

**Sterling Natl. Bank v Mikriss Prod., Ltd.**

2014 NY Slip Op 30814(U)

March 28, 2014

Sup Ct, New York County

Docket Number: 651682/13

Judge: Anil C. Singh

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 61

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STERLING NATIONAL BANK,

Plaintiff,

-against-

MIKRISS PRODUCTIONS, LTD. and  
MARTIN BREGMAN,

Defendants.

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DECISION AND  
ORDER

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HON. ANIL C. SINGH, J.:

Plaintiff moves for an order pursuant to CPLR 3212, awarding summary judgment in favor of plaintiff and dismissing the answer and affirmative defenses of the defendants. Defendants oppose the motion.

Plaintiff Sterling National Bank commenced the instant action by filing a summons and verified complaint on April 31, 2013.

The complaint alleges that on February 5, 2007, the corporate defendant Mikriss Productions, Ltd., executed a written business line of credit agreement, a commercial security agreement, and a commercial guaranty, in favor of plaintiff, whereby the corporate defendant was granted a line of credit in the amount of \$100,000.00 by the plaintiff. The complaint alleges further that defendant Martin Bregman executed a guaranty.

The complaint alleges four causes of action. The first cause of action alleges breach of contract. The second cause of action alleges an account stated. The third cause of action alleges unjust enrichment. The fourth cause of action against the guarantor alleges breach of the personal guaranty. The complaint seeks damages in the amount of \$44,359.39, together with interest at the default rate from February 15, 2013, plus costs, expenses and attorneys' fees.

Defendants answered the complaint on August 14, 2013. The answer asserts no affirmative defenses.

Plaintiff exhibits the sworn affidavit of David C. Johnson, who states that he is a Vice President of plaintiff bank. Johnson contends that the corporate defendant defaulted by failing to make the minimum monthly payment when due; plaintiff sent a notice of default; and defendants failed to cure the default. Copies of the business line of credit agreement, the commercial guaranty, and the demand letter are annexed to Johnson's affidavit.

Defendants have not submitted any sworn affidavits in opposition to the motion. Defendants' attorney contends that plaintiff's claim of \$44,359.39 is not supported by any documentation in plaintiff's motion or its underlying pleadings. The Court notes that the affirmation of defendants' attorney, which is not based on personal knowledge, is entitled to no evidentiary weight (Berrios v. 735 Avenue of

the Americas, LLC, 82 A.D.3d 552,553 [1<sup>st</sup> Dept., 2011]).

In reply, plaintiff exhibits another sworn affidavit by David. C. Johnson. Copies of monthly statements of account that were sent to the corporate defendant are annexed to the affidavit as exhibit "A."

After careful consideration, the Court finds that plaintiff has made out a prima facie case in its favor on its causes of action for breach of contract and breach of the personal guaranty based upon the sworn affidavits of David C. Johnson and the documentary evidence. We find further that defendants have failed to show the existence of any genuine issues of material fact or otherwise rebutted the motion.

Finally, the Court finds that plaintiff is entitled to reasonable attorneys' fees based upon the unambiguous language of the agreement, which states that

Borrower agrees to pay all costs and expenses lender incurs to collect this agreement. This includes ... lender's reasonable attorneys' fees....

(Johnson Affidavit, exhibit C, p. 3).

Accordingly, it is

ORDERED that the motion for summary judgment on the complaint herein is granted on the first cause of action alleging breach of contract and the fourth cause of action based upon the personal guaranty, and the Clerk is directed to enter judgment in favor of plaintiff and against defendants Mikriss Productions, Ltd., and Martin Bregman in the amount of \$44,359.39, with interest at the rate of 14.25% per annum


from the date of February 15, 2013, until the date of decision on this motion, and thereafter at the statutory rate, as calculated by the Clerk, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that that portion of the plaintiff's action that seeks the recovery of attorneys' fees is severed, and the issue of the amount of reasonable attorneys' fees plaintiff may recover against the defendants Mikriss Productions, Ltd., and Martin Bregman is referred to a Special Referee to hear and report; and it is further

ORDERED that counsel for the plaintiff shall, within 30 days from the date of this order, serve a copy of this order with notice of entry, together with a completed Information Sheet,<sup>1</sup> upon the Special Referee Clerk in the Motion Support Office (Room 119M), who is directed to place this matter on the calendar of the Special Referee's Part for the earliest convenient date.

The foregoing constitutes the decision and order of the court.

Date: 3/28/14  
New York, New York

  
Anil C. Singh  
HON. ANIL C. SINGH  
SUPREME COURT JUSTICE

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<sup>1</sup>Copies are available in Room 119M at 60 Centre Street and on the Court's website.