

**Nala Mgt. Corp. v Worldwide Fibers LLC**

2011 NY Slip Op 32090(U)

July 15, 2011

Supreme Court, Nassau County

Docket Number: 4407-11

Judge: Timothy S. Driscoll

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**SUPREME COURT-STATE OF NEW YORK  
SHORT FORM ORDER**

**Present:**

**HON. TIMOTHY S. DRISCOLL**  
**Justice Supreme Court**

-----X  
**NALA MANAGEMENT CORP.,**

**Plaintiff,**

**-against-**

**WORLDWIDE FIBERS LLC,**

**Defendant.**  
-----X

**TRIAL/IAS PART: 20  
NASSAU COUNTY**

**Index No: 4407-11  
Motion Seq. No: 1  
Submission Date: 5/25/11**

**The following papers have been read on this motion:**

- Notice of Motion, Affidavit in Support and Exhibits.....X**
- Memorandum of Law in Support.....X**
- Affidavit of Service dated March 25, 2011.....X**
- Affidavit of Service dated June 2, 2011, Letter and Transcript....X**

This matter is before the Court for decision on the motion filed by Plaintiff Nala Management Corp. ("Plaintiff") on March 28, 2011 and submitted on May 25, 2011 without opposition. For the reasons set forth below, the Court grants Plaintiff's motion and awards Plaintiff judgment against Defendant in the principal sum of \$200,000, plus interest and costs to be determined at an inquest.

**BACKGROUND**

**A. Relief Sought**

Plaintiff moves for an Order, pursuant to CPLR § 3213, granting summary judgment in favor of Plaintiff and against Defendant..

Defendant Worldwide Fibers LLC ("Defendant") has submitted no opposition or other response to Plaintiff's motion.

2]

B. The Parties' History

Joyce Harvey ("Harvey"), the President of Plaintiff corporation, affirms as follows in support of Plaintiff's motion:

On June 30, 2009, Defendant, as borrower, executed, acknowledged and delivered to Plaintiff, as lender, a Promissory Note ("Note") (Ex. A to Harvey Aff. in Supp.). The Note is signed by William Schlenger and Sharyn Harvey Schlenger on behalf of Defendant. The principal amount of the Note is \$200,000, and the Note bears an interest rate of 7% per annum and a default interest rate of 9% per annum. The Note requires Defendant to make monthly payments of accrued interest in the amount of \$1,166.67, beginning in August of 2009 and continuing until July 31, 2011, at which time all unpaid principal would be due and payable.<sup>1</sup> The Note also provides that in the event of non-payment, and if such default continues for a period of 60 days after written notice, then at the option of Plaintiff, all or any part of the remaining unpaid Note shall become due and payable with a default interest rate of 9% per annum, calculated from the date of the default.

Harvey provides a chart reflecting the monthly payments of \$1,166.67 made by Defendant between August 6, 2009 and November 15, 2010, which total \$18,981.72. Harvey affirms that Defendant has defaulted under the Note by failing to pay Plaintiff the monthly installments of interest payments due on December 10, 2010, January 10, 2011, February 10, 2011 and March 10, 2011.

By letter dated January 10, 2011 (Ex. B to Harvey Aff. in Opp.), Plaintiff advised Defendant that, in light of Defendant's failure to make required interest payments on the Note, an Event of Default had occurred. The letter stated, further, that as a result of the Event of Default, Defendant's obligations under the Note would bear interest at the default rate of 9% per annum. On January 10, 2011, Plaintiff also notified Defendant's attorney of Defendant's default under the Note, as reflected by the facsimile confirmation provided (*id.* at Ex. D). Harvey affirms that, as a result of Defendant's defaults under the Note, Defendant owes Plaintiff the principal amount of

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<sup>1</sup> Harvey affirms that the unpaid principal would be due and payable on July 31, 2011. The Note, however, contains the following language on page 1: "Interest to be paid monthly and principal on or before July 1, 2011" (emphasis added).

\$200,000, plus accrued but unpaid interest from December 10, 2010 at the default rate of 9% per annum, through entry of judgment, less the sum of \$312.00 that Defendant paid on November 15, 2010.

Plaintiff has provided an Affidavit of Service reflecting the service of the instant motion and supporting papers on Defendant on March 24, 2011. On May 25, 2011, this matter was before the Court, and Plaintiff has provided a transcript of those proceedings. At that time, the Court noted that the original return date of this motion was May 5, 2011, at which time Plaintiff's counsel, as well as a representative of the Defendant, appeared. The case was called on the record on May 5, 2011, at which time William Schlenger appeared and represented to the Court that he wished to obtain an attorney on behalf of Defendant, but needed additional time to do so. Based on that representation, the Court adjourned the matter from May 5, 2011 to May 25, 2011. Neither Mr. Schlenger, nor any representative of or attorney for Defendant, appeared on May 25, 2011 and Plaintiff's counsel confirmed that Mr. Schlenger had not communicated with her since May 5, 2011. The Court submitted the motion and directed Plaintiff's counsel to order the minutes of the May 25, 2011 proceedings and serve them on Defendant. Plaintiff has provided proof of its compliance with that directive.

C. The Parties' Positions

Plaintiff submits that it has demonstrated its right to judgment by establishing the execution and delivery of the Note, Defendant's obligations under the Note to repay the sum owed, Defendant's default and Defendant's failure to repay the outstanding accelerated debts owed on the Note.

Defendant has submitted no opposition or other response to Plaintiff's motion.

RULING OF THE COURT

A. Motion for Summary Judgment in Lieu of Complaint

CPLR § 3213 provides as follows:

When an action is based upon an instrument for the payment of money only or upon any judgment, the plaintiff may serve with the summons a notice of motion for summary judgment and the supporting papers in lieu of a complaint. The summons served with such motion papers shall require the defendant to submit answering papers on the motion within the time provided in the notice of motion.

[\* 4]

The minimum time such motion shall be noticed to be heard shall be as provided by subdivision (a) of rule 320 for making an appearance, depending upon the method of service. If the plaintiff sets the hearing date of the motion later than the minimum time therefor, he may require the defendant to serve a copy of his answering papers upon him within such extended period of time, not exceeding ten days, prior to such hearing date. No default judgment may be entered pursuant to subdivision (a) of section 3215 prior to the hearing date of the motion. If the motion is denied, the moving and answering papers shall be deemed the complaint and answer, respectively, unless the court orders otherwise.

The purpose of CPLR § 3213 is to provide a speedy and effective means of securing a judgment on claims that are presumptively meritorious. *J.D. Structures, Inc. v. Waldbaum*, 282 A.D.2d 434 (2d Dept. 2001). Relief pursuant to CPLR § 3213 is available where a right to payment can be ascertained from the face of a document. *Boland v. Indah Kiat Finance*, 291 A.D.2d 342, 343 (1<sup>st</sup> Dept. 2002), quoting *Matas v. Alpargatas S.A.I.C.*, 274 A.D.2d 327, 328 (1<sup>st</sup> Dept. 2000).

B. Promissory Note

A promissory note is an instrument for the payment of money only for the purpose of CPLR § 3213. *Davis v. Lanteri*, 307 A.D.2d 947 (2d Dept. 2003); *East New York Savings Bank v. Baccaray*, 214 A.D.2d 601 (2d Dept. 1995). To establish a *prima facie* case on a promissory note, a plaintiff must establish the existence of the instrument and the defendant's failure to make payment pursuant to the terms of the instrument. *Cutter Bayview Cleaners, Inc. v. Spotless Shirts, Inc.*, 57 A.D.3d 708 (2d Dept. 2008); *Mangiatori v. Maher*, 293 A.D.2d 454 (2d Dept. 2002). Once plaintiff has met its burden, the defendant must then establish by admissible evidence the existence of a triable issue concerning a bona fide defense. *Cutter Bayview Cleaners, Inc. v. Spotless Shirts, Inc.*, *supra*; *Northport Car Wash, Inc. v. Northport Car Care, LLC*, 52 A.D.3d 794 (2d Dept. 2008).

C. Application of these Principles to the Instant Action

The Court concludes that Plaintiff has demonstrated his right to judgment against Defendant, pursuant to the Note, by establishing the existence of the Promissory Note, and Defendant's failure to make payment pursuant to the terms of that instrument. Moreover, Defendant has failed to generate a triable issue of fact as to its obligations on that instrument. Accordingly, it is hereby:

[\* 5]  
**ORDERED**, that Plaintiff Nala Management Corp. have judgment against Defendant Worldwide Fibers LLC in the principal amount of \$200,000, plus interest and costs to be determined at an inquest; and it is further

**ORDERED**, that this matter is respectfully referred to Special Referee Frank Schellace (Room 060, Special 2 Courtroom, Lower Level) to hear and determine all issues relating to the computation of interest and costs on August 18, 2011 at 9:30 a.m.; and it is further

**ORDERED**, that Plaintiff shall serve upon the Defendant by certified mail, return receipt requested, a copy of this Order with Notice of Entry, a Notice of Inquest or a Note of Issue and shall pay the appropriate filing fees on or before August 5, 2011; and it is further

**ORDERED**, that the County Clerk, Nassau County is directed to enter a judgment in favor of the Plaintiff and against Defendant in accordance with the decision of the Special Referee.

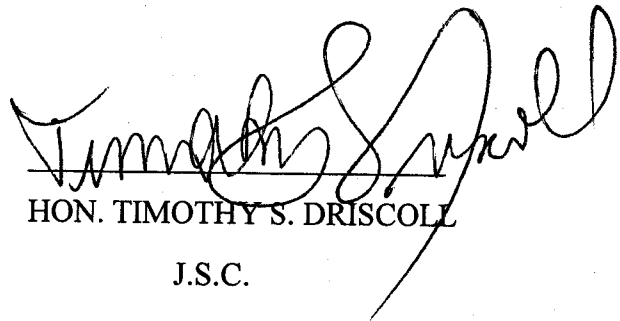
All matters not decided herein are hereby denied.

This constitutes the decision and order of the Court.

DATED: Mineola, NY

July 15, 2011

ENTER



HON. TIMOTHY S. DRISCOLL  
J.S.C.

**ENTERED**  
JUL 19 2011  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE