

**JPMorgan Chase Bank, N.A. v Leaseland Auto
Leasing & Sales Inc.**

2011 NY Slip Op 30568(U)

March 1, 2011

Supreme Court, New York County

Docket Number: 10351/2010

Judge: Joel K. Asarch

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU: PART 17

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JPMORGAN CHASE BANK, N.A., as
Successor-by-Assignment from
The Bank of New York,

Plaintiff,

- against -

LEASELAND AUTO LEASING & SALES INC.,

Defendant.

-----X

P R E S E N T :
HON. JOEL K. ASARCH,
Justice of the Supreme Court.

The following named papers numbered 1 to 6 were submitted on this Notice of Motion on November 5, 2010:

Papers numbered:

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| Notice of Motion, Affirmations (2), and Affidavit in Support | 1-4 |
| Affidavit in Opposition and Memorandum of Law | 5-6 |
| Reply Affirmation | X |

The motion by the Plaintiff pursuant to C.P.L.R. 3212 for summary judgment relief as against the Defendant LEASELAND AUTO LEASING & SALES INC. for the amounts due under various loan/credit agreements is decided as follows:

This action arises from the purported default of the Defendant LEASELAND AUTO LEASING & SALES INC. ("LEASELAND") under a Business Checking Credit Line Agreement ("B.C.C.L.") dated March 19, 1998, and a Business Revolving Credit Account Agreement ("B.R.C.A.") dated March 19, 1998 between the Plaintiff JPMORGAN CHASE BANK, N.A. (by its predecessor THE CHASE MANHATTAN BANK) and the Defendant LEASELAND, and a

Business Credit Link Agreement (“B.C.L.A.”) dated July 25, 2002 between THE BANK OF NEW YORK (for which JPMORGAN CHASE BANK, N.A. is the Successor-by-Assignment) and the Defendant LEASELAND, as a result of which it is alleged that the Defendant is liable to the Plaintiff for the following:

The sum of \$3,675.61 in outstanding principal, together with interest from March 30, 2010, and late charges pursuant to the terms and conditions of the B.C.C.L.;

The sum of \$17,665.18 in outstanding principal, together with interest from May 6, 2010, and late charges pursuant to the terms and conditions of the B.R.C.A.; and

The sum of \$59,975.76 in outstanding principal, together with applicable interest (Prime plus 1.00%) from March 25, 2010 to April 24, 2010 and a default rate per annum equal to Prime plus 4.00% from April 25, 2010, and late charges pursuant to the terms and conditions of the B.C.L.A.

Summary judgment is drastic relief as it effectively denies a party the opportunity to prosecute or defend their position and present evidence at trial. Thus, summary judgment should only be granted where no triable issues of fact are raised, *see Andre v. Pomeroy*, 35 N.Y.2d 361 (1974), and the cause of action or defense is established sufficiently to warrant a Court directing judgment in favor of the movant as a matter of law. *See Gilbert Frank Corp. v. Federal Ins. Co.*, 70 N.Y.2d 966 (1988); *Alvarez v. Prospect Hospital et al.*, 68 N.Y.2d 320 (1986); *Rebecchi v. Whitmore*, 172 A.D.2d 600 (2nd Dept. 1991). The responsibility of the Court in deciding a motion for summary judgment relief is not to resolve issues of fact or decide matters of credibility, but merely to determine whether such issues exist. *See Hantz v. Fishman*, 155 A.D.2d 415 (2nd Dept. 1989); *see also Barr v. County of Albany*, 50 N.Y.2d 247 (1980); *Daliendo v. Johnson*, 147 A.D.2d 312 (2nd Dept. 1987). In considering the motion, the Court must view the evidence in the light

most favorable to the non-moving party and afford such party the benefit of every favorable inference that can be drawn from the evidence. Schuhmann v. McBride, 23 A.D.3d 542, 543 (2nd Dept. 2005). However, where appropriate, summary judgment should be granted by the Court.

In opposition to the within motion, the Defendant LEASELAND argues unpersuasively that the loan documents submitted in support of the motion do not constitute admissible and sufficient proof, and may not be used as the basis for a summary judgment motion as they are neither certified nor authenticated. The Defendant further contends that discovery is necessary pursuant to C.P.L.R. 3212(f) as it is “... not possible to ascertain with any degree of certainty whether defendant is liable for the amounts demanded.” The Court tangentially notes that the opposition filed by the Defendant to this motion consists solely of an Affirmation by counsel, and not by a party with personal knowledge of the facts.

The Defendant does not dispute receipt and utilization of the funds advanced by the Plaintiff, the existence of the credit line, the revolving credit account, and the credit link agreement, or its default under the terms thereof. Further, the Defendant LEASELAND has failed to amplify any of the stated boilerplate defenses set forth in its answer *i.e.* failure to state a cause of action, lack of jurisdiction, improper venue, and statute of limitations. The party opposing a motion for summary judgment must present sufficient proof to demonstrate the existence of a genuine triable issue of fact with respect to a *bona fide* defense. Quest Commercial, LLC v. Rovner, 35 A.D.3d 576 (2nd Dept. 2006); Bank of New York v. Cariello, 69 A.D.2d 805 (2nd Dept. 1979). Neither the Answer of the Defendant nor its opposing papers establish questions of fact with respect to a viable defense which would preclude an award of summary judgment in favor of the Plaintiff. *See e.g.* Bank Leumi Trust Co. of New York v. Rattet & Liebman, 182 A.D.2d 541, 542 (1st Dept. 1992). Thus, the Defendant

has failed to meet its burden.

Contrary to the contentions of the Defendant, the Plaintiff has made a *prima facie* showing of entitlement to judgment as a matter of law by submitting proof of the underlying credit agreements (the existence of which the Defendant does not deny), and the failure of said Defendant to make payment in accordance with the terms of each. *See e.g.* HSBC Bank USA, Nat. Ass'n v. Laniado, 72 A.D.3d 645 (2nd Dept. 2010); North Fork Bank Corp. v. Graphic Forms Associates, Inc., 36 A.D.3d 676 (2nd Dept. 2007); JPMorgan Chase Bank v. Gamut-Mitchell, Inc., 27 A.D.3d 622, 623 (2nd Dept. 2006).

Although determination of a summary judgment motion may be delayed to allow for further discovery where evidence necessary to oppose the motion is unavailable to the opponent (*see* C.P.L.R. 3212[f]), “[a] determination of summary judgment cannot be avoided by a claimed need for discovery unless some evidentiary basis is offered to suggest that discovery may lead to relevant evidence.” Ruttura & Sons Constr. Co. v. J. Petrocelli Constr., Inc., 257 A.D.2d 614, 615 (1999) *lv to app disp.* 93 N.Y.2d 956 (1999). The “mere hope” or supposition that further discovery will reveal the existence of triable issues of fact is insufficient to delay determination on the issue of summary judgment. Shectman v. Wilson, 68 A.D.3d 848, 850 (2nd Dept. 2009). Here, the Defendant has failed to demonstrate an evidentiary basis to suggest that additional disclosure might lead to relevant evidence. Further, the Defendant has failed to show that facts necessary to oppose the motion of the Plaintiff are exclusively within the knowledge and/or control of the Plaintiff. Canarick v. Cicarelli, 46 A.D.3d 587, 589 (2nd Dept. 2007); *see also* Ewing v. ADF Const. Corp., 16 A.D.3d 1085, 1087 (4th Dept. 2005).

Based upon the foregoing, the assertions by the Defendant that the loan documents as

presented do not form the basis for a summary judgment motion and that a dismissal motion in advance of discovery is premature, are merely unsupported conclusory allegations which are insufficient to defeat a summary judgment motion.

Accordingly, after due deliberation, it is

ORDERED, that the motion of the Plaintiff JPMORGAN CHASE BANK, N.A. for summary judgment relief as against the Defendant LEASELAND AUTO LEASING & SALES, INC. for the amounts due and owing pursuant to the Business Checking Credit Line Agreement (“B.C.C.L.”) dated March 19, 1998, the Business Revolving Credit Account Agreement (“B.R.C.A.”) dated March 19, 1998, and the Business Credit Link Agreement (“B.C.L.A.”) dated July 25, 2002, is **granted**, and the Plaintiff is hereby awarded judgment against the Defendant as follows:

- (1) On the First Cause of Action in the principal sum of **\$3,675.61**, together with interest from March 30, 2010, and applicable late charges;
- (2) On the Second Cause of Action in the principal sum of **\$17,665.18**, together with interest from May 6, 2010, and applicable late charges; and
- (3) On the Third Cause of Action in the principal sum of **\$59,975.76**, together with applicable interest (Prime plus 1.00%) from March 25, 2010 to April 24, 2010 and a default rate per annum equal to Prime plus 4.00% from April 25, 2010, and applicable late charges; and it is further

ORDERED, that in accordance with both Paragraph “12” of the Business Checking Credit Line Agreement and the Business Credit Link Agreement (“Enforcement Costs”), the Plaintiff is hereby awarded attorneys’ fees in the reasonable sum of **\$1,200.00** pursuant to the Affirmation in Support of Attorneys’ Fees dated September 10, 2010, and submitted as a part of the within motion;

and it is further

ORDERED, that within SIXTY (60) DAYS of the date hereof, the Plaintiff shall settle a Judgment on notice to counsel for the Defendant LEASELAND AUTO LEASING & SALES, INC. in accordance herewith.

The foregoing constitutes the Decision and Order of the Court.

Dated: Mineola, New York
March 1, 2011

ENTER:


JOEL K. ASARCH, J.S.C.

Copies mailed to:
Cullen and Dykman, LLP
Attorneys for Plaintiff

Marvin L. Schwartz, Esq.
Attorneys for Defendant

ENTERED
MAR 03 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE