

**Valley Natl. Bank v Sukhu Realty, Inc.**

2009 NY Slip Op 33228(U)

December 10, 2009

Supreme Court, Queens County

Docket Number: 13028/09

Judge: James J. Golia

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Memorandum

NEW YORK STATE SUPREME COURT - QUEENS COUNTY

Present: Honorable JAMES J. GOLIA  
Justice

IAS TERM, PART 33

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VALLEY NATIONAL BANK,

Index No: 13028/09

Plaintiff(s),

Motion Date: 12/10/09

-- against --

Cal. No: 41

SUKHU REALTY, INC. AND RAGOBAR SUKHU  
A/K/A RAGOBAR D. SUKHU,

Sequence No. 1

Defendant(s).

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This is a motion pursuant to CPLR 3212 by plaintiff for summary judgment against the defendants Sukhu Realty, Inc. (Sukhu Realty) and Ragobar Sukhu a/k/a Ragobar D. Sukhu.

This is an action to collect monies allegedly due and owing to the plaintiff by defendants arising out of a Commercial Revolving Line of Credit Note and Agreement (the Agreement) and the personal guaranty of the debt thereunder.

On or about February 15, 2008, the defendant Sukhu Realty, Inc. (Sukhu Realty) made, executed and delivered to the plaintiff the Agreement. Under the Agreement, Sukhu Realty agreed to pay Valley the principal sum of up to \$40,000 with interest thereon at the rate of Prime + 2.00% per annum. The Agreement, also provides that upon demand by Valley for payment of any amounts due under the Agreement, interest shall accrue at the default interest rate of

Prime + 7.00%. On or about February 15, 2008, the defendant Rogobar Sukhu made and executed and delivered an absolute personal, unconditional and continuing guarantee of each and every obligation of Sukhu Realty (the Personal Guaranty).

The plaintiff submitted evidence that established that Sukhu Realty failed to pay each and every installment that was due under the Agreement since January 15, 2009, and the defendant Rogobar Sukhu failed to pay under the Personal Guaranty since January 15, 2009, and each and every month thereafter, leaving a balance of \$35,043.06. On or about April 21, 2009, the plaintiff sent a Demand Letter to the defendants declaring the entire amount under the Agreement and Personal Guaranty due and payable, and demanding full payment of the Agreement and the Personal Guaranty. On or about April 21, 2009, the defendants made a single payment in the amount of \$151.16 which was applied to the principal. The plaintiff alleges that the defendant has failed to pay \$34,891.90 in principal due on the Agreement since January 15, 2009, the default date together with interest. This action to collect the monies owed was commenced on May 18, 2009.

On a motion for summary judgment, the movant must offer sufficient evidence to establish its prima facie entitlement to judgment as a matter of law (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]). In order to recover on the terms of a promissory note, the obligee must establish a prima facie case by

providing proof of the existence of the promissory note and a default thereunder (see *MDJR Enters. v LaTorre*, 268 AD2d 509 [2009]). In support of its motion, the plaintiff submitted the affidavit of Bing Luh, a Vice President. The affidavit of Mr. Luh established the plaintiff's prima facie entitlement to summary judgment by submitting evidence which established the existence of the promissory note, the unconditional terms of the note and the default of the defendant Sukhu Realty. In order to recover under the terms of a personal guaranty, the obligee must establish a prima facie case by providing sufficient proof of the underlying obligation, the guarantee and the failure of the guarantor to make a payment in accordance with its terms (see *Key Bank of Long Is. v. Bank*, 162 AD2d 501 [1990]). The affidavit of Mr. Luh demonstrated that Ragobar Sukhu defaulted under the terms of the Personal Guaranty by failing to make payments due since January 15, 2009.

In opposition, the defendants failed to raise a triable issue of fact. The defendants' argument that the plaintiff lacks standing to bring this suit under BCL § 1312 is without merit. The defendants' argument is based on the allegation that the plaintiff lacks standing because the plaintiff is a foreign corporation unlicensed to do business in New York. The plaintiff, however, is a national bank chartered by the Office of Comptroller of Currency. Under 12 USC § 24 the powers of a national bank include the power to "sue and be sued, complain and defend, in any court of law and

equity, as fully as natural persons." Therefore, the plaintiff had standing to bring this suit.

Additionally, the fact that there is a New Jersey choice of law provision does not change the outcome of the case. Under New Jersey law, where a contract contains clear terms, those terms are conclusive as to the meaning of the contract (see *Traveler's Ins. Co. v Transp. of New Jersey*, 204 NJ Super 63 [App Div 1985]). Here, the terms of both the Agreement and the Personal Guaranty were clear and unambiguous and must be enforced. The defendants further argue that *American Furniture Mfg., Inc. v Value Furniture & Mattress Warehouse*, 2009 WL 88922 (NJ Super AD 2008) precludes recovery under theory that a guarantor cannot be held liable on a credit application that has one signature line for the loan and guarantee. The facts of this case, however, are different and the plaintiff is not precluded from recovering against the individual defendant under the Personal Guaranty. Here, the Personal Guaranty is a separate agreement with a separate signature line which states "Ragobar Sukhu, individually," which was voluntarily executed by the defendant Ragobar Sukhu. Therefore, the defendant Ragobar Sukhu is individually liable under the terms of the Personal Guaranty. The defendants have otherwise failed to contest their fault or the amounts that are now due and owing.

Accordingly, the summary judgment motion is granted in favor of the plaintiff against the defendants Sukhu Realty, Inc. and

Ragobar Sukhu a/k/a Ragobar D. Sukhu and the plaintiff is awarded \$34,891.90 with past due interest thereon at the Regular Interest rate of Prime + 2.00% per annum from January 15, 2009 through April 20, 2009 and interest thereon at the Default Interest Rate of Prime + 7.00% from April 21, 2009 through to and including the date of entry of judgment and finance charges as set forth in the Agreement. Plaintiff's attorney is directed to submit an affidavit with the proposed order setting forth in detail all costs, expenses, and attorney fees incurred for services rendered which amount shall be fixed in the order to be entered hereon.

Settle Order.

Dated:

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JAMES J. GOLIA, J.S.C.