

**New Jersey Higher Educ. Student Assistance Auth.
v Clark**

2016 NY Slip Op 32223(U)

October 27, 2016

Supreme Court, New York County

Docket Number: 653240/2014

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

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NEW JERSEY HIGHER EDUCATION STUDENT
ASSISTANCE AUTHORITY,

Plaintiff,

- v -

BERNICE CLARK,

Defendant.

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HON. EILEEN A. RAKOWER, J.S.C.

Index No.
653240/2014

**DECISION
and ORDER**

Mot. Seq. 001

Plaintiff New Jersey Higher Education Student Assistance Authority (“Authority” or “HESAA” or “plaintiff”) brings this action to recover the amounts due on student loans made to Lauren Clark (the “borrower”) from cosignor Bernice Clark (“defendant”).

Plaintiff now moves for an order, pursuant to CPLR 3212, granting summary judgment against defendant in the amount of \$27,961.07 plus accrued interest and attorney fees in the amount of \$6,827.34 (based on a contingency fee of 22%) pursuant to the agreement and NJ Regulation 9A:10-6.16(b). Plaintiff submits the attorney affirmation of Norina A. Melita, Esq., annexing the summons and complaint; the answer; the affidavit of Janice Seitz, Program Officer of NJESAA; the loan applications and two promissory notes; a National Clearinghouse Report indicating that the borrower graduated in May 2013; and the pursuit activity file, which indicates that the borrower was offered a recent grad deferment and was responsible to make monthly payments to the interest accruing while in deferment. Defendant submits no opposition.

In 2009, Lauren Clark borrowed funds from the Authority through the NJCLASS program. In consideration of the two loans, Lauren Clark executed two promissory notes dated February 10, 2009 and July 14, 2009, in the principal sums of \$10,500.00 and \$17,655.00, respectively. Defendant Bernice Clark cosigned each note. Under each note, the borrower selected Option 2, under which the principal is deferred and the borrower is required to pay the interest while in deferment. The loans defaulted for non-payment in the amounts of \$10,417.68 and

\$17,543.39 in principal, and \$1,143.59 and \$1,928.69 in accruing interest to May 30, 2014, respectively. The interest rate is set by the Authority at 7.62%.

The promissory notes signed by borrower and defendant provided:

Collection Costs: If I am in Default, I agree to pay all amounts, including reasonable collection agency and attorneys' fees and court and other collection costs that you incur in effecting collection of this Note, up to the maximum permitted by law.

* * *

Default: To the extent permitted by law, I will be in default and you may declare, without notice or demand, the entire unpaid amount of this Note, including principal, interest, late charges, reasonable collection costs and all other costs, immediately due and payable if I:

A. fail to make any payment to you when due and HESAA reasonably concludes that I no longer intend to honor my obligation; * * *

The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law by tendering sufficient evidence in admissible form to eliminate any material issue of fact from the case. *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). Where the proponent makes such a showing, the burden shifts to the party opposing the motion to demonstrate by admissible evidence that a factual issue remains requiring the trier of fact to determine the issue. *Id.* at 560.

The Authority was created pursuant to the Higher Education Student Assistance Authority Law and oversees the New Jersey College Loans to Assist State Students (NJCLASS) Loan Program. N.J.S.A. 18A:71C-21. Under the NJCLASS program, the Authority is authorized to "make loans available in such amounts as necessary to ensure that student loans remain generally available to, or for the benefit of, eligible students who are not eligible for, or have additional financial need beyond, a federally insured student loan and who meet the eligibility criteria set forth in [N.J.S.A.] 18A:71C-27." *Id.* Interest on the loans accrues "from the date of the making of the loan; however, the payment of the principal or the interest or both may be deferred until a time or times determined by the [A]uthority." N.J.S.A. 18A:71C-26. Pursuant to N.J.S.A. 18A:71A-8, the Authority adopted rules and regulations governing loans under the NJCLASS program. N.J.A.C. 9A:10-6.1 to -6.19.

Default is governed by N.J.A.C. 9A: 10-6.16, which provides:

(a) Default occurs when a borrower fails to make an installment payment when due, or to meet other terms of the Promissory Note under circumstances where the Authority finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay, provided failure to repay persists for:

1. At least 180 days when payments are due monthly; or
2. At least 240 days during the student's in-school period when payments are due less frequently than monthly.

(b) Upon default, the borrower and/or cosigner, if any, are liable for the entire balance of the loan. Upon default, the Authority shall notify credit bureaus of this negative information. Default may result in any or all of the following: expedited increase of interest rate, loss of State income tax refunds or State tax rebates, legal action, assessment of collection charges including attorney fees of up to 30 percent of the debt collected, loss of eligibility for other student aid, negative credit reports, administrative wage garnishment, offset of lottery prize winnings, and suspension of New Jersey occupational and professional license.

N.J. Admin. Code § 9A:10-6.16.

Here, plaintiff's documentary evidence consisting of the loan agreements and promissory notes, loan maintenance tracking information, and Seitz's affidavit certifying that defendant defaulted in payment on the notes is sufficient to make out a prima facie showing of entitlement to judgment as a matter of law. *See The Commissioner of the State Insurance Fund v. Concord Messenger Service, Inc.*, 34 A.D.3d 355 (1st Dept. 2006). Defendant does not oppose, and thus fails to raise a triable issue of fact. Where the movant has established a prima facie showing of entitlement to summary judgment, the motion, unopposed on the merits, shall be granted. *See generally Access Capital v. DeCicco*, 302 A.D.2d 48, 53-54 (1st Dept. 2002).

Based upon the foregoing, it is hereby

ORDERED that plaintiff's motion for summary judgment against defendant Bernice Clark is granted without opposition; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff, New Jersey Higher Education Student Assistance Authority, and against defendant Bernice Clark in the amount of \$27,961.07, plus accrued interest at the rate of 7.62%, in the amount of \$3,562.62 from August 22, 2014 until the date of entry of judgment, as calculated by the Clerk, and thereafter at the statutory rate, together with attorney's fees in the amount of \$6,827.34, and costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

Dated: OCTOBER 27, 2016

OCT 27 2016



Eileen A. Rakower, J.S.C.