

Lilue v Figueira

2023 NY Slip Op 32731(U)

August 7, 2023

Supreme Court, New York County

Docket Number: Index No. 652902/2023

Judge: Barry R. Ostrager

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. BARRY R. OSTRAGER PART IAS MOTION 61EFM

Justice

-----X		INDEX NO.	652902/2023
PETER ALEXANDER BLATNIK LILUE,		MOTION DATE	
Plaintiff,		MOTION SEQ. NO.	001
- v -			
JORGE LUIS FIGUEIRA,			

Defendant.

DECISION + ORDER ON MOTION

-----X
HON. BARRY R. OSTRAGER

Plaintiff Peter Alexander Blatnik Lilue (“Lilue”) has moved herein for summary judgment in lieu of complaint awarding him a money judgment, pursuant to CPLR §3213, against defendant Jorge Luis Figueira (“Figueira”) based on a Promissory Note and an Acknowledgement of Debt. According to the Affidavit of Service completed by the process server (NYSCEF Doc. No. 10), Figueira was personally served on July 3, 2023, by personal delivery of the moving papers to Figueira in Florida.

On July 28, 2023, the return date of the motion, Lilue’s counsel efiled a letter to the Court advising that counsel had received a document from Figueira entitled “Answer” and dated July 3, 2023, which indicated that Figueira was representing himself and which purported to oppose Lilue’s motion (NYSCEF Doc. Nos. 11 and 12). The Answer was not efiled by Figueira, nor received by this Court, although the Answer states that it was mailed to the street address for the Courthouse on July 3, when it was also mailed to Lilue’s counsel. In his efiled letter to the Court, Lilue’s counsel urges the Court to reject the Answer based on improper form and as lacking in merit and to enter a default judgment in favor of Lilue against Figueira.

After considering all the papers, including the Answer filed by Figueira representing himself, the Court grants Lilue’s motion on the merits for the reasons that follow.

CPLR § 3213 provides for an accelerated procedure for the entry of a money judgment “based on an instrument for the payment of money only.” Lilue has established a *prima facie* case for the requested relief. The motion is supported by an affidavit on personal knowledge from Mr. Lilue (NYSCEF Doc. No. 4). There, Lilue states that Figueira was the former president of Nodus Bank located in Puerto Rico and one of the three founders and former executive director of Areti Bank, d./b/a Areti Bank Holdings, Inc. A business associate introduced the two men in 2019 when Figueira was looking for investors for Areti. Lilue agreed to lend Figueira \$1 million with a 10% interest rate until the loan was paid in full..

On August 10, 2019, Figueira and Lilue signed a Promissory Note reflecting their agreement ("First Promissory Note," NYSCEF Doc. No. 5). The terms of the First Promissory Note were that Lilue would lend, and Figueira would personally owe, \$1 million with 10% interest accruing per annum. Lilue confirms that, between August 2019 and April 2020, he wired Figueira a total of \$1 million pursuant to the Note. The First Promissory Note also stated that failure to pay by the August 10, 2020 Maturity Date would constitute an event of default and that, upon Figueira’s default, Lilue could demand that the amount due be paid immediately.

When Figueira failed to pay the First Promissory Note on the August 10, 2020 Maturity Date, the parties negotiated a one-year extension at Figueira’s request upon a payment of \$300,000.00. On August 28, 2020, the parties signed a second promissory note ("Second Promissory Note," NYSCEF Doc. No. 6), which extended the date of repayment by one year to August 28, 2021. The terms were nearly identical to those stated in the First Promissory Note but revised the amount due to be \$770,988.88 to reflect the \$300,000 payment Figueira had made and the 10% interest which had already accrued.

According to Lilue, the Second Promissory Note matured on August 28, 2021 with no payment having been made. As a result, in August 2021, Lilue asked Figueira to sign an

Acknowledgement of Debt, which Figueira executed on September 2, 2022 ("Acknowledgement," NYSCEF Doc. No. 7),. The Acknowledgement stated that "Jorge Luis Figueira . . . hereby acknowledges himself to be truly and lawfully indebted to Peter Alexander Blatnik Lilue. . . in the sum-certain amount of Eight Hundred Fifty-Five Thousand Four Hundred Seventy-Six Dollars [\$855,476.00] plus interest calculated at ten percent (10%) per annum beginning on the date April 15, 2021." The Acknowledgement further states that Figueira acknowledges that he is "solely responsible for the debts" and "waives all future arguments about the validity or amount of the debt..." The Acknowledgement also states that "this document may serve as a sum-certain statement of the Indebted Amount and may be used without limitation by Creditor [Lilue] to pursue a judgment." Additionally, the Acknowledgement provides for jurisdiction and venue in the courts of New York County, NY, and that it shall be construed under the laws of the State of New York.

In the Acknowledgement, Figueira unambiguously agreed to pay Lilue within six months of execution, by March 2,2023. Lilue attests that Figueira never made a single payment after signing the Acknowledgment. He asserts that Figueira now owes \$855,476.00 plus 10% interest per annum from April 15, 2021, through the entry of judgment. Lilue also seeks to recover costs and reasonable attorney's fees pursuant to an express provision in the Acknowledgement providing for fees "in the event of pursuing legal remedies in the event of a default." No specific amount of fees is requested.

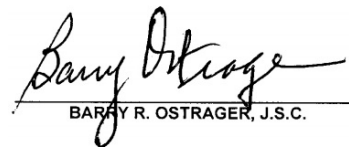
As indicated above, Figueira mailed an Answer, which Lilue urges the Court to reject based on improper form and on the merits and to enter a default judgment in Lilue's favor. The Answer prepared by the self-represented defendant is clear and comprehensible. The fact that it is styled as an Answer to a Complaint, rather than opposition to the motion, does not compel the Court to reject it and treat plaintiff's motion as one for a default judgment.

In the Answer, Figueira denies all of Lilue's allegations and presents nine Affirmative Defenses. The general denials fail to create issues of fact in light of the strong evidence presented

by plaintiff in support of the motion. Nor do any of the Affirmative Defenses create a triable issue of fact that bars summary judgment in lieu of complaint. As confirmed above, Figueira was properly served, and jurisdiction in the New York courts was expressly provided for. The Notes and the Acknowledgement of Debt were clear and unambiguous, and enforcement is being sought well within the six-year statute of limitations for breach of contract. The demand for an accounting fails where, as here, Figueira fails to specifically indicate that he paid any amount not reflected in Lilue’s Affidavit. The equitable defenses also fail, as they are wholly conclusory and unsupported by a single fact. Indeed, all the Affirmative Defenses consist of nothing more than boilerplate single sentences with no detail or evidentiary support.

Accordingly, plaintiff’s motion for summary judgment in lieu of complaint is granted, and the Clerk is directed to enter judgment in favor of plaintiff Peter Alexander Blatnik Lilue against defendant Jorge Luis Figueira in the sum of Eight Hundred Fifty-Five Thousand Four Hundred Seventy-Six Dollars (\$855,476.00) plus interest calculated by the Clerk of the Court at ten percent (10%) per annum beginning on April 15, 2021, and continuing through the entry of judgment, with interest accruing thereafter at the statutory rate of 9% per annum until the amount is paid in full, plus costs and disbursements as calculated by the Clerk of the Court. Additionally, the Court awards plaintiff \$7500.00 for reasonable attorney’s fees. Plaintiff is directed to efile a Proposed Judgment and Bill of Costs directed to the County Clerk for the entry of a judgment.

Dated: August 7, 2023


 BARRY R. OSTRAGER, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE