

**TD Bank, N.A. v Supreme Light. LLC**

2026 NY Slip Op 31063(U)

January 28, 2026

Supreme Court, Kings County

Docket Number: Index No. 506569/2021

Judge: Francois A. Rivera

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At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 28<sup>th</sup> day of January 2026

HONORABLE FRANCOIS A. RIVERA

-----X  
TD BANK, N.A.,

Plaintiff,

- against -

SURPEME LIGHTING LLC; and DAVID GOLDSTEIN,

Defendants,

-----X

**DECISION & ORDER**

Index No.: 506569/2021

Oral Argument: 11/7/2024

Cal. No.: 52

Ms. Seq. No.: 1

Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of motion filed by TD Bank, N.A., (hereinafter TD or plaintiff) on June 26, 2024, under motion sequence one, for an order pursuant to CPLR 3212 granting summary judgment in its favor on the issue of liability on the claims asserted in its complaint against Supreme Lighting LLC and David Goldstein (hereinafter the defendants). The defendants have opposed the motion.

- Notice of Motion
- Affirmation in support
  - Exhibits 1 to 4
- Affidavit in Support
  - Exhibits 1 to 7
- Statement of Material Facts
- Memorandum of law in support
- Affirmation in opposition
  - Exhibit A
- Affidavit in opposition
- Affirmation in reply

**BACKGROUND**

On March 18, 2021, plaintiff commenced the instant action by filing a summons

and verified complaint (hereinafter the commencement papers) with the Kings County Clerk's office (KCCO).

On April 20, 2021, the defendants interposed and filed a joint verified answer with the KCCO. The verified complaint alleges forty-eight allegations of fact in support of three causes of action, namely, breach of a business loan agreement (hereinafter the "LOC agreement"), breach of a personal guaranty agreement, and breach of a collateral security agreement.

The verified complaint alleging the following salient facts. On December 22, 2017, Supreme Lighting LLC (hereinafter the borrower) executed and delivered to plaintiff, a certain "Promissory Note" (the "Note") which evidenced a line of credit in the amount of \$100,000 ("LOC") extended by plaintiff to borrower. The LOC was made on a demand basis as set forth in the Note. The LOC is a United States Small Business Administration Loan.

Pursuant to the terms of the Note, interest due on the LOC accrues at a variable rate, at 3.49% above the Wall Street Journal Prime rate (as defined in the Note), with an initial rate of 7.99%. Under the Note, borrower agreed to make monthly payments of interest only commencing January 22, 2018, and continuing the same day of each month thereafter until December 22, 2024, when all unpaid principal and interest would be due.

Under the LOC agreement, the borrower agreed that its final payment would include all the outstanding amounts due on the LOC, including principal, interest, costs, expenses, attorneys' fees, and other fees. The borrower agreed to pay plaintiff a late payment charge of 5% of the unpaid portion of any regularly scheduled payment that became 15 days or more late and to reimburse plaintiff for any reasonable costs and attorneys' fees incurred by plaintiff in connection with plaintiff's attempts to enforce or preserve any rights or remedies under the Note and LOC Agreement.

Borrower failed to make monthly payments due under the Note and LOC agreement for July 22, 2020, and each month thereafter.

By correspondence dated February 25, 2021, plaintiff accelerated the LOC, and made demand that borrower make payment of all amounts due on the LOC. Plaintiff also demanded borrower assemble the Collateral and make it available to plaintiff for inspection, evaluation, possession, and sale by plaintiff.

The borrower is in default of the LOC for failing to pay the LOC upon demand: As of March 16, 2021, the principal amount of \$99,800.41, was due under the Note and LOC Agreement, plus accrued interest, late charges, and other allowed charges such as collection expenses, including legal fees and costs.

To secure payment of LOC, David Goldstein (hereinafter the guarantor) executed and delivered to plaintiff a certain guaranty, whereby guarantor absolutely and unconditionally guaranteed payment of all amounts due on the LOC (hereinafter the "Guaranty"). By virtue of the stated default, the borrower defaulted under the terms of the Note and LOC Agreement, entitling plaintiff to payment of its obligations from guarantor under the terms of the guaranty. By correspondence dated November 13, 2020, plaintiff declared the stated default, accelerated the LOC, and demanded immediate payment from the defendants of all amounts due under the Note, LOC Agreement, and Guaranty. Borrower and guarantor failed to make payments upon demand which constitutes a further default under the Note, LOC agreement, and guaranty. By correspondence dated February 25, 2021, plaintiff reiterated its declaration of the stated default, acceleration of the LOC, and demand that defendants make payment of all amounts due on the LOC, and demanded borrower assemble the collateral and make it available to plaintiff for inspection, evaluation, possession, and sale by plaintiff.

As of March 16, 2021, the principal amount of \$99,800.41, was due under the Note and LOC Agreement, plus accrued interest, late charges, and other allowed charges such as collection expenses, including legal fees and costs.

On December 22, 2017, to further secure payment of the amounts due on LOC, and all other indebtedness of borrower to plaintiff, borrower executed and delivered to plaintiff a certain security agreement entitled the "Commercial Security Agreement"

(the “Security Agreement”), wherein borrower specifically granted plaintiff a security interest in all borrower’s business assets as defined in the Security Agreement (the “Collateral”) (the Note, LOC Agreement, Guaranty, Security Agreement, and all related loan documents are collectively referred to hereinafter as the “LOC Documents). Plaintiff’s continuing security interest in the Collateral was perfected by a UCC-1 Financing Statement bearing Filing Number 201801175076339 filed against borrower in the New York State Department of State on January 17, 2018. By virtue of the Stated Default, borrower is in default under the terms of the Security Agreement, entitling plaintiff to pursue its remedies against the Collateral, including repossession of the Collateral by replevin to inventory and sell the Collateral at a public or private auction in accordance with the Uniform Commercial Code.

By correspondence dated November 13, 2020, plaintiff declared the Stated Default, accelerated the LOC, and demanded defendants immediately make payment of all amounts due on the LOC. By correspondence dated February 25, 2021, plaintiff reiterated its declaration of the Stated Default, acceleration of the LOC, and demand that defendants make payment of all amounts due on the LOC, and demanded borrower assemble the Collateral and make it available to plaintiff for inspection, evaluation, possession, and sale by Plaintiff. defendants failed to make payment upon demand, which constituted a further default under the LOC Documents. Borrower failed to deliver possession of the Collateral to plaintiff despite borrower’s obligations under the Security Agreement and is further in default under the LOC Documents as a result. Plaintiff has sustained, and will continue to sustain, immediate and irreparable harm by reason of borrower’s failure to assemble and deliver possession of the Collateral.

## **LAW AND APPLICATION**

It is well established that summary judgment be granted only when no triable issue of fact exists (*Alvarez v Prospect Hospital*, 68 NY2d 320,324 [1986]). The burden is upon the moving party to make prima facie showing that he or she is entitled to summary judgment as a matter of law by presenting evidence in admissible form

demonstrating the absence of material facts (*Giuffrida v Citibank*, 100 NY2d 72, 80 [2003])

A failure to make that showing requires the denial of the summary judgment motion, regardless of the adequacy of the opposing papers (*Ayotte v Gervasio*, 8J NY2d 1062, 1063 [1993]). If prima facie showing has been made, the burden shifts to the opposing party to produce evidentiary proof sufficient to establish the existence of material issues of fact (*Alvarez*, 68 NY2d at 324).

Pursuant to CPLR 3212 (b), a court will grant for summary judgment upon a determination that the movant's papers justify holding, as a matter of law, that there is no defense to the Cause of action, or that the cause of action or defense has no merit. Furthermore, all of the evidence must be viewed in the light most favorable to the opponent of the motion (*Marine Midland Bank v Dino & Artie's Automatic Transmission Co.*, 168 AD2d 610 [2d Dept 1990]).

The essential elements of a cause of action to recover damages for breach of contract are "the existence of a contract; the plaintiff's performance pursuant to the contract, the defendant's breach of its contractual obligations, and damages resulting from the breach (*Cruz v Cruz*, 213 AD3d 805,807 [2d Dept 2023]).

The only sworn testimony offered in support of the plaintiff's motion was the affirmation of Peter Y Roh, Esq., its counsel (hereinafter Roh) and the affidavit of Thomas Becker, its President (hereinafter Becker).

Roh did not offer any evidence regarding the defendants' alleged breach of its agreement with the plaintiff. Roh referred to four annexed exhibits labeled one through four. Exhibit I is a copy of the Commencement papers; Exhibit 2 is the affidavit of service on the borrower Defendant. Exhibit 3 was the affidavit of service pursuant to the guarantor Defendant, David Goldstein. Exhibit 4 is described as the Defendant's Verified Answer.

In sum, Roh had no personal knowledge regarding any of the transactions alleged in the complaint. Becker averred personal knowledge with respect to the creation, maintenance, and storage of plaintiff's business records. Becker then

identified and authenticated seven annexed exhibits which he retrieved from the plaintiff's electronic business records retention system. He described the annexed exhibits labeled one through six as follows. Exhibit 1 was the note between the plaintiff and the defendants. Exhibit 2 was the loan agreement between the plaintiff and the defendant. Exhibit 3 was the guarantee between the plaintiff and defendant David Goldstein. Exhibit 4 was described as the security agreement between the plaintiff and the defendants. Exhibit 5 was described as demand for immediate payment. Exhibit 6 was described as the default letter. Exhibit 7 was the transactional history.

Becker alleged that because of defendants' default under the LOC Documents, plaintiff the defendants owe \$134,832.90, consisting of the principal amount of \$99,800.41, accrued interest of \$34,882.49, and site visit fees of \$150.00, plus per diem interest and legal fees and costs.

Defendants accurately contended, among other things that Becker's affidavit failed to state how much money was tendered to the defendants, failed to discuss how the accrued interest was computed, and did not provide any detail pertaining to the accounting of the alleged loan.

The note annexed as exhibit 1 to plaintiff's motion papers reflects that the plaintiff gave the defendant a revolving line of credit<sup>1</sup>.

The plaintiff's evidentiary submission did not establish what amounts the defendants allegedly took from the LOC, what date those amounts were taken, what amounts were paid if any, when those amounts were repaid, what was the balance due month to month, or how those amounts were computed. The plaintiff also did not submit monthly or periodic

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<sup>1</sup> "A line of credit (LOC) is a preset borrowing limit that can be tapped into at any time. The borrower can take money out as needed until the limit is reached. As money is repaid, it can be borrowed again in the case of an open line of credit. An LOC is an arrangement between a financial institution—usually a bank—and a customer that establishes the maximum loan amount that the customer can borrow. The borrower can access funds from fire LOC at any time as long as they do not exceed the maximum amount (or credit limit) set in the agreement." (Adam Hayes, Line of Credit (LOC) Definition, Types, and Examples [4an 30, 2024], available at [www.investopedia.com/terms/l/lineofcredit.asp](http://www.investopedia.com/terms/l/lineofcredit.asp)).

statements issued in the instant action, Becker’s affidavit of the amount due from the defendants is therefore conclusory and unsupported. In effect, plaintiff did not establish how it determined the balance purportedly due from the defendants.

In light of these evidentiary deficiencies plaintiff did not make a prima facie showing of entitlement to summary judgment on any of its claims asserted the complaint. The motion is therefore denied, without regard to the sufficiency of defendants' opposition papers (*see Alvarez v Prospect Hosp.*, 68 NY2d 320,324 [1986]; *Winegrad v. New York Univ: Med Ctr.*, 64 NY2d 851, 853 [1985]).

**CONCLUSION**

The motion by plaintiff TD Bank, N.A for an order pursuant to CPLR 3212 granting summary judgment in its favor on the issue of liability on the claims asserted in its complaint against Supreme Lighting LLC and David Goldstein is denied.

The foregoing constitutes the decision and order of this Court.

ENTER:

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*Francis A. Rivera*  
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J.S.C