

SG Equip. Fin. USA Corp. v Vaan Gaskets, Inc.

2019 NY Slip Op 31362(U)

May 13, 2019

Supreme Court, New York County

Docket Number: 654492/2018

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
NEW YORK COUNTY

PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM

Justice

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INDEX NO. 654492/2018

SG EQUIPMENT FINANCE USA CORP.,

MOTION DATE 05/13/2019

Plaintiff,

MOTION SEQ. NO. 001

- v -

VAAN GASKETS, INC., ANTONIO RIVERO, ANTONIO RIVERO

Defendant.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26

were read on this motion to/for JUDGMENT - SUMMARY.

For the reasons set forth below, SG Equipment Finance Corp.'s motion pursuant to CPLR § 3212 for summary judgment is granted.

Reference is made to (x) a Master Lease Agreement (the Lease Agreement), dated October 5, 2016, between TRUMPF Finance1 and Vaan Gaskets, Inc. (Vaan Gaskets; Vaan Gaskets, together with Antonio Rafael Rivero and Antonio Jose Rivero, collectively, the Defendants) pursuant to which TRUMPF Finance agreed to lease certain equipment to Vaan Gaskets (Tsang aff, exhibit A ¶ 1), (y) a Personal Guaranty, dated October 5, 2016, by Antonio Rafael Rivero and in favor of TRUMPF Finance (the ARR Guaranty), and (z) a second Personal Guaranty, of even date therewith, by Antonio Jose Rivero and in favor of TRUMPF Finance (the AJR Guaranty), pursuant to which Antonio Rafael Rivero and Antonio Jose Rivero guaranteed to

1 SG Equipment Finance USA Corp. dba TRUMP Finance.

TRUMPF Finance the payment and performance of all indebtedness, obligations, and liabilities of Vaan Gaskets arising out of any financial accommodations extended by TRUMPF Finance (Tsang aff, exhibits C, D).

The terms of the Lease Agreement are set forth in a Master Lease Schedule (**Lease Schedule**), dated of even date therewith, between TRUMPF Finance and Vaan Gaskets, which describes the leased equipment as one TRUMPF TruLaser1030 Fiber S/N (the **Equipment**), for a base lease term of 60 months commencing on the date of delivery and acceptance, with monthly lease payments of \$5,260, plus a one-time documentation fee of \$750 (Tsang aff, exhibit B).

Section 19 of the Lease Agreement provides that the Lease Agreement is a Finance Lease as that term is defined in Article 2A of the UCC (*id.* ¶19). Article 2A of the UCC provides that “a lease contract is effective and enforceable according to its terms between the parties” (NY UCC § 2-A-301). Section 13 of the Lease Agreement sets forth the circumstances constituting an Event of Default, including the failure to make any lease payment when it becomes due where such failure is not cured within 10 days (Tsang aff, exhibit A ¶ 13).

Section 14 of Lease Agreement provides:

Upon the occurrence of any Event of Default, Lessor may declare this Agreement and/or any Lease hereunder to be in default and exercise any one or more of the following remedies: (a) declare the entire unpaid balance of Lease Payments for the unexpired term of the Lease immediately due and payable and similarly accelerate the balances due under any other Leases without notice or demand, (b) sue for and recover the Stipulated Loss Value, as defined in Section 10 hereof, for each accelerated Lease, but only to the extent permitted by law, (c) charge Lessee interest on all monies more than thirty days past due at the lesser of one and one half percent (1.5%) per month or the maximum rate permitted by law from the date of default until paid, (d) require Lessee to assemble all Equipment at

Lessee's expense, at a place reasonably designated by Lessor and/or (e) remove any physical obstructions for removal of the Equipment from the place where the Equipment is located and take possession of any or all items of Equipment, without demand or notice, wherever same may be located, disconnecting and separating all such items of the Equipment from any other property and/or (f) exercise any remedies available to Lessor under the UCC and/or applicable law (*id.* ¶ 14).

Pursuant to Section 14 of the Lease Agreement, Section 1 of the ARR Guaranty, and Section 1 of the AJR Guaranty, the Defendants agreed to pay all legal fees incurred by TRUMPF Finance in connection with enforcement of the Lease Agreement (Tsang aff, exhibit A ¶ 14; Tsang aff, exhibits C, D ¶ 1).

The Amended Complaint alleges that Vaan Gaskets defaulted under the Lease Agreement by failing to make the required lease payments due to TRUMPF Finance beginning in July 2018 and for each month thereafter (Amended Complaint ¶ 17), that TRUMPF Finance served default demand notices on August 17, 2018, and that such defaults were not cured within the 10-day cure period provided in the Lease Agreement.

The Amended Complaint further alleges that, (i) as a result of Vaan Gaskets' default, TRUMPF Finance has incurred damages of not less than \$229,078.98, plus accrued interest from the date of default, costs, expenses, and attorneys' fees (*id.* ¶ 18) and (ii) Mssrs. Rivero have breached the ARR Guaranty and the AJR Guaranty by failing to pay the obligations due and owing to TRUMPF Finance (*id.* ¶¶ 19-34). Accordingly, TRUMPF Finance sued and now moves for summary judgment.

DISCUSSION

Summary judgment will be granted only when the movant presents evidentiary proof in admissible form that there are no triable issues of material fact and that there is either no defense to the cause of action or that the cause of action or defense has no merit (CPLR § 3212 [b]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The proponent of a summary judgment motion carries the initial burden to make a *prima facie* showing of entitlement to judgment as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d at 324). Failure to make such a *prima facie* showing requires denial of the motion (*id.*, citing *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). Once this showing is made, the burden shifts to the opposing party to produce evidence in admissible form sufficient to establish the existence of a triable issue of fact (*Alvarez*, 68 NY2d at 324).

To establish entitlement to summary judgment in a cause of action alleging breach of an equipment lease, a plaintiff must demonstrate the existence of an equipment lease agreement and proof of non-payment (*AGFA Photo USA Corp. v Chromazone, Inc.*, 82 AD3d 402, 403 [1st Dept 2011]). A demand notice may serve as proof of non-payment (*id.*). In a cause of action for breach of a guaranty, a plaintiff must establish the existence of a guarantee executed by the defendant(s), the underlying debt, and the guarantor's failure to perform under the guarantee (*Sarfati v Palazzolo*, 142 AD3d 877, 877 [1st Dept 2016]).

It is undisputed that SG Equipment Finance USA Corp. dba TRUMPF Finance had a Lease Agreement with Vaan Gaskets which Lease Agreement was guaranteed pursuant to the ARR Guaranty and the AJR Guaranty by Mssrs. Rivero, that Vaan Gaskets defaulted under the Lease

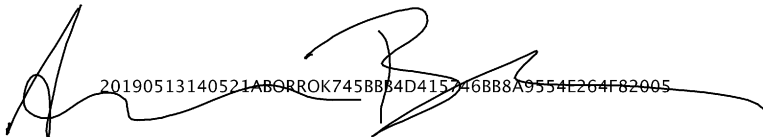
Agreement beyond the applicable cure period and that no payments have been made to the TRUMPF Finance since July, 2018.

In their opposition papers, the Defendants argue that TRUMPF Finance failed to mitigate damages by “exercising its alternate remedy of repossession—as expressly provided in the [Lease Agreement]” (NYSCEF Doc. No. 23 at 4). The argument is unavailing. Simply put, Section 14 of the Lease Agreement provided TRUMPF Finance with the option not the obligation to repossess to mitigate damages. While TRUMPF Finance was under no statutory or contractual obligation to mitigate damages, Section 14 of the Lease Agreement provides that “[i]n the event Lessor disposes of the Equipment, Lessor shall give Lessee credit for any sums received by Lessor from the sale or lease of the Equipment after deduction of the expenses of sale or lease” (Tsang aff, exhibit A ¶ 14). At oral argument, both TRUMPF Finance and the Defendants acknowledged that the Equipment has been surrendered and sold at auction.

Accordingly, it is

ORDERED that the plaintiff’s motion for summary judgment is granted and the Clerk of the Court is directed to enter judgment in favor of SG Equipment Finance USA Corp. and against Vaan Gaskets, Inc., Antonio Rafael Rivero, and Antonio Jose Rivero in the amount of \$229,078.98, less the amount of the proceeds from the sale of the Equipment after deduction of expenses incurred in effectuating the sale, proof of which shall be submitted to the Clerk, together with interest at the rate of 9% per annum from the date of July 1, 2018 until the date of the decision and order on this motion, and thereafter at the statutory rate, 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 the plaintiff shall have execution thereof.


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5/13/2019

DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED DENIED

GRANTED IN PART OTHER

APPLICATION: SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT REFERENCE