

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

D34053  
G/kmb

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Argued - January 24, 2012

MARK C. DILLON, J.P.  
ANITA R. FLORIO  
CHERYL E. CHAMBERS  
SHERI S. ROMAN, JJ.

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2011-04568

DECISION & ORDER

Lilia Arbuzova, respondent, v Yury Skalet,  
et al., appellants.

(Index No. 11326/08)

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Sanford Solny, Brooklyn, N.Y., for appellants.

Steven B. Sarshik, New York, N.Y., for respondent.

In an action to recover on a promissory note, the defendants appeal from a judgment of the Supreme Court, Kings County (Schmidt, J.), entered March 28, 2011, which, upon an order of the same court dated February 17, 2011, granting the plaintiff's motion for summary judgment on the complaint and denying their cross motion for summary judgment dismissing the complaint, is in favor of the plaintiff and against them in the principal sum of \$125,000.

ORDERED that the judgment is affirmed, with costs.

A corporation is prohibited from asserting the defense of civil usury (*see* General Obligations Law § 5-521; *Schneider v Phelps*, 41 NY2d 238, 242; *Tower Funding v Berry Realty*, 302 AD2d 513, 514). An individual guarantor of a corporate obligation is also precluded from raising such a defense (*see Schneider v Phelps*, 41 NY2d at 242; *Tower Funding v Berry Realty*, 302 AD2d at 514). Here, although the interest rate in the subject promissory note exceeded 16% per annum (*see* General Obligations Law § 5-501[1], [2]; Banking Law § 14-a[1]; *Tower Funding v Berry Realty*, 302 AD2d at 514), the plaintiff established, *prima facie*, that the loan was made to the corporate defendant, Bais Seller Realty, with the defendant Yury Skalet as personal guarantor of the loan (*see Tower Funding v Berry Realty*, 302 AD2d at 514). In opposition to this *prima facie* showing, the defendants failed to raise a triable issue of fact (*see generally Alvarez v Prospect Hosp.*, 68 NY2d 320, 324).

February 21, 2012

Page 1.

ARBUZOVA v SKALET

Accordingly, the Supreme Court properly granted the plaintiff's motion for summary judgment on her complaint and denied the defendants' cross motion for summary judgment dismissing the complaint.

DILLON, J.P., FLORIO, CHAMBERS and ROMAN, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court