

M E M O R A N D U M

SUPREME COURT - QUEENS COUNTY
I.A.S. PART 14

 LEAF FINANCIAL CORPORATION AS
 ASSIGNEE OF FIVE POINT CAPITAL,
 INC.,

Index No. 29310/07

By: **ELLIOT, J.**

Plaintiff,
 -against-

Date: May 27, 2008

Motion Date: March 11, 2008

CROWN POULTRY FARM INC., AND
 GANESH ARORA A/K/A GANESH
 DASS ARORA, INDIVIDUALLY,

Motion Cal. No. 15

Motion Seq. No. 1

Defendants.

In this action by plaintiff Leaf Financial Corporation as Assignee of Five Point Capital, Inc. (Leaf) to recover damages alleged to have been sustained as a result of a breach of defendant Crown Poultry Farm Inc.'s (Crown) obligation to make payments due under an equipment lease, plaintiff moves for summary judgment against defendant Crown on the lease and against defendant Ganesh Arora a/k/a Ganesh Dass Arora, Individually (Arora) on the guaranty.

Plaintiff alleges that the sum of \$62,789.93 is due and owing from defendant Crown and defendants do not challenge that assertion. Opposition to the motion consists solely of a claim by defendant Arora, president of defendant Crown, that he did not understand that he was signing a personal guaranty.

It has been held that, even in the commercial context, factual issues concerning whether the process by which a guaranty

was obtained was unconscionable can preclude summary judgment for the lessor. Advanta Business Services Corp. v. Colon, 4 Misc.3d 117 [Appellate Term, 2nd and 11th Judicial Districts]. Such case acknowledges the rule "...that persons insufficiently proficient in the English language must prove reasonable efforts to have a document read and explained [citations omitted]."

Applicable to the instant case is Sofio v. Hughes, 162 AD2d 518, which states that: "First, as a matter of law, it must be noted that the rule stated in the Pimpinello [Pimpinello v. Swift & Co., 146 ad2D 866], case is applicable only when the signer of the document is free of negligence. Persons who are blind or illiterate are not automatically excused from complying with the terms of the contracts which they sign simply because their disability might have prevented them from reading the contracts. The cases consistently hold that a person with such a disability must make a reasonable effort to have the document read to him (see, e.g., Albany Medical Center Hospital v. Armlin, supra, [146 AD2d 866] at 867, 536 NYS2d 272; Brian Wallach Agency v. Bank of New York, 75 AD2d 878, 879, 428 NYS2d 280). The same should be true of a person who claims not to understand English. Even assuming Mr. Sofio was unable to understand the release, he should not have signed it before having it explained to him. Second, as a matter of fact, there is no proof that Mr. Sofio's command of English is so poor as to justify the inference that, if he had taken the trouble to read the release, he would not have been able to understand it."

Here, defendant Arora operates a grocery store in

Queens County. The mere conclusory statements that he "is not possessed of a high degree of business acumen" and "does not have a great command of the English language and further was not capable of reading and comprehending the true and complete nature of all of the documents" is insufficient to relieve him of the most basic requirement of making some effort to have the documents read and/or explained to him. Similarly, although defendant Arora asserts that plaintiff's assignor's failure to explain the documents to him constitutes fraud in the inducement, defendant has failed to set forth any duty on behalf of plaintiff's assignor to do so. There is no indication, or even allegation, that defendant Arora was deceived or even lied to in any manner.

"A party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, producing sufficient evidence to demonstrate the absence of any material issue of fact. Once this showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution." Giuffrida v. Citibank, 100 NY2d 72 at 81.

In the instant case, plaintiff has made a prima facie showing of entitlement to judgment as a matter of law. Defendants do not challenge plaintiff's assertion that the sum of \$62,789.93 is due and owing under the lease agreement. Although defendant Arora asserts that the guaranty under which judgment is

sought is unenforceable, the court rejects such assertion. Defendant Arora has failed to produce evidentiary proof in admissible form sufficient to establish the existence of a material fact requiring a trial.

Accordingly, the motion is granted.

Settle order together with an attorney's affirmation with respect to the issue of counsel fees, and provide in such order for the award of counsel fees, if any, to be determined by the court.

J.S.C.