

Valley Natl. Bank v Top Express Cab Corp.
2021 NY Slip Op 32818(U)
December 16, 2021
Supreme Court, New York County
Docket Number: Index No. 655304/2020
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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VALLEY NATIONAL BANK,	INDEX NO. <u>655304/2020</u>
Plaintiff,	MOTION DATE <u>N/A</u>
- v -	MOTION SEQ. NO. <u>001</u>
TOP EXPRESS CAB CORP., SAMI ITSHAIK, 412 EXPRESS MANAGEMENT CORP.	DECISION + ORDER ON MOTION
Defendants.	
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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34
 were read on this motion for SUMMARY JUDGMENT AND DEFAULT JUDGMENT.

The facts in this case are essentially the same as in *Val. Nat. Bank v Shamuely Cab Corp.*, 2021 WL 5579694, *2 – 4 [N.Y. Sup Ct, New York County 2021] and *Val. Nat. Bank v Tarzan Cab Corp.*, 2021 NY Slip Op 32559(U) [N.Y. Sup Ct, New York County 2021], in which the Court granted summary judgment against the Borrower and Individual Guarantor and a default judgment against the Corporate Guarantor. The same result obtains here.

In this case, Defendant Top Express Cab Corp. (“Borrower”) received \$1,125,000.00 of financing from Plaintiff in July 2017 and executed a promissory note (the “Note”). The terms of the Note included an annual interest rate of 3.23% until the principal was repaid in full, and an additional 5% interest rate in the event that Borrower defaulted. Borrower proffered two New York City taxi medallions (numbers 9G15 and 9G17) as collateral for the loan, which was memorialized in a security agreement. Plaintiff perfected its security interest in the medallions by filing a UCC-1 Filing Statement with the N.Y. Dept. of State. The loan was further

guaranteed by Defendants Sami Itshaik (“Individual Guarantor”) and 412 Express Management Corp. (“Corporate Guarantor”).

Defendants made monthly payments from the beginning of the loan term until defaulting on or about March 17, 2020. Plaintiff gave Defendants notice of default by letter on August 21, 2020. Plaintiff filed a Summons and Complaint, to which Defendants Borrower and Individual Guarantor answered, and then subsequently filed a Supplemental Summons and Amended Verified Complaint joining Corporate Guarantor as a defendant. Plaintiff served Corporate Guarantor with its supplemental and amended pleadings on December 14, 2020 (NYSCEF Docs. 23 – 25). Corporate Guarantor failed to answer or otherwise respond to the Amended Verified Complaint.

Plaintiff now moves (i) for summary judgment against the Borrower and the Defendant Individual Guarantor for the outstanding debt on the Note, delivery of the collateral, and for reimbursement of attorney’s fees and costs; and (ii) for default judgment against the Defendant Corporate Guarantor, 412 Express Management Corp., for the outstanding debt on the Note and reimbursement of attorneys’ fees and costs.

Defendants oppose the motion for summary judgment, arguing (without citation to authority) that repayment became “impossible” as of March 2020 due to the effects of the COVID-19 pandemic (augmented by competition from rideshare apps). There has been no opposition to the motion for a default judgment.

As the facts and arguments presented by the parties in this case are essentially the same as those addressed by the Court in *Val. Nat. Bank v Shamuely Cab Corp.*, 2021 WL 5579694, the Court incorporates by reference here its reasoning in *Shamuely* as sufficient for summary judgment.

As for Plaintiff's request default judgment under CPLR 3215 against Corporate Guarantor, it is undisputed that Corporate Guarantor failed to timely appear, answer, or otherwise move with respect to Plaintiff's supplemental summons and complaint (NYSCEF Docs. 5 & 6). Plaintiff has submitted un rebutted evidence demonstrating compliance with the statutory procedural requirements of CPLR 3215 (*see* NYSCEF Docs. 23 – 25). Therefore, Plaintiff's motion for default judgment is granted as to liability. The relief sought is identical to that sought against Answering Defendants—*i.e.*, \$1,124,923.26 of outstanding principal, plus interest accrued on the outstanding principal at the contractual per annum interest rate of 3.23% until August 21, 2020 equaling an amount of \$18,362.78, plus interest accrued pursuant to the contractual 3.23% rate plus the additional contractual default rate 5% from August 22, 2020 to the present. As such, Plaintiff's motion for default judgment is granted as to damages.

Defaulting Corporate Guarantor may seek a vacatur of the instant default judgment if it can satisfy the requirements of CPLR 5015, CPLR 317, or any other relevant law.

Accordingly, it is hereby

ORDERED that Plaintiff's motion for summary judgment is **GRANTED** against Answering Defendants Sami Express Cab Corp. and Sami Itshaik in the amount of \$1,124,923.26 of outstanding principal, plus interest accrued on the outstanding principal at the contractual per annum interest rate of 3.23% until August 21, 2020 equaling an amount of \$18,362.78, plus interest accrued pursuant at the contractual 3.23% rate plus the additional contractual default rate of 5% from August 22, 2020 to the present, together with costs and disbursements as calculated by the County Clerk; it is further

ORDERED that Plaintiff's motion for a default judgment is **GRANTED** against Defendant 412 Management Corp. in the amount alleged in the Complaint, which is

\$1,124,923.26 of outstanding principal, plus interest accrued on the outstanding principal at the contractual per annum interest rate of 3.23% until August 21, 2020 equaling an amount of \$18,362.78, plus interest accrued pursuant at the contractual 3.23% rate plus the additional contractual default rate of 5% from August 22, 2020 to the present, subject to a credit based on the sale of the collateral, together with costs and disbursements as calculated by the County Clerk; it is further

ORDERED that Defendants shall assemble and deliver to Plaintiff the collateral, including medallions issued by the New York City Taxi and Limousine Commission bearing numbers 9G15 and 9G17; it is further

ORDERED that the Clerk shall enter a judgment in accordance with this Decision and Order, to be submitted to the Clerk by Plaintiff after the Court determines the amount of collection expenses.

This constitutes the Decision and Order and Judgment of the Court.

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JOEL M. COHEN, J.S.C.

12/16/2021
DATE

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER
 INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER
 FIDUCIARY APPOINTMENT REFERENCE

CHECK IF APPROPRIATE: