

Cranshire Capital, L.P. v VU1 Corp.

2014 NY Slip Op 32263(U)

August 20, 2014

Supreme Court, New York County

Docket Number: 651796/2014

Judge: Shirley Werner Kornreich

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

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CRANSHIRE CAPITAL, L.P., CRANSHIRE
CAPITAL MASTER FUND, LTD., IROQUOIS
MASTER FUND, LTD., and ROCKMORE
INVESTMENT MASTER FUND, LTD.,

Index No.: 651796/2014

DECISION & ORDER

Plaintiffs,

-against-

VU1 CORPORATION,

Defendant.

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SHIRLEY WERNER KORNREICH, J.:

Plaintiffs Cranshire Capital, L.P. (Cranshire L.P.), Cranshire Capital Master Fund, Ltd. (Cranshire Ltd.), Iroquois Master Fund, Ltd. (Iroquois), and Rockmore Investment Master Fund, Ltd. (Rockmore) move, pursuant to CPLR 3213, for summary judgment in lieu of complaint against defendant Vu1 Corporation (Vu1). Plaintiffs' motion is granted, on default, for the reasons that follow.

Plaintiffs commenced this action to recover on four unpaid Convertible Debentures (the Debentures) issued by Vu1 on June 22, 2011 and which matured June 22, 2013. The Debentures, whose terms are virtually identical other than the amount owed, are governed by New York law and provide that Vu1 consents to this court's jurisdiction. The Debentures carry an 18% default interest rate.

Each plaintiff owns one of the Debentures. Cranshire L.P.'s Debenture is worth \$264,712.50, Cranshire Ltd.'s Debenture is worth \$29,412.50, Iroquois' Debenture is worth \$117,650, and Rockmore's Debenture is worth \$294,125.

Plaintiffs commenced this action by filing the instant motion for summary judgment in lieu of complaint on June 12, 2014. Vu1 was served through the Secretary of State on June 20, 2014. Vu1 did not file opposition papers and, therefore, is in default.

“Pursuant to CPLR 3213, a party may commence an action by motion for summary judgment in lieu of complaint when the action is ‘based upon an instrument for the payment of money only or upon any judgment.’” *Lawrence v Kennedy*, 95 AD3d 955, 957 (2d Dept 2012). “An instrument is considered to be for the payment of money only if it contains an unconditional promise to pay a sum certain over a stated period of time.” *Id.*, citing *Weissman v Sinorm Deli, Inc.*, 88 NY2d 437, 444 (1996). “However, ‘[t]he instrument does not qualify if outside proof is needed, other than simple proof of nonpayment or a similar de minimis deviation from the face of the document.’” *Id.* A motion for summary judgment in lieu of complaint is governed by the usual standards for motions for summary judgment brought pursuant to CPLR 3212. *McBean v Goodman*, 27 Misc3d 1212(A), at *2 (Sup Ct, Kings County 2010), citing *Gateway State Bank v Shangri-La Private Club for Women, Inc.*, 113 AD2d 791 (2d Dept 1985).

Summary judgment may be granted only when it is clear that no triable issue of fact exists. *Alvarez v Prospect Hosp.*, 68 NY2d 320, 325 (1986). The burden is upon the moving party to make a *prima facie* showing of entitlement to summary judgment as a matter of law. *Zuckerman v City of New York*, 49 NY2d 557, 562 (1980); *Friends of Animals, Inc. v Associated Fur Mfrs., Inc.*, 46 NY2d 1065, 1067 (1979). A failure to make such a *prima facie* showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. *Ayotte v Gervasio*, 81 NY2d 1062, 1063 (1993). If a *prima facie* showing has been made, the burden shifts to the opposing party to produce evidence sufficient to establish the existence of material

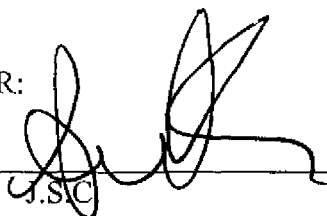
issues of fact. *Alvarez*, 68 NY2d at 324; *Zuckerman*, 49 NY2d at 562. The papers submitted in support of and in opposition to a summary judgment motion are examined in the light most favorable to the party opposing the motion. *Martin v Briggs*, 235 AD2d 192, 196 (1st Dept 1997). Mere conclusions, unsubstantiated allegations, or expressions of hope are insufficient to defeat a summary judgment motion. *Zuckerman*, 49 NY2d at 562. Upon the completion of the court's examination of all the documents submitted in connection with a summary judgment motion, the motion must be denied if there is any doubt as to the existence of a triable issue of fact. *Rotuba Extruders, Inc. v Ceppos*, 46 NY2d 223, 231 (1978).

Plaintiffs established their *prima facie* case by submitting evidence of Vu1's default on its obligations under the Debentures. Vu1 was duly served, but did not submit opposition papers. Summary judgment, therefore, is granted to plaintiffs. Plaintiffs seek the unpaid face value of their Debentures, plus default interest through May 31, 2014, for which they provide a calculation for each Debenture. Accordingly, it is

ORDERED that the motion for summary judgment in lieu of complaint by plaintiffs Cranshire Capital, L.P., Cranshire Capital Master Fund, Ltd., Iroquois Master Fund, Ltd., and Rockmore Investment Master Fund, Ltd. is granted on default against defendant Vu1 Corporation, and the Clerk is directed to enter judgment against said defendant as follows: (1) in favor of Cranshire Capital, L.P. in the amount of \$339,719.70 plus 9% pre-judgment interest from June 1, 2014 to the date judgment is entered; (2) in favor of Cranshire Capital Master Fund, Ltd. in the amount of \$37,746.63 plus 9% pre-judgment interest from June 1, 2014 to the date judgment is entered; (3) in favor of Iroquois Master Fund, Ltd. in the amount of \$151,305.64 plus 9% pre-judgment interest from June 1, 2014 to the date judgment is entered; and (4) in favor

of Rockmore Investment Master Fund, Ltd. in the amount of \$377,466.33 plus 9% pre-judgment interest from June 1, 2014 to the date judgment is entered.

Dated: August 20, 2014

ENTER: 
_____ J.S.C