

Santander Bank, N.A. v Russian Am. Consulting Corp.

2023 NY Slip Op 33181(U)

September 13, 2023

Supreme Court, New York County

Docket Number: Index No. 655440/2021

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

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SANTANDER BANK, N.A.,

Plaintiff,

- v -

RUSSIAN AMERICAN CONSULTING CORP.,

Defendant.

-----X

INDEX NO. 655440/2021

MOTION DATE 08/11/2023

MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 004) 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, and 66

were read on this motion to RENEW/REARGUE/RESETTLE/RECONSIDER.

Upon the foregoing documents, the motion is granted without opposition, for the reasons set forth in the moving papers (NYSCEF Doc. Nos. 57, 65) and the exhibits attached thereto, in which the court concurs, as summarized herein. The court assumes familiarity with the facts and prior history of this action as set forth in its prior decisions dated June 21, 2022, December 2, 2022, and June 6, 2023 (NYSCEF Doc. Nos. 16, 36, 54).

In this action upon a loan agreement, note, and other related agreements, the court previously denied plaintiff's motion for summary judgment on the grounds that the documents submitted in support of the motion had been redacted to obscure defendant's signature, leaving the court unable to evaluate whether there was an agreement between the parties (NYSCEF Doc. No. 54). Plaintiff's counsel, Amai S. Abdellah, Esq., having examined the documents closely, now asserts that the apparent redactions are in fact errors in the scanning process (Abdellah Affirmation, NYSCEF Doc. No. 57, ¶ 26). Correctly scanned copies of the loan agreement, promissory note, and security agreement were electronically filed with the court in support of the motion (Garcia aff., NYSCEF Doc. No. 65 at 9-18), and also sent to the court in hard copy

format. A review of these documents shows that they were in fact signed by defendant's principal, Andrei Chouranov (*id.* at 12, 15, 18). Accordingly, the court is satisfied as to the existence of an enforceable agreement between the parties, and as to the "reasonable justification for the failure to present such facts on the prior motion" (CPLR 2221[e][3]).

Plaintiff has established prima facie entitlement to summary judgment on its claim for breach of the note by submission of the executed promissory note, and the affidavit of its associate Gabriela Garcia, attesting to defendant's failure to repay the note when due (Garcia Aff., NYSCEF Doc. No. 65, ¶¶ 12-16) (*Alard, L.L.C. v Weiss*, 1 AD3d 131, 131 [1st Dept 2003] ["Having established defendant's execution of the note and default in payment, plaintiff made out a prima facie case"]). By failing to oppose the motion, defendant has also failed to raise a triable issue of fact in opposition (*Kershaw v Hospital for Special Surgery*, 114 AD3d 75, 82 [1st Dept 2013] [opponent of summary judgment must "submit proof in admissible form sufficient to create a question of fact requiring a trial"]). The court dismisses as duplicative the claims for an account stated and unjust enrichment (*Clark-Fitzpatrick, Inc. v Long Island R.R. Co.*, 70 NY2d 382, 388 [1987] [unjust enrichment]; *Vanpoy Corp., S.R.L. v Soleil Chartered Bank*, 204 AD3d 486, 488 [1st Dept 2022] [account stated]).

Plaintiff has also established prima facie entitlement to summary judgment on its claim for replevin of the collateral set forth in the security agreement, as evidenced by submission of the security agreement and Garcia's affidavit, which together establish that "defendant is in possession of certain property of which the plaintiff claims to have a superior right" (*Westbury Recycling, Inc. v Westbury Transfer & Recycling, LLC*, 209 AD3d 929, 932 [2d Dept 2022]). Specifically, the security agreement provides that upon any default under the loan agreement or promissory note, or, indeed, any of defendant's obligations thereunder or related thereto, plaintiff

“shall have the right to locate, disable or take possession of the Collateral” (Garcia aff., NYSCEF Doc. No. 65 at 18). Plaintiff perfected its interest in the collateral by the filing of an initial UCC-1 Financing Statement on February 5, 2009 (Garcia Aff., NYSCEF Doc. No. 65 at 21).¹

Accordingly, it is hereby

ORDERED that the motion to renew is granted; and it is further

ORDERED that, upon renewal, the court vacates its prior order of June 6, 2023 (NYSCEF Doc. No. 54), and awards summary judgment to plaintiff on its first and fourth causes of action; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendant in the amount of \$99,838.22, with interest thereon at the rate of 15.99% from November 30, 2021 through the date hereof, then at the statutory rate through entry of judgment, as calculated by the Clerk, and continuing to accrue at the statutory rate thereafter through satisfaction of judgment, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that plaintiff, having established entitlement to its reasonable attorneys’ fees pursuant to the promissory note, shall submit an itemization of its reasonable attorneys’ fees incurred and proof thereof on or before September 27, 2023 by electronic filing, with a copy by email to the Principal Court Attorney of Part 38 at ssyaggy@nycourts.gov; and it is further

ORDERED that the issue of plaintiff’s attorneys’ fees is severed and continued; and it is further

¹ The court notes that plaintiff filed an amendment to the financing statement which marked the box terminating its secured interest in the collateral as of October 3, 2017 (Garcia Aff., NYSCEF Doc. No. 65 at 20). The court understands that marking to have been made in error, in view of plaintiff’s continued reliance on the validity of its security interest in the collateral.

ORDERED that within thirty (30) days of service of a copy of this order with notice of entry, defendant shall deliver all personalty described in and covered by the Security Agreement between the parties, including any personalty thereafter acquired by defendant, pursuant to UCC 9-609; and it is further

ORDERED that the Sheriff of any County within the state, upon service upon them of a copy of this order and the payment of any applicable fees, enforce this Order.

This constitutes the decision and order of the court.



<u>9/13/2023</u> DATE					<u>LOUIS L. NOCK, J.S.C.</u>			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	NON-FINAL DISPOSITION			
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input 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