

Banco Popular N. Am. v Jubaraj Assoc. Inc.

2009 NY Slip Op 31225(U)

June 2, 2009

Supreme Court, New York County

Docket Number: 102925/09

Judge: Judith J. Gische

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

PRESENT: HON. JUDITH J. GISCHE

PART 10

Justice

Banco Popular

Plaintiff (s),

- v -

Juberay Assoc.

Defendant(s)

INDEX NO.

102925/09

MOTION DATE

MOTION SEQ. NO.

001

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

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

motion (s) and cross-motion(s) decided in accordance with the annexed decision/order of even date.

FILED

JUN 08 2009

COUNTY CLERK'S OFFICE
NEW YORK

Dated:

6/24/09

[Signature]
Hon. Judith J. Gische, J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 10

-----X
BANCO POPULAR NORTH AMERICA,

Plaintiff,

-against-

JUBARAJ ASSOCIATES INC., and JUBARJ
SELIM a/k/a JUBARJ SALIM,

Defendants.
-----X

Decision/Order

Index No.: 102925/09
Seq. No. : 001

Present:
Hon. Judith J. Gische
J.S.C.

FILED
JUN 08 2009
COUNTY CLERK'S OFFICE
NEW YORK

Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this (these) motion(s):

Papers

Plt's motion [sjlc] w/ BR affid, exhs 1

-----X
Upon the foregoing papers, the decision and order of the court is as follows:

This is plaintiff's motion for summary judgment in lieu of a complaint. CPLR § 3213. Defendant has not opposed the motion, despite proof of service. The court's decision follows.

CPLR 3213 is intended to be an efficient and effective means of securing a judgment on claims presumptively meritorious. Interman Indus. Products, Ltd. v. R.S.M. Electron Power, Inc., 37 N.Y.2d 151 (1975). An instrument for the payment of money qualifies for CPLR 3213 treatment if it contains an unconditional promise by the debtor to repay lender the moneys advanced to it or on its behalf for payment. Afco Credit Corp. v. Boropark Twelfth Ave. Realty Corp., 187 A.D.2d 634, (2nd Dept. 1992) The moving party is entitled to summary judgment unless the other party comes forward with evidentiary proof sufficient to raise an issue as to the defenses to the instrument. Id.

Pursuant to a Promissory Note (the "Note") dated February 27, 2008, plaintiff loaned to Jubaraj Associates, Inc. (the "Corporation") the principal sum of \$40,000. Jubaraj Selim (the "Guarantor") executed a Commercial Guaranty which guaranteed the Corporation's indebtedness under the Note. Interest on the note was to accrue at the prime rate plus 2% per annum reduced by 1% for the preferred rate reduction on the unpaid balance until fully paid. The Note required the Corporation to make regular monthly payments of all accrued unpaid interest due commencing March 27, 2008, and on that day of each month thereafter. All remaining principal and unpaid accrued interest, if not paid sooner, was due and payable on February 27, 2009.

The Corporation's failure to make monthly payments by the due date constitutes a default under the Note. The Note provides that, in the event of a default, the preferred rate reduction of 1% is terminated and plaintiff may increase the variable interest rate to 5% points over the then applicable percentage rate, as defined in the Note. Plaintiff also claims that \$17.10 is due on the Note for late charges.

The Corporation failed to make payments of principal and interest due on October 27, 2008 and has not made any payment since then. As of January 26, 2009, the principal sum of \$38,419.50 was due under the Note, together with interest thereon from October 27, 2008 to January 26, 2009 in the sum of \$636.32, late charges of \$17.10. Plaintiff has provided a copy of a statement of the Corporation's account. After due demand, plaintiff made demands to the guarantor for payment of the Corporation's debt under the Note. The Guarantor did not make any payments thereunder.

The Note qualifies as an instrument for the payment of money.. Therefore, plaintiff has established entitlement to summary judgment against defendant given the

defendants' undisputed failure to make payments due under the Note and Guaranty, respectively (see Afco Credit Corp. V. Boropark, *supra*; Bonds Financial, Inc. v. Kestrel Technologies, LLC, 48 AD3d 230 [1st Dept 2008]).

Plaintiff further seeks to recover \$3,000 from the defendants for legal fees incurred in the prosecution of this action. Although the Note provides that in the event of a default thereunder, defendant agrees to pay plaintiff's reasonable attorneys fees, plaintiff has failed to submit an affirmation of its attorneys' services delineating the work performed, costs and disbursements occurred, and attesting to the reasonableness of the fees thereby. Therefore, plaintiff has failed to establish that \$3,000 bears a reasonable relationship to the services provided and to be provided to plaintiff, and such request for relief is hereby denied. First National Bank of East Islip v. Brower, 42 N.Y.2d 471 (1977).

The court also acknowledges that under the Guaranty, plaintiff seeks a default judgment against Jubaraj Selim a/k/a Jubaraj Salim. However, only Jubaraj Selim is a party to the Guaranty, and plaintiff has not provided any basis for liability against a "Jubaraj Salim." Therefore, that branch of the motion must be denied.

Accordingly, plaintiff's motion for summary judgment in lieu of complaint is hereby granted to the extent that plaintiff is entitled to a money judgment in its favor and against the Corporation and the Guarantor, joint and severally, for the unpaid principal sum of \$38,419.50, together with interest thereon from October 27, 2008 to January 26, 2009 in the sum of \$636.32¹, and late charges of \$17.10.

¹ Although plaintiff also seeks interest from January 26, 2009 to the date of entry of judgment, plaintiff has not provided any calculations as to the applicable interest rate, and the court, therefore, has no basis to award any further damages representing pre-judgment interest.

Conclusion

In accordance herewith, it is hereby

ORDERED that plaintiff Banco Popular North America's motion pursuant to CPLR § 3213 for summary judgment in lieu of complaint against defendants Jubaraj Associates Inc., and Jubaraj Selim is granted to the extent that plaintiff is entitled to a money judgment in its favor and against Jubaraj Associates and Jubaraj Selim, joint and severally, for the unpaid principal sum of \$38,419.50, together with interest thereon from October 27, 2008 to January 26, 2009 in the sum of \$636.32, and late charges of \$17.10; and it is further


ORDERED that the Clerk shall enter a money judgment in favor of plaintiff Banco Popular North America and against Jubaraj Associates and Jubaraj Selim, joint and severally, for the unpaid principal sum of \$38,419.50, together with interest thereon from October 27, 2008 to January 26, 2009 in the sum of \$636.32, and late charges of \$17.10.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby denied.

This shall constitute the decision and order of the Court.

Dated: New York, New York
June 2, 2009

So Ordered:



HON. JUDITH J. GISCHE, J.S.C.

FILED
JUN 08 2009
COUNTY CLERK'S OFFICE
NEW YORK