

Connectone Bank v NY Cookie Taxi Corp.
2018 NY Slip Op 32658(U)
October 15, 2018
Supreme Court, New York County
Docket Number: 653349/2018
Judge: Jennifer G. Schechter
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

-----X
CONNECTONE BANK,

Index No.: 653349/2018

Plaintiff,
-against-

DECISION & ORDER

NY COOKIE TAXI CORP. and MAKSIM KATS,

Defendants.

-----X
CONNECTONE BANK,

Index No.: 653350/2018

Plaintiff,
-against-

NY PISCES TAXI CORP. and MAKSIM KATS,

Defendants.

-----X
CONNECTONE BANK,

Index No.: 156521/2018

Plaintiff,
-against-

PIZZA TAXI, LLC and MAKSIM KATS,

Defendants.

-----X
JENNIFER G. SCHECTER, J.:

Before the court are virtually identical motions for summary judgment in lieu of complaint filed by ConnectOne Bank (the Bank) against Maksim Kats and three of his companies – NY Cookie Taxi Corp. (Cookie), NY Pisces Taxi Corp. (Pisces), and Pizza Taxi, LLC (Pizza) (collectively, the Companies) – that each own taxi medallions.¹

¹ There are other similar actions pending before other judges that were not marked related and thus not decided by this court.

The decline in Kats' taxi business has apparently resulted in the Bank seeking to collect on loans issued to the Companies, which Kats personally guaranteed and which were secured by the Companies' taxi medallions. In each of these actions, the Bank seeks to enforce a promissory note executed by the Companies (Dkt. 5 [collectively, the Notes]).² The Notes are governed by New York law. Cookie's note is dated April 23, 2014, has a face value of \$1.5 million, carries a 3.75% per annum interest rate, requires monthly payments of \$7,711.97 and has a maturity date of May 1, 2017.³ Pisces' note is dated January 22, 2014, has a face value of \$1.8 million, carries a 3.75% per annum interest rate, requires monthly payments of \$8,336.08 and has a maturity dated of February 1, 2017. Pizza's note is dated January 27, 2014, has a face value of \$1.75 million, carries a 3.75% per annum interest rate, requires monthly payments of \$8,104.52 and has a maturity dated of March 1, 2017. Under the Notes, the failure to make a monthly payment is an Event of Default, upon which the entire principal balance plus interest becomes immediately due.

The Notes are secured by Collateral, pursuant to Security Agreements (Dkt. 7), for which the Bank had perfected security interests (*see* Dkt. 8), that included the

² References to "Dkt." followed by a number refer to documents filed in these actions on the New York State Courts Electronic Filing system (NYSCEF). Since the docket entries in each action correspond to the same type of document (e.g., Dkt. 5 in each action is the promissory note; Dkt. 11 in each action is the loan history), the court does not provide triplicate citations to each docket entry.

³ While the Notes provide that the lender is The OSG Corp., the Notes were assigned by allonge to the Bank (*see* Dkt. 5 at 5). Likewise, the UCC Financing Statements provide that the Bank is the secured party (*see* Dkt. 8 at 2).

Companies' taxi medallions (the Medallions). Kats executed unconditional guaranties of the Notes (Dkt. 6 [the Guaranties]).

On April 30, 2015, the parties entered into virtually identical Modification Agreements (Dkt. 9) in which they agreed, among other things, that (1) as of April 1, 2015, the principal balance on (a) Cookie's note was \$1,476,091.73; (b) Pisces' note was \$1,772,308.19; and (c) Pizza's note was \$1,723,453.31; (2) the interest rate on the Notes would be increased to 4.125%; (3) the monthly payments would be reduced to amounts specified therein; and (4) Kats remained liable as a guarantor. According to Loan Payment Records submitted by the Bank (Dkt. 11), defendants' last monthly payments on the Notes were made in early August 2017.

By letters dated November 6, 2017 (Dkt. 10), the Bank notified defendants of their default. In February 2018, the Bank sold the Medallions, for which defendants received \$750,000 credits (*see* Dkt. 4 at 6). The Bank claims that, as of May 23, 2018: (1) Cookie's unpaid principal was \$711,341.19 and the accrued unpaid interest was \$52,030.89 – and thus \$763,372.08 is owed in total; (2) Pisces' unpaid principal was \$1,000,872.22 and the accrued unpaid interest was \$67,321.74 – and thus \$1,068,193.96 is owed in total; and (3) Pizza's unpaid principal was \$942,114.91 and the accrued unpaid interest was \$64,296.74 – and thus \$1,006,411.65 is owed in total (*see id.*).⁴ In July

⁴ The Loan Payment Records indicate that in February 2018, payments in excess of \$1.5 million were made on each Note. Moreover, the credit for the sale of the Medallions is not recorded. Since this appeared to be inconsistent with the amounts claimed to be owed in the Bank's moving papers, the court directed the Bank to provide supplemental affidavits to explain these discrepancies. On September 19, 2018, the Bank submitted affidavits from its Managing Director (Dkts. 18, 19) explaining that the credits for the Medallions are not accounted for in the

2018, the Bank commenced these actions by filing these motions for summary judgment in lieu of complaint, seeking to recover the outstanding amounts from the Companies under the Notes and from Kats under the Guaranties.⁵ On September 24, 2018, the Bank withdrew its claims against Kats without prejudice because he filed for bankruptcy (*see* Dkts. 21, 23).

“Pursuant to CPLR 3213, a party may commence an action by motion for summary judgment in lieu of complaint when the action is ‘based upon an instrument for the payment of money only’” (*Lawrence v Kennedy*, 95 AD3d 955, 957 [2d Dept 2012]). A motion under CPLR 3213 is an appropriate means to collect on a note (*Poah One Acquisition Holdings V Ltd. v Armenta*, 96 AD3d 560 [1st Dept 2012]) and an unconditional guarantee (*see Acadia Woods Partners, LLC v Signal Lake Fund LP*, 102 AD3d 522, 523 [1st Dept 2013]). “To establish prima facie entitlement to summary judgment in lieu of complaint, a plaintiff must show the existence of a promissory note executed by the defendant containing an unequivocal and unconditional obligation to

Loan Payment Records because they occurred after the date of last line items but that, nonetheless, \$750,000 credits were given by the Bank to the Companies as part of the calculation of the amount due in the Bank’s moving papers (*id.* at 2). The Bank further explains that the final “‘payment’ column of the Loan History is not actually a payment. Rather, it is the summation of the Unpaid Principal Balance of the Loan as of February 14, 2018, as detailed in the Payment History” (*id.* at 3). This makes sense, as such amounts correspond to the unpaid balance amount, factoring in the Medallion credits, set forth in the Bank’s moving papers. It appears that the discrepancy is a result of a software output error. Since the Bank’s sworn explanation is uncontroverted on this summary judgment motion, the court deems it to be admitted (*Kuehne & Nagel, Inc. v Baiden*, 36 NY2d 539, 544 [1975]; *see Moonstone Judge, LLC v Shainwald*, 38 AD3d 215, 216 [1st Dept 2007]).

⁵ While the Bank avers that it is also entitled to collect per diem default interest (*see* Dkt. 4 at 6), “it does not seek to do so.” (Dkt. 3 at 3 n 2). Likewise, while the Notes entitle it to recover attorneys’ fees (*see* Dkt. 5 at 3), the Bank does not seek them.

repay and the failure of the defendant to pay in accordance with the note's terms" (*Zyskind v FaceCake Marketing Techs., Inc.*, 101 AD3d 550, 551 [1st Dept 2012]). "Once the plaintiff submits evidence establishing these elements, the burden shifts to the defendant to submit evidence establishing the existence of a triable issue with respect to a bona fide defense" (*id.*).

The Bank is entitled to summary judgment. It submitted proof of the Companies' liability under the Notes – instruments for the payment of money only – and unrebutted affidavits attesting to the Companies' default and the amounts owed. Defendants were served (*see* Dkts. 14-17) but did not submit opposition papers.

Accordingly, it is

ORDERED that, under Index No. 653349/2018, the motion by plaintiff ConnectOne Bank for summary judgment in lieu of complaint against defendant NY Cookie Taxi Corp. is granted, and the Clerk is directed to enter judgment in favor of said plaintiff and against said defendant in the amount of \$763,372.08 plus 9% prejudgment interest from May 24, 2018 to the date judgment is entered; and it is further

ORDERED that, under Index No. 653350/2018, the motion by plaintiff ConnectOne Bank for summary judgment in lieu of complaint against defendant NY Pisces Taxi Corp. is granted, and the Clerk is directed to enter judgment in favor of said plaintiff and against said defendant in the amount of \$1,068,193.96 plus 9% prejudgment interest from May 24, 2018 to the date judgment is entered; and it is further

ORDERED that, under Index No. 156521/2018, the motion by plaintiff ConnectOne Bank for summary judgment in lieu of complaint against defendant Pizza Taxi, LLC is granted, and the Clerk is directed to enter judgment in favor of said plaintiff and against said defendant in the amount of \$1,006,411.65 plus 9% prejudgment interest from May 24, 2018 to the date judgment is entered.

Dated: October 15, 2018

ENTER:



Jennifer G. Schechter, J.S.C.