SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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GOLDMAN SACHS BANK USA,

Plaintiff,

- v -

JOEL SCHREIBER, WE MEMBER LLC,2307 HOLDINGS LLC,JETSON MEMBER LLC,RETAIL WORX MEMBER LLC

Defendant.

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INDEX NO. 656597/2021

MOTION DATE N/A

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61
were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER.

Goldman Sachs Bank USA's (the **Lender**) motion for summary judgment must be granted. Simply put, the Defendants do not dispute that they breached both the Revolving Loans (Committed Loan) Loan Agreement (the **Loan Agreement;** NYSCEF Doc. No. 4) and the Pledge and Security Agreement (the **Pledge and Security Agreement;** NYSCEF Doc. No. 6). Indeed, the only arguments that the Defendants make in opposition to the motion are that (i) the Lender has improperly calculated the interest rate by (x) using the wrong percentage for the applicable margin rate, and (y) supplementing the LIBOR rate, and (ii) the Lender improperly seeks both equitable and monetary relief. As discussed below, the arguments fail.

Reference is made to this Court's Decision and Order dated January 6, 2022 (the **Prior Decision;** NYSCEF Doc. No. 22) pursuant to which this Court granted the Lender's motion for a preliminary injunction to prevent Joel Schreiber (the **Grantor**) and We Member LLC (**We Member**) from selling, removing, altering, transferring, or disposing of the assets held by We

Member, including shares of WeWork Inc. (**WeWork**) without prior written consent from the Lender. The facts are set forth in the Prior Decision. Familiarity is presumed. Any term used but not defined herein shall have the meaning ascribed to it in the Prior Decision.

The Defendants argue that the Lender improperly applied an applicable margin rate of 8.25% instead of 4.25% as required under Section 2.3(a) of the Amended Loan Agreement. They argue that Section 2.3 allows for an additional four percent interest if the Defendants are in default but that the Forbearance Agreement provides that the four percent default interest would not apply. They are not correct.

The Forbearance Agreement provides, in relevant part:

> Notwithstanding anything to the contrary set forth in the definition of Applicable Margin or Section 2.3 of the Loan Agreement and with retroactive effect commencing as of January 1, 2021 and continuing thereafter until the Obligations are paid in full, the Loan shall accrue (and for such historical period shall be deemed to have already accrued) interest at a rate per annum equal to the sum of (a) LIBOR for the then-current LIBOR Reset Period, plus (b) 8.25% per annum; provided that during the pendency of this Agreement, each Loan shall not accrue interest at the Default Rate, notwithstanding the existence of Events of Default, including, without limitation, the Specified Defaults, so long as (i) no Termination Event has occurred pursuant to clauses (iv), (vii) or (viii) of the definition thereof and (ii) no Event of Default (other than the Specified Defaults) has occurred pursuant to Sections 6.1, 6.5 or 6.6 of the Loan Agreement. Each payment of interest specified in Section 8(c) below shall be payable in cash in accordance with Section 2.3(d) of the Loan Agreement

(NYSCEF Doc. No. 52, § 7). In other words, the parties agreed that the applicable margin rate was 8.25% per annum and that an additional four percent default rate – *i.e.*, a 12.25% margin rate – would not be applied. .

As to the Defendant's argument that the Lender should not have supplemented the LIBOR rate, the Lender consents to the LIBOR interest rate that the Defendants seek to apply. These interest rates lower the spread adjustment for the interest owed by 0.1% per month beginning for the month starting November 1, 2021 and ending for the month starting November 1, 2022 (NYSCEF Doc. No. 57, at 3 n 1).

Thus, the Lender is entitled to summary judgment in the amount $19,494,000 with interest in the amount of $2,618,274.81 instead of the $2,624,519.14 in interest previously sought.

Finally, as discussed in the Prior Decision, the parties expressly negotiated that the Lender's consent was required prior to the sale of any assets of We Member because the assets of We Member were to be sufficient collateral to support the loan and the sale of those assets in contravention of the governing documents constituted irreparable harm to the Lender by taking away the value of the collateral (NYSCEF Doc. No. 22, at 5). We Member's assets are the collateral for the loan. Given the Defendants' history in selling assets in violation of the governing documents, an injunction is appropriate. Therefore, the motion for summary judgment must therefore be granted.

It is hereby ORDERED that the Lender's motion for summary judgment is granted; and it is further

ORDERED that the Lender shall enter judgment on notice; and it is further

ORDERED that, pending satisfaction of judgment, the Defendants are enjoined and restrained from selling, removing, altering, transferring, or disposing of the assets held by We Member, including shares of WeWork, absent prior written approval from the Lender.

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5/16/2023
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
	X	GRANTED		DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE