

JP Morgan Chase Bank, N.A. v Mari Dade, Inc.

2008 NY Slip Op 30467(U)

February 20, 2008

Supreme Court, New York County

Docket Number: 0108603/2007

Judge: Jane S. Solomon

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

DECEMENT. *Hon. JANE S. SOLOMON*

PART 55

Index Number : 108603/2007

JPMORGAN CHASE BANK, N.A.

VS.

MARI DADE, INC.

SEQUENCE NUMBER : # 001

SUMMARY JUDGMENT

Justice

INDEX NO. 108603-07

MOTION DATE 12-14-07

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

read on this motion to/for _____

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

Answering Affidavits -- Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1-5

6-9

10-12

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed memorandum decision and order.

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

FILED

FEB 22 2008

NEW YORK

COUNTY CLERK'S OFFICE

Dated: 2/20/08

[Signature]

JANE S. SOLOMON 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: IAS PART 55

-----X

JP MORGAN CHASE BANK, N.A.,

INDEX NO. 108603/2007

Plaintiff,

-against-

MARI DADE, INC. and MARIA TRINDADE,

DECISION and ORDER

Defendants.

-----X

JANE S. SOLOMON, J.

FILED
FEB 22 2008
NEW YORK
COUNTY CLERK'S OFFICE

Plaintiff JP Morgan Chase Bank, N.A. ("Chase") moves under CPLR § 3212 for summary judgment against defendants Mari Dade, Inc. (the "Company") and Maria Rosenthal s/h/a Maria Trindade ("Trindade"). Trindade cross-moves for summary judgment dismissing the Complaint as to her. The motions are decided as follows.

Trindade formed the Company, which operated as a women's apparel designer and manufacturer, in or about April 2001. She was the Company's President and sole shareholder until it ceased doing business in or around 2006. On or about February 23, 2004, the Company applied to Chase for a revolving credit line in the principal sum of \$50,000 by signing a Business Revolving Credit Account Agreement (the "Agreement"), which Chase approved on or about March 15, 2004. The Agreement provides that

the Company would pay an annual fee of \$500 per year (waived for the first year), and would repay the amount advanced with interest at Chase's prime rate in thirty-six consecutive monthly installments due on the 15th of each month.

The Agreement further provides that the Company's failure to make any payments when due constitutes an event of default, which would permit Chase to (i) declare all principal, interest and other amount already owing and which shall become owing to be immediately due and payable without notice of any kind (including notice of acceleration); and (ii) set off the amount owed by taking possession of any amount held on deposit for the Company. In addition, the Agreement states that if a required monthly payment is made 10 or more days late, the Company would be required to pay a late fee equivalent to 5% of the total payment due, and it provides for the payment of attorneys fees in connection with the collection of overdue amounts.

Trindade signed the Agreement twice, the first time in a section entitled "Authorizing Resolution," as the Company's President, and the second time in a section labeled "ACKNOWLEDGMENT/AUTHORIZATION (Please read the PERSONEL [sic] GUARANTEE AND COLLATERAL AGREEMENT, then sign and date your Application." Above her signature is the language "By signing

below, I/we also individually and personally, jointly and severally, agree to the terms of the Guarantee and Collateral Agreement, which appear in the PERSONAL GUARANTEE AND COLLATERAL AGREEMENT Section of this Application." The Personal Guarantee and Collateral Agreement section is directly above the Acknowledgment/Authorization section, and provides that each guarantor "individually and personally, jointly and severally, absolutely and unconditionally guarantee[s] to [Chase] and its assigns the prompt payment of each and every obligation and liability of every nature and description of [the Company] to Chase ..."

Bonnie A. McGuffie ("McGuffie"), Chase's Assistant Vice President of the Portfolio Management Center, submits an affidavit stating that she has reviewed the books, records and documents relating to the Agreement, and that they are retained in Chase's regular course of business. Based on her review, McGuffie contends the Company made all payments through January 15, 2007, but then failed to make any more payments. Accordingly, she states that Chase is owed \$43,821.31 in principal, plus interest at the prime rate from February 15, 2007. She further claims that several of the payments that were made were late, so that \$324.78 has accrued in unpaid late fees.

Finally, McGuffie contends that following the Company's default, a demand was made on Trindade, but she has not honored it.

Chase commenced this action against the Company and Trindade seeking the amount due under the Agreement plus \$3,550 in attorneys fees and \$522 in costs and disbursements. Trindade answered, denying knowledge about the amount owed and denying that she signed a personal guaranty. Chase now moves for summary judgment, and Trindade cross-moves for summary judgment arguing that the Agreement is unclear; she never signed a personal guaranty; and she should be permitted to proceed with previously noticed discovery.

Discussion

Trindade's arguments that she did not sign in the Personal Guaranty section, that there is no signature line designating an individual as a guarantor, and that her two signatures on the Authorizing Resolution and Applicant Acknowledgment sections were made solely in her corporate capacity, are unpersuasive.

General Obligations Law § 5-707(a)(2) states that there must be a written memorandum signed by the party to be held accountable for the payments of the debts of another. Moreover, if an officer is to be held liable for the debts of a corporation, "the nearly universal practice is that the officer

signs twice - once as an officer and again as an individual." Salzman Sign Co. v. Beck, 10 N.Y.2d 63, 67 (1961). Here, Trindade signed the Agreement twice, and her second signature comes directly below a statement that she agrees to the Personal Guarantee, which comes in a clearly defined section directly preceding it. Chase is entitled to rely on her signature here, because a person has a duty to read any legal document before signing it. See Sandcham Realt Corp. v. Taub, 299 A.D.2d 220 (1st Dep't 2002). In addition, Trindade was required to give personal financial information in the Agreement, emphasizing that a credit decision was being made, at least in part, upon consideration of her creditworthiness.

Under these circumstances, the Agreement is not unclear, and Trindade's guarantee of the Company's loan obligation is valid and enforceable. Thus, Chase is granted summary judgment for the liability of both defendants. With respect to the amount owed, however, although McGuffie's affidavit states she has reviewed Chase's records, no records have been submitted and Trindade denies the amount outstanding. Accordingly, pursuant to CPLR § 3212(c), the matter shall be referred to a Special Referee to ascertain the amount due.

Accordingly, it hereby is

ORDERED that Trindade's cross-motion is denied, and Chase's motion for summary judgment is granted as to liability against both defendants under the Agreement; and it further is

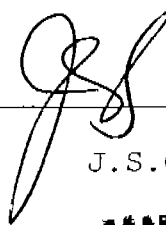
ORDERED that the issue of how much defendants owe Chase under the Agreement for unpaid principal, interest, late fees, reasonable attorneys' fees, costs and expenses is referred to a Special Referee to hear and report with recommendations; and it further is

ORDERED that this motion shall be held in abeyance pending the report and recommendations of the Special Referee and a motion pursuant to CPLR § 4403; and it further is

ORDERED that a copy of this order with notice of entry shall be served by hand within 45 days of entry on the Motion Support Office (Room 119M) to arrange a date for the reference to a Special Referee.

Dated: February 20, 2008

ENTER:



J.S.C.

JANE S. SOLOMON

FILED

FEB 22 2008

NEW YORK
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