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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER
Acting Supreme Court Justice

JPMORGAN CHASE BANK N.A., as successor by merger to BANK ONE, N.A.,

Plaintiff,

- against -

ARTCRAFT PHOTOPRINT, INC. and ANTHONY J. FERREZZA,

Defendants.

TRIAL/IAS PART 32
NASSAU COUNTY

Index No.: 2152/10
Motion Seq. No.: 01
Motion Date: 06/18/10
XXX

The following papers have been read on this motion:

	Papers Numbered
Notice of Motion, Affirmation, Affidavit and Exhibits	1
Affidavit in Opposition	2
Defendants' Memorandum of Law in Opposition	3
Affirmation in Reply to Defendants' Opposition and in Further Support of Plaintiff's Motion	4

In an action for monies due and owing under a certain Promissory Note ("Note") and the absolute, personal, unconditional and continuing guarantee thereunder, the plaintiff, JPMorgan Chase Bank N.A., as successor by merger to Bank One N.A., moves, pursuant to CPLR § 3212, for an order granting summary judgment on the grounds that corporate defendant Artcraft Photoprint, Inc. ("Artcraft") is liable for amounts due and owing under said Note and that individual defendant Anthony J. Ferrezza ("Ferrezza") is liable under said Note's Personal Guarantee of the obligations of defendant Artcraft. Plaintiff also moves for an order dismissing

the counterclaim of defendants against plaintiff. Defendants oppose plaintiff's motion.

With respect to plaintiff's motion, the complaint alleges and plaintiff's proof shows that, on or about August 20, 1999, defendant Artcraft made, executed and delivered to Bank One, N.A., and now plaintiff J.P. Morgan Chase Bank N.A. by merger, a Note in writing, dated on that day, wherein and whereby defendant Artcraft promised to pay to the order of Bank One, N.A., and now plaintiff J.P. Morgan Chase Bank N.A. by merger, the principal sum of $50,000.00 with interest on the unpaid principal balance at a rate per annum equal to rate of Prime plus 1.00% and a default rate equal to the rate of Prime plus 4.00% with late charges at the rate of 5.00% of each payment due. On or about June 8, 2000, defendant Artcraft made a request to plaintiff from an increase in the Note line of credit in the amount of $50,000.00. Plaintiff granted defendant Artcraft's request and extended defendant Artcraft an additional line of credit in the amount of $50,000.00 As a result, the line of credit extended to defendant Artcraft was in the total amount of $100,000.00. On or about March 21, 2001, defendant Artcraft made a request to plaintiff from an increase in the Note line of credit in the amount of $10,000.00. Plaintiff granted defendant Artcraft's request and extended defendant Artcraft an additional line of credit in the amount of $10,000.00 As a result, the line of credit extended to defendant Artcraft was in the total amount of $110,000.00. On or about June 7, 2000, defendant Ferrezza validly made, executed and delivered to plaintiff, as successor by merger to Bank One N.A., an absolute, personal, unconditional and continuing guarantee to each and every obligation of defendant Artcraft to the loan holder.

The complaint further alleges that the defendant Artcraft defaulted under the Note by failing to pay each and every installment due thereunder beginning September 20, 2009 and

continuing each and every month thereafter. Thereafter, defendant Ferrezza was required to make payments to plaintiff under the terms of the Note Personal Guarantee. Defendant Ferrezza defaulted under the Note Personal Guarantee by failing to pay each and every installment due under the Note and the Note Personal Guarantee beginning September 20, 2009 and continuing each and every month thereafter. Since defendants' defaults, no payments upon the obligations of the defendants have been made in accordance with the Note and the Note Personal Guaranty. Based upon said defaults, defendants are liable to plaintiff in the principal sum of $112,402.58, together with interest at a rate of Prime plus 1.00% from August 20, 2009 to September 19, 2009, and at a default interest rate per annum equal to the rate of Prime plus 4.00% from September 20, 2009, the default date, through, to and including the date of entry of judgment, together with late charges thereon at the rate of 5.00% of each payment due on the Note.

Plaintiff submits that the defendants appeared in the action on February 22, 2010 and submitted an answer consisting of general denials and boilerplate affirmative defenses, along with one counterclaim. Plaintiff further submits that defendants' answer did not raise any meritorious defenses or triable issues of material fact. General denials in a defendant's answer are insufficient to raise a triable issue of fact to defeat a plaintiff's motion for summary judgment. *See New York Higher Education Service Corp. v. Ortiz*, 104 A.D.2d 684, 479 N.Y.S.2d 910 (3d Dept. 1984).

Plaintiff satisfied its initial burden of establishing its entitlement to judgment as a matter of law by submitting proof of the existence of the underlying obligation, the guarantee executed by defendant Ferrezza, the unconditional terms of repayment and defendants' failure to make payment in accordance with their terms. *See Famolaro v. Crest Offset, Inc.*, 24 A.D.3d 604, 807

N.Y.S.2d 387 (2d Dept. 2005). *See also Superior Fidelity Assurance, Ltd. v. Schwartz*, 69 A.D.3d 924, 893 N.Y.S.2d 256 (2d Dept. 2010); *Verela v. Citrus Lake Development, Inc.*, 53 A.D.3d 574, 862 N.Y.S.2d 96 (2d Dept. 2008). The burden then shifts to defendants Artcraft and Ferrezza to demonstrate by admissible evidence the existence of a triable issue of fact with respect to a *bona fide* defense. *See Famolaro v. Crest Offset, Inc, supra; MDJR Enterprises, Inc. v. LaTorre*, 268 A.D.2d 509, 703 N.Y.S.2d 54 (2d Dept. 2000); *Quest Commercial, LLC v. Rovner*, 35 A.D.3d 576, 825 N.Y.S.2d 766 (2d Dept. 2006).

In opposition, defendants Artcraft and Ferrezza claim that plaintiff's arguments are insincere and founded upon its overreaching and abuse of a sole proprietor who had never dealt with a business loan or line-of-credit. Defendant Ferrezza states that he never intended to, nor did he, assume personal liability for the debts of his corporation, which was incorporated for that very reason, to protect him and his family from corporate liability or debt.

Defendant Ferrezza submits that he should not be held personally liable for the alleged debts of defendant Artcraft because "[p]ursuant to New York law, an agent signing an agreement on his principal's behalf, will not be found personally liable under the terms of the agreement 'unless there is clear and explicit evidence of the agent's intention to substitute or superadd (*sic*) his personal liability for, or to, that of his principal.' *Lerner v. Amalgamted Clothing & Textile Workers Union*, 938 F.2d 2, 5 (2d cir. 1991)(*citing Mencher v. Weiss*, 306 N.Y. 1, 4, 114 N.E.2d 177 (1953)." Defendant Ferrezza argues that the Note was a contract of adhesion. He also states that, "Defendant Ferrezza, while in the art and photography business (as a sole proprietor) since high school, had never applied for a line-of-credit....Despite Plaintiff's allegation, Defendant Ferrezza did not request any of the lines-of-credit at issue, and never negotiated or signed such an agreement before."

Defendants also assert that "[a]t this stage, prior to discovery, summary judgment is, at a very minimum, premature."

Initially, the Court notes that defendant Ferrezza does not deny signing the Note Personal Guarantee. Defendants do not contest the validity of the Note nor do defendants dispute the amounts due thereunder. Nor do they dispute their default under the Note or the Note Personal Guarantee. Additionally, defendants do not contest a finding of summary judgment against defendant Artcraft. Defendants only dispute defendant Ferrezza's intent to personally guarantee the obligations of defendant Artcraft under said Note.

As to the defendant Ferrezza's contention, as set forth in the counterclaim contained in defendants' Answer, that he did not personally guarantee the Note, it is noted that defendant has not claimed that he did not read the Business Credit Application/Note Personal Guarantee. Furthermore, the clear bold face type situated above the Business Credit Application signature line explicitly states "I/we also individually agree to the terms of the Guarantee and Collateral Agreement which appear in the Personal Guarantee and Collateral Agreement (above)." The plain, unambiguous, emboldened language above the signature line clearly states that the individual signing the Business Credit Application/Note Personal Guarantee is also agreeing to the Note Personal Guarantee.

It is well settled that "[t]he signer of a written agreement is conclusively bound by its terms unless there is a showing, absent here, of fraud, duress or some other wrongful act." *See Columbus Trust Co. v. Campolo*, 110 A.D.2d 616, 487 N.Y.S.2d 105 (2d Dept. 1985). A person is presumed to have read what he signs. *See Lejkowski v. Petrou*, 178 A.D.2d 465, 576 N.Y.S.2d 816 (2d Dept. 1991). Further, a party will not be excused from an agreement by a failure or even a claimed inability to read it. *See Huang v. Cheng*, 182 A.D.2d 600, 583 N.Y.S.2d 370 (1st

Dept. 1992). Thus, the law presumes that one who is capable of reading something has read the document which she/he executed, and is conclusively bound by the terms thereof. *Marine Midland Bank, N.A. v. Embassy East, Inc.*, 160 A.D.2d 420, 553 N.Y.S.2d 767 (1st Dept. 1990). *See also Sofio v. Hughes*, 162 A.D.2d 518, 556 N.Y.S.2d 717 (2d Dept. 1990).

Moreover, the motion for summary judgment was not premature, since defendants failed to offer an evidentiary basis to suggest that the discovery may lead to relevant evidence. Defendants' "hope and speculation that evidence sufficient to defeat the motion might be uncovered during discovery was an insufficient basis for denying the motion." *Conte v. Frelen Assoc., LLC, supra. See also Lopez v. WS Distrib., Inc.*, 34 A.D.3d 759, 825 N.Y.S.2d 516 (2d Dept. 2006).

Although summary judgment is a drastic remedy (*see Andre v. Pomeroy*, 35 N.Y.2d 361, 362 N.Y.S.2d 131 (1974), nevertheless, a "court must evaluate whether the alleged factual issues presented are genuine or unsubstantiated" (*see Assing v. United Rubber Supply Co., Inc.*, 126 A.D.2d 590, 511 N.Y.S.2d 31 (2d Dept. 1987); *Rotuba Extruders, Inc. v. Ceppos*, 46 N.Y.2d 223, 413 N.Y.S.2d 141 (1978)) and where there is nothing left to be resolved at trial, the case should be summarily decided. *See Andre v. Pomeroy, supra* at 364.

In conclusion, plaintiff has established its entitlement to summary judgment against defendants Artcraft and Ferrezza for the amounts due and owing pursuant to the Note and the Note Personal Guarantee. Defendants Artcraft and Ferrezza have failed to raise an issue of fact or viable defense to the action. *See Famolaro v. Crest Offset, Inc., supra; Bankers Trust of Rockland County v. Keesler*, 49 A.D.2d 918, 373 N.Y.S.2d 637 (2d Dept. 1975).

Accordingly, it is hereby

ORDERED, that the motion by plaintiff for summary judgment against defendants

Artcraft and Ferrezza, jointly and severally, in the sum of $112,402.58, together with interest at a rate of Prime plus 1.00% from August 20, 2009 to September 19, 2009, and at a default interest rate per annum equal to the rate of Prime plus 4.00% from September 20, 2009, the default date, through, to and including the date of entry of judgment, together with late charges thereon at the rate of 5.00% of each payment due on the Note is hereby **GRANTED**.

ORDERED, that the motion by plaintiff dismissing defendants' counterclaim with prejudice is hereby **GRANTED**

ORDERED, that the motion by plaintiff awarding plaintiff the sum of $1,112.44 in attorneys' fees plus costs and expenses as may be fixed by the clerk is hereby **GRANTED**.

Settle clerk's judgment.

This constitutes the decision and order of this Court.

ENTER:

DENISE L. SHER
A.J.S.C.
XXX

Dated: Mineola, New York
August 20, 2010

ENTERED
AUG 26 2010
NASSAU COUNTY
COUNTY CLERK'S OFFICE