

**HSBC Bank USA, N.A. v Components Intl. Inc.**

2009 NY Slip Op 31987(U)

August 25, 2009

Supreme Court, Suffolk County

Docket Number: 37841-2008

Judge: Emily Pines

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SUPREME COURT - STATE OF NEW YORK  
**COMMERCIAL DIVISION**  
**TRIAL TERM, PART 46 SUFFOLK COUNTY**

PRESENT: Hon. Emily Pines

MOTION DATE: 03-31-2009  
 SUBMITTED: 05-27-2009  
 MOTION NO.: 001 RRH

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 HSBC BANK USA, N.A.,

**Plaintiff,**

**-against-**

PLATZER, SWERGOLD, KARLIN, LEVINE,  
 GOLDBERG & JASLOW, LLP  
 Attorneys for Plaintiff  
 1065 Avenue of the Americas  
 New York, New York 10018

**COMPONENTS INTERNATIONAL INC. d/b/a  
 COMPONENTS INTERNATIONAL, INC. and  
 NOSON HECHT, a/k/a JASON HECHT,  
 individually,**

HELLER, HOROWITZ & FEIT, p.c.  
 Attorneys for Defendant Noson Hecht  
 292 Madison Avenue  
 New York, New York 10017

**Defendants.**

THE SILBER LAW FIRM, LLC  
 Attorneys for Defendant Components Intl. Inc.  
 150 Broadway 14<sup>th</sup> Floor  
 New York, New York 10038

Plaintiff, HSBC Bank USA, N.A. ("HSBC") moves for Summary Judgment against Components International Inc. d/b/a Components International, Inc. ("Components") and Noson Hecht, a/k/a Jason Hecht ("Hecht"). In its complaint, HSBC alleges that on or about September 22, 2004, Hecht, on behalf of Components, executed a Business Line of Credit Agreement ("Agreement #1") for a credit line in the principal amount of \$80,000.00. In addition to executing Agreement #1, Hecht executed a General Security Agreement ("Security Agreement") and a Unlimited Continuing Guaranty (the "Guaranty").

The plaintiff relies on the Security Agreement in support of its claim that all of the assets of Components were pledged as collateral for the loan. The relevant language contained in the Security Agreement is as follows:

"Debtor hereby grants to Secured Party a security interest (Security Interest) in all of the Collateral. As used in this Agreement, "Collateral" means all right, title and interest of Debtor in and to any and all of the following property, whether now owned of hereafter existing or acquired and wherever located, all products and proceeds (including but not limited to insurance proceeds) of such property, wherever located and in whatever form, and all books and records pertaining to such property and all other property of Debtor in which Secured Party now of hereafter is granted a security interest pursuant to this Agreement of otherwise:

All assets and property of every description (including, without limitation, all Accounts, General Intangibles, Chattel Paper (whether tangible or electronic), Instruments, Letter-of-Credit Rights, Investment Property, Deposit Accounts, Documents, and Goods (including inventory, Equipment and Fixtures and embedded software, and all Accessions to any Goods).”

On or about October 13, 2004, HSBC filed a UCC-1 financing statement covering the collateral set forth above. A copy of the UCC-1 was annexed in support of this motion.

In addition to the Security Agreement, Hecht executed a Guaranty. The Guaranty clearly sets forth language which states “Guarantor hereby unconditionally guarantees the full and prompt payment to BANK when due, whether by acceleration or otherwise, of any and all Indebtedness...” . The Guaranty further states that the Indebtedness is defined as “all indebtedness and other liabilities of Debtor to Bank of every kind and character and all extensions, renewals and replacements thereof...including all unpaid accrued interest and all costs and expenses”. Finally, HSBC cites language in the Guaranty which states in relevant portion that “Bank shall not be required to make any demand upon, exercise any right to declare a default by or proceed against the DEBTOR prior to proceeding against Guarantor to the full extent of the obligations”.

Subsequent to the execution of the above documents on or about May 18, 2005, Hecht, on behalf of Components applied for a business line of credit in the amount of \$330,000.00 (Agreement #2), which was approved by HSBC. Agreement #2 incorporated and superseded the obligations of Components under Agreement #1. HSBC contends that the Guaranty remained in full force and effect covering Agreement #2, relying on the language set forth above. Additionally, on or about May 18, 2005, to further support Agreement #2, Hecht executed a Subordination Agreement under which Hecht subordinated Two Million Ninety-Five Thousand Eight Hundred and Ninety dollars in debt owed to him by Components. The Subordination Agreement provides that it shall remain in full force and effect until full payment is received by HSBC. It also does not terminate until HSBC sends Hecht a written notice of discontinuance.

Prior to approving the loans, HSBC received a banking resolution from Components. The resolution, dated October 16, 2001 was executed by Hecht as President and Jacob Kohn as Vice President and authorized Noson Hecht to borrow money and obtain credit from the Bank on any terms. Subsequently, HSBC received another resolution (the “Second Resolution”), on May 16, 2008. The Second Resolution grants the authority to borrow money and obtain credit to the Chief Executive Officer. The Second Resolution ratifies and reaffirms all previous transactions between HSBC and Components.

On or about September 4, 2008 Components defaulted under the Loan Agreement by failing to make the payments as required and for failing to advise HSBC of a change in its ownership.<sup>1</sup> It is alleged that at the time of the default, Components owed \$330,165.00 to HSBC. On or about September 12, 2008 HSBC sent demand letters to Components and Hecht, declaring a default and

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<sup>1</sup> Upon information and belief, HSBC contends that Hecht resigned as president and sold his stock interest in Components on or about November 6, 2007.

accelerating the obligations under the Loan Agreements. HSBC demanded payment and/or the turning over of the collateral covered by the UCC-1 filings and the Subordination Agreement. Neither payment, nor the surrendering of the collateral, was made by either of the defendants. HSBC subsequently filed the within action, and now moves for Summary Judgment against both Components and Hecht claiming that the documentary evidence clearly establishes its rights as a matter of law.

Both defendants have opposed this motion separately, and on distinctly different grounds.

Hecht claims that HSBC has no claim against him in his individual capacity. In support of this contention, Hecht asserts that HSBC “knowingly and deliberately elected to extend and renew the principal indebtedness three times ... even though the Company was in default”. Hecht alleges that HSBC failed to act in a commercially reasonable manner when it chose to “ignore the Company’s defaults and renew the 2005 agreement”. Hecht also claims that on or about November 6, 2007 when he severed his relationship with Components, he called HSBC and notified the bank that he was “discontinuing the Guaranty”. Hecht alleges that since he was no longer a shareholder in Components, the Guaranty was no longer in effect. He further alleges that HSBC’s delay in declaring the loan in default allowed for the depletion of Component’s assets<sup>2</sup>, and was therefore a breach of its duty of good faith and fair dealing. Hecht contends that he has set forth a viable and meritorious defense to this action and at the very least, such arguments raise triable issues of fact sufficient to defeat HSBC’s motion for summary judgment against him.

Components claims that Hecht lacked the authority to enter into the loan agreement, and to pledge any of Components’ assets to HSBC. Components also alleges that HSBC failed to undertake any due diligence including requesting a shareholders agreement. Components contends that a shareholders agreement would have revealed that other shareholders in the company existed to contradict Hecht’s representation that he was the sole shareholder of Components. Component claims that had HSBC performed “basic verification procedures”, it would have learned of a previous lien on all of Components assets, which would have prevented Hecht from pledging such assets to HSBC.

Mr. Jacob Kohn, the CFO of Components submitted an affidavit in which he argues that on or about May 8, 2008 he received an e-mail from Robert C. Moriggia, HSBC’s Relationship Manager. Mr. Kohn alleges that this e-mail confirms an earlier conversation with Mr. Moriggia wherein Components objected to the loans executed by Hecht. According to Mr. Kohn, it was this communication which resulted in the Second Resolution being executed. This Second Resolution purports to authorize someone, other than Hecht, to execute documents and checks on behalf of Components. Mr. Kohn argues that the language contained in the Second Resolution referring to the ratification of the loan, should not have been incorporated. Mr. Kohn contends that Hecht obtained the loan through fraud and misrepresentation and Components never received any benefit from the loans. As stated in Mr. Kohn’s affidavit, Components “saw no obligation to pay it”.

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<sup>2</sup>As stated above the loans were secured by a UCC-1 filed on all the assets of Components.

In addition, James Sabatier, submitted an affidavit in opposition on behalf of Components. Mr. Sabatier was appointed CEO of Components in November 2007, but is no longer associated with Components. However, in May 2008, Mr. Sabatier executed the Corporate Banking Resolution referred to above on behalf of Components. Mr. Sabatier claims that at the time the Second Resolution was executed, HSBC was aware that Hecht was no longer associated with Components. Sabatier further claims that HSBC was aware that Hecht obtained the loan from HSBC through fraud and misrepresentation and in no way was Components ratifying these loans. Sabatier alleges that HSBC's bad faith and failure to investigate Hecht's representations was negligence by HSBC and HSBC cannot now rely on a subsequently executed Resolution to collect from Components.

In reply, HSBC contends that Components actions belie its current position regarding the loan. All required interest payments on the loan were made regularly and routinely for over four and a half years through a direct debit from Components account and these payments continued for a period of approximately eighteen months after Hecht left Components. In addition, annexed to the reply papers to this motion, HSBC provided copies of Components 2005 and 2006 tax returns given to HSBC by Components during its routine due diligence update, prior to litigation.

HSBC also states that prior to advancing the loans to Components, it conducted due diligence in accordance with its policies and procedures. Such due diligence included a search of public records, corporate filings and UCC recordings. HSBC contends that each of these searches supported the assertions made by Hecht to obtain the loan. HSBC contends that at no time prior to the instant litigation did Components challenge the fact, validity or amount of the loan. Nor did it challenge Hecht's authority to enter into the loan agreement. HSBC argues that it is only now, after this litigation was commenced, that Components raises the issue of Hecht's authority to bind the corporation. It further argues that even if Hecht lacked the authority to execute the original loan documents, Components made regular interest payments on the loan and ratified the loan when it executed the 2008 Resolution.

Summary judgment is warranted when there are no issues of fact to be resolved by the trier of fact (see, **Hartford Accident & Indemnity Co. v Wesolowski**, 33 NY2d 169, 172; **Sillman v Twentieth Century Fox Film Corp.**, 3 NY2d 395, 404). The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issue of fact (see, **Winegrad v New York Univ. Med. Center**, 64 NY2d 851, 853; **Zuckerman v City of New York**, 49 NY2d 557, 562; **Sillman v Twentieth Century Fox Film Corp.**, supra at 404). To defeat the motion, the opponent must present evidentiary facts sufficient to raise a triable issue of fact (see, **Freedman v Chemical Constr. Co.**, 43 NY2d 250, 264). Mere conclusions, expressions of hope, or unsupported allegations or assertions are insufficient to defeat a motion for summary judgment (see, **Zuckerman v City of New York**, supra at 562).

After a thorough reading of the "Unlimited Continuing Guaranty" submitted in support of Summary Judgment, the Court finds that it is not reasonably susceptible to more than one interpretation and is, therefore, unambiguous (*see, Chimart Assoc. v Paul*, 66 NY2d 570). When, as here, the parties set down their agreement in a clear, complete document, their writing should be enforced according to its terms (*see, W.W.W. Assocs. v Gianconieri*, 77 NY2d 157, 162; *Automotive Mgmt. Group v SRB Mgmt. Co.*, 239 AD2d 450; *Matter of Ajar*, 237 AD2d 597).

The Guaranty clearly provides for an absolute and unconditional guaranty by Noson Hecht which cannot be modified or amended, other than in writing and signed by a duly authorized officer of HSBC. Furthermore, the Guaranty states that the Guarantor (Hecht) waives any right it has to require HSBC to proceed against Components prior to proceeding under the Guaranty, nor does it require the Bank to declare a default against Components prior to proceeding against the Guarantor. Therefore the Court grants HSBC's motion for summary judgment against defendant Hecht.

A corporation, making payments under an agreement for an extended period, ratifies actions of its officers thereby precluding a later day claim that the loan agreements were entered into without corporate authority. *See, Tchaika Renewal Co. v City of New York*, 232 AD 2d 259648 NYS 2d 96 (1<sup>st</sup> Dep't 1996).

Applying the standard for granting summary judgment as set forth above, the Court also finds that the documentary evidence clearly warrants granting of summary judgment in favor of HSBC against Components.

The issue of damages against both Defendant's is set down for trial to commence on November 2, 2009 at 10:00 a.m. before the undersigned.

This constitutes the **DECISION** and **ORDER** of the Court.

Dated: August 25, 2009  
Riverhead, New York

  
EMILY PINES  
J. S. C.