

**J-Bar Reinforcement Inc. v Crest Hill Capital LLC**

2023 NY Slip Op 34333(U)

December 11, 2023

Supreme Court, New York County

Docket Number: Index No. 654712/2019

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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J-BAR REINFORCEMENT INC.,RAYMOND BOUDERAU,

INDEX NO. 654712/2019

Plaintiff,

MOTION DATE N/A

- v -

MOTION SEQ. NO. 004

CREST HILL CAPITAL LLC,MANTIS FUNDING  
LLC,MICHAEL L. MARANO, EDWARD LOVETTE

**DECISION + ORDER ON  
MOTION**

Defendant.

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 139, 140, 141, 142, 143, 144, 145

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

The Defendants’ motion for summary judgment is granted because on the fully developed record the Defendants have established that (i) the Senior Lenders have not been repaid such that the Plaintiffs’ lawsuit is premature under the express terms of the Subordination Agreement and (ii) the Plaintiffs fully understood that the senior loan could be extended and the terms could be modified, such that they were not fraudulently induced to enter into the Subordination Agreement.

Reference is made to (i) a Decision and Order of the Appellate Division (*J-Bar Reinforcement, Inc. v Crest Hill Capital LLC*, 169 AD3d 499 [1st Dept 2019]) (the **Appellate Division Decision**) and (ii) the Decision and Order of this Court dated May 11, 2020 (the **Prior Decision**; NYSCEF Doc. No. 62).

In the Appellate Division Decision, the Appellate Division held that the Subordination Agreement barred the Plaintiff from demanding or suing the Defendant for payment until the senior debt was fully repaid and that commercial reasonableness was irrelevant because the Subordination Agreement was not ambiguous (169 AD3d, at 499-500).

In the Prior Decision, the Court denied the branch of the motion to dismiss the breach of contract claim because the Plaintiffs alleged a change in circumstances, namely that the senior debt had been paid, such that the claim was now ripe. Thus, the Court held that this lawsuit was not barred by res judicata. As relevant to the fraudulent inducement claim, the Plaintiffs alleged that the Defendants had made certain promises and representations that gave them a different understanding of their rights than what was provided for in the Subordination Agreement, and the Court accordingly denied that branch of the motion because the claim was not duplicative of the breach of contract claim.

Now, upon the fully developed record, it is clear that (i) the senior debt has not been repaid and (ii) the Plaintiffs were not have been fraudulently induced into entering into the Subordination Agreement. The Defendants have submitted six Extensions and Amendments of Senior Secured Note (NYSCEF Doc. Nos. 128-133) extending the time for repayment of the senior debt. The sixth Extension and Amendment of Senior Secured Note (NYSCEF Doc. No. 133) indicates that Senior Lender agreed to allow the Defendants to delay their remaining Principal Payments until March 2025 and April 2025. In his deposition, Michael Marano, the managing partner of Crest Hill and Mantis, testified that the debt to Dominion had not been repaid (tr at 67, lines 5-14 [NYSCEF Doc. No. 113]). In his affidavit submitted in connection with this motion, Mr.

Marano set forth the terms of the various extensions of the senior debt and indicated that the current amount of outstanding principal on the senior debt is \$200,000 (NYSCEF Doc. No. 142, ¶¶ 30-49). This establishes the Defendants' prima facie entitlement to summary judgment and the Plaintiff fails to produce any evidence of a material issue of fact for trial (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). In fact, Raymond Bouderau admitted at his deposition that he did not know whether the Dominion loan had been repaid (tr at 133, lines 9-11 [NYSCEF Doc. No. 114]). At oral argument (12.8.23), the Plaintiff conceded that they did not have any evidence that the Senior Loan had been repaid. The Defendants are therefore entitled to summary judgment on the breach of contract claim.

The fraudulent inducement claim is also dismissed. As alleged, the Plaintiffs' claim is premised on allegations that (i) the Defendants were not sincere about their intent to perform under the note and (ii) that the Subordination Agreement was only a formality and the Plaintiffs would still be repaid within 18 months if they wanted to be regardless of the senior debt. Insincerity can not form the basis for the Plaintiffs' claim as a matter of law (*Budow Sales Corp. v G. Holdings Corp.*, 171 AD3d 655, 655 [1st Dept 2019]). The Plaintiff's loan documents do not provide for an 18-month term loan whereby interest would accrue on their loan or that their agreement to forebear from seeking enforcement of any repayment obligation was for 18 months. The fully developed record unequivocally establishes that the Plaintiffs discussed the Subordination Agreement with counsel who explicitly advised them that the term of the loan was not 18 months and that they would be subordinated to any extensions and amendments to the senior debt, and the Plaintiffs ultimately entered into the Subordination Agreement against the advice of counsel (NYSCEF Doc. Nos. 120-124). Accordingly, the Plaintiffs were not fraudulently induced to

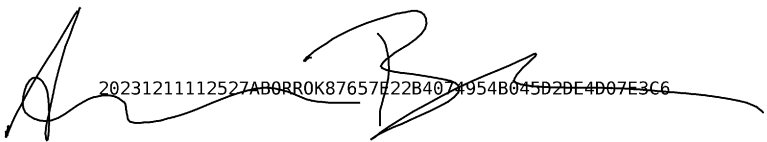
enter into the Subordination Agreement. They fully understand that the senior loan could be extended ad infinitum such that they could be waiting for well beyond 18 months for repayment.

As such, the fraudulent inducement claim is also dismissed.

For the avoidance of doubt, the cause of action for a declaratory judgment is also dismissed.

It is hereby ORDERED that the Defendants' motion for summary judgment is granted.

12/11/2023  
 DATE

  
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 ANDREW BORROK, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE