

Eastern Funding LLC v Harter Enters. Inc.
2019 NY Slip Op 30412(U)
February 20, 2019
Supreme Court, New York County
Docket Number: 654334/2018
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JOEL M. COHEN PART IAS MOTION 3EFM

Justice

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EASTERN FUNDING LLC,

Plaintiff,

- v -

HARTER ENTERPRISES INC.,BRAD HARTER

Defendant.

INDEX NO. 654334/2018

MOTION DATE 02/19/2019

MOTION SEQ. NO. 001 002

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 10 were read on this motion for SUMMARY JUDGMENT IN LIEU OF COMPLAINT.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 13, 14, 15, 16 were read on this motion for LEAVE TO DISMISS DEFENDANT BRAD HARTER.

Upon the foregoing documents:

Plaintiff Eastern Funding LLC ("Eastern Funding") seeks Summary Judgment in Lieu of a Complaint against Defendant Harter Enterprises Inc.¹ pursuant to CPLR §3213 and seeks leave to dismiss Defendant Brad Harter (who has filed for Bankruptcy) from the action. For the following reasons, Plaintiff's unopposed motions are Granted.

On August 19, 2015, Defendant Harter Enterprises, Inc. executed a Master Promissory Note and Security Agreement which incorporated Loan Schedules 001, 002, 003 and 004². Separately, on the same date, Defendant Brad Harter executed an Irrevocable Guaranty in favor of Plaintiff, guaranteeing Harter Enterprises' full and punctual payment and performance under the Promissory Note. (NYSCEF 3).

¹ Plaintiff initially sought this relief against both Harter Enterprises and Brad Hunter but has since dismissed Brad Harter from this action, thus only seeking summary judgment against Harter Enterprises.

² Loan Schedule 001 was fully satisfied and, therefore, is not a part of the instant litigation. (NYSCEF 2, ¶8).

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In accordance with the Promissory Note and Loan Schedules, Plaintiff lent Defendant Harter Enterprises, Inc. \$156,217.20 which was to be repaid in 60 consecutive, equal, self-amortizing monthly payments of principal and interest. Each payment was to be in the amount of \$1,030.00, the first of which was due on September 24, 2015. Payment was remitted in accordance with the Note and Schedules until May 2018. On July 13, 2018 Plaintiff sent Defendants a Notice of Default and Demand for Payment demanding that the default be timely cured and demanding the return of the vehicles securing the Note. (see NYSCEF 4). Defendant Harter Enterprises failed to make any additional payments under the Note and, therefore, is in default of the plain terms and obligations of the Note and Guaranty. (*Fagan Affidavit*, ¶7).

Under CPLR §3213 “when an action is based upon an instrument for the payment of money only . . . the plaintiff may serve with the summons a notice of motion for summary judgment and the supporting papers in lieu of a complaint.” CPLR §3213.

In order to establish its prima facie entitlement to judgment as to the amount of a debt, a plaintiff must submit records supporting its calculation of the debt amount. *Citibank N.A., v. Villano*, 140 A.D.3d 553, 553-54 (1st Dept 2016). However, “a document does not qualify for CPLR §3213 treatment if the court must consult other materials besides the bare document and proof of nonpayment, or if it must make a more than *de minimis* deviation from the face of the document.” *PDL Biopharma, Inc. v. Wohlstadter*, 147 A.D.3d 494, 494 (1st Dep’t 2017).

Here, Plaintiff relies only on a Promissory Note and its related documents, including a Security Agreement, Loan Schedules and Guaranty that contain the express terms of repayment which do not require the Court to consult extrinsic material to assess Plaintiff’s entitlement to a judgment and the amount of the debt. Plaintiff also properly includes an Affidavit from Robert

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Fagan, Vice President of Collections for Eastern Funding, who avers that Defendants have failed to satisfy their obligations under the Promissory Note and Guaranty.

Despite being served with the instant motion on August 31, 2018, Defendants have failed to oppose this motion. (NYSCEF 11). Rather, Defendant Brad Harter filed for Chapter 7 bankruptcy on September 20, 2018 (NYSCEF 15) and Defendant Harter Enterprises has not responded to either motion. It is because of this bankruptcy filing that Plaintiff seeks dismissal as against Defendant Brad Harter so that it may continue with this action against Defendant Harter Enterprise.³

The Court, being satisfied with the proof offered by Plaintiff in support of its motion for Summary Judgment in Lieu of a Complaint and its motion for leave to dismiss this action against Brad Harter, grants its motion and awards judgment against Defendant Harter Enterprise in the amount of \$86,520.00 plus interest and dismisses Brad Harter from this action.

Therefore it is:


ORDERED that Plaintiff's Motion for Summary Judgment in Lieu of a Complaint is Granted as against Defendant Harter Enterprises and the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendant Harter Enterprises in the amount of \$86,520.00, together with interest at the statutory rate of 9% per annum from August 30, 2018 until the entry of this decision, and thereafter at the statutory rate of 9% per annum until the judgment is satisfied, as calculated by the Clerk, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

³ Debtor Brad Harter's filing of bankruptcy does not invoke an automatic stay of claims against Harter Enterprises under 11 U.S.C.A. §362(a). *See Merrill Lynch, Pierce, Fenner & Smith, Inc. v Oxford Venture Partners, LLC*, 13 A.D.3d 89 (1st Dept 2004). ("It is well settled that [t]he automatic stay provisions of the Federal bankruptcy laws "do not extend to nonbankrupt codefendants".)

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ORDERED that Defendant Brad Harter is dismissed from this action.

This constitutes the Decision and Order of the Court.

<u>2/20/2019</u> DATE	 JOEL M. COHEN, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	<input type="checkbox"/> FIDUCIARY APPOINTMENT
				<input type="checkbox"/> REFERENCE