Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____ Argued - January 5, 2012

DANIEL D. ANGIOLILLO, J.P.
ANITA R. FLORIO
CHERYL E. CHAMBERS
L. PRISCILLA HALL, JJ.

2010-10031 DECISION & ORDER
2011-02732

JPMorgan Chase Bank, N.A., etc., respondent, v
Mandy Bauer, etc., appellant.

(Index No. 2868/10)

Hirschel Law Firm, P.C., Garden City, N.Y. (Daniel Hirschel of counsel), for appellant.

Helfand & Helfand, New York, N.Y. (Andrew B. Helfand and Michael A. D'Emidio of counsel), for respondent.

In an action to recover on a business line of credit agreement and a personal guaranty, the defendant appeals from (1) an order of the Supreme Court, Nassau County (Sher, J.), entered September 17, 2010, which granted the plaintiff's motion for summary judgment on the complaint, and (2) a judgment of the same court dated October 18, 2010, which, upon the order, is in favor of the plaintiff and against her in the principal sum of $80,273.99.

ORDERED that the appeal from the order is dismissed; and it is further,

ORDERED that the judgment is affirmed; and it is further,

ORDERED that one bill of costs is awarded to the plaintiff.

The appeal from the intermediate order must be dismissed because the right of direct appeal therefrom terminated with the entry of judgment in the action (*see Matter of Aho*, 39 NY2d 241, 248). The issues raised on appeal from the order are brought up for review and have been

considered on the appeal from the judgment (*see* CPLR 5501[a][1]).

The defendant, Mandy Bauer, also known as Mandy R. Bauer and Mandy Roffe Bauer, does business under the name Lloyd and Mandy Bauer DDS (hereinafter the dental practice).

The plaintiff bank made a prima facie showing of entitlement to judgment as a matter of law against Bauer by submitting proof of the existence of the underlying credit agreement, Bauer's personal guaranty of the obligations of the dental practice under that agreement, and the failure of the dental practice to make payment in accordance with the terms of the credit agreement (*see HSBC Bank USA, N.A. v Laniado*, 72 AD3d 645; *Wolf v Citibank, N.A.*, 34 AD3d 574, 575; *Kensington House Co. v Oram*, 293 AD2d 304, 304-305). Bauer failed to raise a triable issue of fact in opposition. "[S]omething more than a bald assertion of forgery is required to create an issue of fact contesting the authenticity of a signature," and Bauer's "affidavit was alone inadequate to raise an issue of fact necessitating a trial" (*Banco Popular N.A. v Victory Taxi Mgt.*, 1 NY3d 381, 384; *see Seaboard Sur. Co. v Nigro Bros.*, 222 AD2d 574).

Bauer waived the defense of lack of standing by failing to raise it in either her answer or in a pre-answer motion to dismiss the complaint (*see CitiMortgage, Inc. v Rosenthal*, 88 AD3d 759; *Wells Fargo Bank Minn., N.A. v Mastropaolo*, 42 AD3d 239, 244).

Accordingly, the Supreme Court properly granted the plaintiff's motion for summary judgment on the complaint.

Bauer's remaining contention is not properly before this Court.

ANGIOLILLO, J.P., FLORIO, CHAMBERS and HALL, JJ., concur.

ENTER:

Aprilanne Agostino
Clerk of the Court