

Medallion Bank v Chopper Taxi Inc.

2021 NY Slip Op 32645(U)

December 10, 2021

Supreme Court, New York County

Docket Number: Index No. 653146/2021

Judge: Louis L. Nock

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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. LOUIS L. NOCK **PART** **38M**

Justice

-----X

MEDALLION BANK,

Plaintiff,

- v -

CHOPPER TAXI INC. and MEIR YAKUEL,

Defendants.

-----X

INDEX NO. 653146/2021

MOTION DATE 08/31/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, and 46 were read on this motion for SUMMARY JUDGMENT.

LOUIS L. NOCK, J.

Upon the foregoing documents, and after argument, it is ordered that the plaintiff's motion for summary judgment is denied, without prejudice to renew upon the additional submission of a Statement of Material Facts pursuant to 22 NYCRR § 202.8-g.

This is an action by an industrial bank which financed the purchase by the corporate defendant of New York City Taxi Medallions. The relevant promissory note had an original face amount of \$1,100,000. The loan was secured by security interests in the medallions. Further security consisted of a guaranty executed and tendered by the individual defendant.

The complaint alleges that the loan is in default and the corporate defendant has failed to turn over the medallions securing the loan. The complaint asserts three causes of action: a first, against the corporate defendant for the outstanding balance of the loan plus costs, fees, and interest; a second, against the corporate defendant for immediate turnover of the medallions; and a third, against the individual defendant (guarantor) for the outstanding balance of the loan plus costs, fees, and interest. Defendants have filed an answer asserting affirmative defenses.

Plaintiff now moves for summary judgment on its complaint and, in so doing, has submitted supporting materials in the form of affidavits and exhibits, consonant with the threshold requirements of CPLR 3221 (b) (*see*, NYSCEF Doc. Nos. 14-33). However, as counsel for defendants points out in opposition to the motion, plaintiff has not submitted a Statement of Material Facts pursuant to 22 NYCRR § 202.8-g. That rule was added December 29, 2020, and became effective February 1, 2021, pursuant to Administrative Order of the Chief Administrative Judge of the Court – No. AO/270/2020, dated December 29, 2020.¹ Plaintiff’s instant motion was filed after said effective date, on August 31, 2021 (*see*, NYSCEF Doc. No. 14 [Notice of Motion]).

On account of the lack of a Statement of Material Facts, defendants’ counsel has asked this court to issue a straight denial of the motion, with finality, and to compel this case into a discovery phase; calling on this court to “exercise its equitable powers in the interest of justice” in doing so (NYSCEF Doc. No. 36 at 17 [Defendants’ Memorandum]). Said counsel’s request for such a disposition follows his enthused discussion of a decision issued by the Supreme Court, Rockland County, titled *Amos Financial LLC v Crapanzano* (73 Misc 3d 448, 154 NYS3d 366 [Sup Ct, Rockland County, July 30, 2021]), which not only finally denied a plaintiff’s motion for summary judgment for the lack of a Statement of Material Facts; but went even further to issue what that court called an “Admonishment to Plaintiff” (154 NYS3d at 374-75). This court declines to adopt such a disposition in this case.

To be sure – plaintiff’s motion does lack the ingredient of a Statement of Material Facts, which ingredient is undeniably required under the relatively new procedural rule – Rule 202.8-g of Title 22 of the New York Code of Rules and Regulations. However, in all other respects –

¹ Available at: [AO-270-20.pdf \(nycourts.gov\)](https://www.nycourts.gov/ao-270-20.pdf)

including statutory respects promulgated in CPLR 3212 (b) – the motion is properly supported from a procedural standpoint. Obviously, substantive success remains to be determined. But instead of placing weight on defendants’ counsel’s urging to “deny the motion in its entirety,” characterizing that as “the interest of justice” (NYSCEF Doc. No. 36 at 17), or on what another court preferred to do as an “[a]dmonishment” (*Amos Financial LLC, supra* [Sup Ct Rockland County]), this court derives less severe guidance from CPLR 2101 (f), titled “Defects in form,” which envisions a more flexible approach toward procedural oversights by litigating parties. It authorizes a court to preserve the efficient and just continuity of the proceedings by allowing defects to be corrected. And that is precisely why this court refrains from issuing final denial of the plaintiff’s motion; but instead, denies the motion without prejudice to renew upon the additional submission of a Statement of Material Facts.²

Accordingly, it is

ORDERED that plaintiff’s motion for summary judgment is denied without prejudice to plaintiff’s right (in this particular action only) to renew the motion upon submission of a Statement of Material Facts pursuant to 22 NYCRR § 202.8-g; and it is further

ORDERED that said renewal may consist of an attorney’s affirmation asking the court to re-consider the present filings in conjunction with a newly filed Statement of Material Facts; and it is further

ORDERED that any such renewal shall occur no later than 30 days from the date of filing hereof; and it is further

² The within disposition is limited to the precise procedural and temporal circumstances of the subject motion.

ORDERED that any opposition to any such renewed motion for summary judgment may consist of an attorneys' affirmation asking the court to re-consider the present filings in conjunction with a Counter-Statement of Material Facts pursuant to 22 NYCRR § 202.8-g.

This will constitute the decision and order of the court.

ENTER:

Louis L. Nock

<u>12/10/2021</u> DATE					<u>LOUIS L. NOCK, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input checked="" type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE
			<input type="checkbox"/>	DENIED	