

Orix Fin. Servs., Inc. v Hansen

2007 NY Slip Op 32362(U)

July 20, 2007

Supreme Court, New York County

Docket Number: 0113211/2006

Judge: Rolando T. Acosta

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: **ROLANDO T. ACOSTA**

PART 61

Index Number : 113211/2006

ORIX FINANCIAL SERVICES

vs

HANSEN, JOHN J.

Sequence Number : 001

SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

See Attached

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

FILED

JUL 30 2007

NEW YORK

COUNTY CLERKS OFFICE

MOTION IS DECIDED IN ACCORDANCE WITH THE ATTACHED MEMORANDUM

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SO ORDERED

Dated: July 20, 2007

[Signature]

ROLANDO T. ACOSTA

J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

REFERENCE

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK PART 61**

Orix Financial Services, Inc., formerly
known as Orix Credit Alliance, Inc.,

Plaintiff,

– against –

John J. Hasen d/b/a JE. Hanson Trucking,

Defendants.

DECISION/JUDGMENT

Index No. 113211/07

Motion Seq. 1

Present:
Hon. Rolando T. Acosta
Supreme Court Justice

The following papers were considered in reviewing plaintiff's motion for an order granting summary judgment pursuant to CPLR § 3212:

| Papers | Numbered |
|------------------------------------|------------------------|
| Notice of Motion, Affidavit | 1, 2, (Ex. A-G) |

Plaintiff brings this summary judgment motion for unpaid payments to the plaintiff by defendant pursuant to a written note for the financing and acquisition of equipment executed by the parties. Specifically, on or about April 30, 1999, Trailer Marketing, Inc. ("seller") entered into a Conditional Sale Contract Note ("Note") with defendant John J. Hansen d/b/a John J. Hansen Trucking ("Hansen"), whereby it sold to Hansen a bottom dump trailer and a flatbed trailer.

On or about April 30, 1999, Seller assigned the Note to plaintiff. On or about the same date, Hansen executed a Delivery/Installation Certificate, Waiver and Agreement, whereby Hansen acknowledged complete and satisfactory delivery of the equipment free from any defenses, offsets or counterclaims.

Plaintiff alleges that beginning on November 1, 2000 and on the 1st of each month thereafter, Hansen defaulted in the payments required under the Note. Pursuant to the terms and conditions of the Note, plaintiff located and peaceably took possession of the equipment, and subsequently conducted a sale of the equipment on April 5, 2001 upon notice to Hansen. The equipment was sold at said sale for a gross purchase price of \$29,000.00, with \$1,704.57 as to the costs and expenses of the sale. Plaintiff thus brings the instant action seeking the unpaid balance of the Note, as well as late charges and default interest at the post-maturity rate.

It is well settled that the proponent of a motion for summary judgment must establish that "there is no defense to the cause of action or that the cause of action or defense has no merit," (C.P.L.R. §3212[b]), sufficiently to warrant the court as a matter of law to direct judgment in his or her favor. Bush v. St. Claire's Hospital, 82 N.Y.2d 738, 739 (1993); Winegrad v. New York University Medical Center, 64 N.Y.2d 851, 853 (1985). This standard requires that the proponent of the motion

"tender[] sufficient evidence to eliminate any material issues of fact from the case," *id.*, "by evidentiary proof in admissible form." Zuckerman v. City of New York, 49 N.Y.2d 557, 562 (1980). Thus, the motion must be supported "by affidavit [from a person having knowledge of the facts], by a copy of the pleadings and by other available proof, such as depositions." C.P.L.R. §3212(b).

Where the proponent of the motion makes a *prima facie* showing of entitlement to summary judgment, the burden shifts to the party opposing the motion to demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action, or to tender an acceptable excuse for his or her failure to do so. Vermette v. Kenworth Truck Company, 68 N.Y.2d 714, 717 (1986); Zuckerman v. City of New York, *supra*, 49 N.Y.2d at 560, 562. Like the proponent of the motion, the party opposing the motion must set forth evidentiary proof in admissible form in support of his or her claim that material triable issues of fact exist. *Id.*, at 562. In deciding a motion for summary judgment, the Court must view the evidence in the light most favorable to the non-moving party, affording them the benefit of all reasonable inferences that can be drawn. Negri v. Stop & Shop, Inc., 65 N.Y.2d 625 (1985).

In the instant action, plaintiff has satisfied its burden of establishing its *prima facie* entitlement to summary judgment. That is, plaintiff has provided a

copy of the Note entered into by the parties outlining defendant's obligations, a copy of the assignment of the Note to plaintiff, as well as a copy of the defendant's payment history. As plaintiff established its *prima facie* entitlement to summary judgment, the burden shifted to defendant to demonstrate that triable issues of fact exist. Defendant, having defaulted on the motion, has failed to do so. Accordingly, based upon the foregoing, it is hereby

ORDERED that plaintiff's motion for summary judgment against defendant is GRANTED, unopposed; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff Orix Financial Services, Inc. and against John J. Hansen d/b/a John J. Hansen Trucking in the sum of \$16,569.41 plus default interest at the post-maturity rate set forth in the Note, i.e., 1/15th of 1% *per diem* from the day after the sale on April 5, 2001, until judgment is entered; and it is further

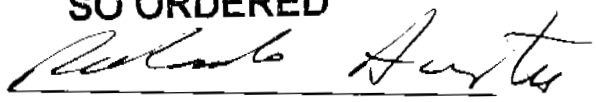
ORDERED that a copy of this Order with notice of entry be served upon the Trial Support Clerk (Room 158), who is directed, upon the filing of a note of issue and a statement of readiness and the payment of proper fees, if any, to place this action on the appropriate trial calendar for a Special Referee to hear and decide the amount of attorney's fees to be awarded plaintiff, if any.

This constitutes the Decision, Order and Judgment of the Court.

Dated: July 20, 2007

ENTER

SO ORDERED



ROLANDO T. ACOSTA
Rolando T. Acosta, J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

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FILED
JUL 30 2007
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