit, its , being duly sworn, deposes and says that herein; that he has and knows the contents thereof, and that the same is true

Sworn to before me, this day of 19

STATE OF NEW YORK, COUNTY OF

ss.:

CERTIFICATION BY ATTORNEY

The undersigned attorney hereby certifies that the within copy. has been compared by him with the original and found to be a true and complete

Dated: 19

STATE OF NEW YORK, COUNTY OF

ss.:

ATTORNEY'S AFFIRMATION

The undersigned, being an attorney duly admitted to practice in the courts of this state, and being the attorney of record or an attorney acting as of counsel to the attorney of record for in this action, affirms the following under penalty of perjury: That deponent has read the foregoing and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

The grounds of the undersigned's belief as to all matters not stated upon deponent's knowledge are as follows:

Dated: 19

STATE OF NEW YORK, COUNTY OF

ss.:

AFFIDAVIT OF SERVICE BY MAIL

is over the age of 18 years and is not a party to the action and resides at , being duly sworn, deposes and says, that deponent

That on the day of 19 the deponent served a copy of the within attorney(s) for upon in the within action, at the address(s) designated by said attorney(s) by enclosing same in a postpaid properly addressed wrapper and depositing same in a post office box which is an official depository under the care and exclusive custody of and regularly maintained by the United States Post Office at State of New York.

Sworn to before me, this day of 19

Sir : PLEASE TAKE NOTICE that the within is a true-certified-copy of a

duly entered in the office of the clerk of

on 19

Dated: Yours, etc.

LEVINE, KIRSHON & SCHAPS

Attorneys for

Office and Post Office Address

1501 BROADWAY
New York, N. Y. 10036

To

Attorney for

NOTICE OF SETTLEMENT

Sir : PLEASE TAKE NOTICE that

of which the within is a true copy will be presented for settlement to Mr. Justice

one of the Justices of the within named Court

at 19

on the day of M.

Dated: Yours, etc.

LEVINE, KIRSHON & SCHAPS

Attorneys for

Office and Post Office Address

1501 BROADWAY
New York, N. Y. 10036

To

Attorney for

SUPREME COURT, WESTCHESTER COUNTY

HAROLD WILSON,

Plaintiff,

vs.

DIAMONDSTEIN BOOK COMPANY, INC.,

Defendant.

NOTICE OF MOTION, AFFIDAVIT, AND EXHIBITS

LEVINE, KIRSHON & SCHAPS

Attorneys for Defendant
Office and Post Office Address

1501 BROADWAY
New York, N. Y. 10036

TEL. No. CH 4-1023

To Esq.

Attorney for

Service of a copy of the within

is hereby admitted.

Dated, N. Y., 19

Attorney for

WINDSOR STATIONERS, 307 WEST 38TH STREET, N. Y.