

Signature Fin. LLC v Zubok

2018 NY Slip Op 31731(U)

March 26, 2018

Supreme Court, New York County

Docket Number: 650765/2017

Judge: David B. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAVID BENJAMIN COHEN

PART 58

Justice

-----X

SIGNATURE FINANCIAL LLC

INDEX NO. 650765/2017

Plaintiff,

MOTION DATE 10/19/2017

002

MOTION SEQ. NO.

- v -

VALENTINA ZUBOK,

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 50, 51, 52, 53, 54, 55

were read on this application to/for Judgment - Summary

Upon the foregoing documents, it is

Plaintiff's motion for summary judgment is granted and defendant's affirmative defenses and counterclaims are dismissed.

Summary judgment is a drastic remedy that should not be granted where there exists a triable issue of fact (Integrated Logistics Consultants v. Fidata Corp., 131 AD2d 338 [1st Dept 1987]; Ratner v. Elovitz, 198 AD2d 184 [1st Dept 1993]). On a summary judgment motion, the

court must view all evidence in a light most favorable to the non-moving party (*Rodriguez v. Parkchester South Condominium Inc.*, 178 AD2d 231 [1st Dept 1991]). The moving party must show that as a matter of law it is entitled to judgment (*Alvarez v. Prospect Hosp.*, 68 NY2d 320 324 [1986]). The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]). After the moving party has demonstrated its *prima facie* entitlement to summary judgment, the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring a trial (*Zuckerman v. City of New York*, 49 NY2d 557 [1980]).

Plaintiff has established its *prima facie* entitlement to summary judgment that defendant signed a personal guarantee; that the borrower failed to make payments and that the guarantor has not paid the debt. In fact, defendant does not dispute any of these facts. In opposition to the motion, defendant submitted an attorney affirmation and memorandum of law, as well as two signed, but not notarized affidavits by defendant and her partner. In fact, the affidavit of the partner does not even have the signature line on the same page as the statements. As these affidavits are not sworn to, they are not in admissible form and of no probative value. The deficiency is beyond a mere defect in the form of an affidavit, which a Court can waive under CPLR 210(f).

The first affirmative defense is simply not a valid defense as there was no requirement to attach the guarantees at the pleading stage and plaintiff has done so in connection with this motion. The second affirmative defense is dismissed as it is contradicted by the advisement of legal representation document signed by defendant on behalf of the various corporate borrowers and personally. Furthermore, the factual statements in the second and third affirmative defenses

are unsupported by any admissible affidavit to rebut the *prima facie* case established by plaintiff and in any case, raise defenses that do not raise any genuine issue of fact as to the guarantees at issue. The remaining laundry list of affirmative defenses are also dismissed as they are insufficient to raise a genuine issue of fact (*see Scholastic Inc. v Pace Plumbing Corp.*, 129 AD3d 75 [1st Dept 2015] [“[M]oreover, neither plaintiff nor the court ought to be required to sift through a boilerplate list of defenses, or ‘be compelled to wade through a mass of verbiage and superfluous matter’ (*Barsella v City of New York*, 82 AD2d 747, 748 [1st Dept 1981]), to divine which defenses might apply to the case.”]). Here, respondents have raised no issue of fact to defeat petitioner’s motion for summary judgment, nor have they shown any merit to any affirmative defense.

Finally, the counterclaim is also dismissed without prejudice. The guarantees contain no set-off and no counterclaim provisions precluding defendant from raising the counterclaim in this action.

Plaintiff’s motion for summary judgment on its cause of action for attorney fees is granted to the extent of severing said issue and setting down the matter for a hearing.

Accordingly, it is hereby

ORDERED, that plaintiff is granted summary judgment on each of the four notes and plaintiff is awarded:

(i) on its First Cause of Action against defendant a judgment in the amount of \$991,371.82 plus interest from October 2, 2017 and costs and disbursements as taxed by the Clerk;

(ii) on its Second Cause of Action against defendant a judgment in the amount of \$991,371.82 plus interest from October 2, 2017 and costs and disbursements as taxed by the Clerk;

(iii) on its Third Cause of Action against defendant a judgment in the amount of \$991,371.82 plus interest from October 2, 2017 and costs and disbursements as taxed by the Clerk;

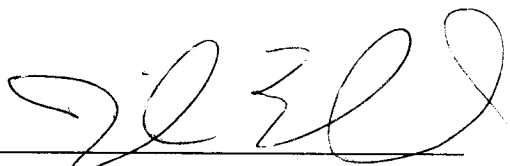
(iv) on its Fourth Cause of Action against defendant a judgment in the amount of \$991,371.82 plus interest from October 2, 2017 and costs and disbursements as taxed by the Clerk; and it is further

ORDERED, that defendant's counterclaim is dismissed; and it is further

ORDERED, that plaintiff's cause of action seeking attorney's fees is granted to the extent of setting down the issue for a hearing. An inquest/trial is granted to determine the amount of fees to be awarded. Plaintiff shall cause the matter to be placed upon the calendar for such trial. Plaintiff shall, within 20 days from the date of this order, serve a copy of this order upon (counsel for) all parties hereto by regular mail and upon the Clerk of the General Clerk's Office (60 Centre Street, Room 119) and shall serve and file with said Clerk a note of issue and statement of readiness and shall pay the fee therefor, and said Clerk shall cause the matter to be placed upon the calendar for such trial.

This constitutes the decision and order of the Court.

3/26/2018
DATE


DAVID BENJAMIN COHEN, J.S.C.
HON. DAVID B. COHEN
J.S.C.

CHECK ONE:

APPLICATION:

CASE DISPOSED
 GRANTED
 SETTLE ORDER

DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART
 SUBMIT ORDER

OTHER