

Flushing Bank v A 2 Z Perfumes, Inc.

2016 NY Slip Op 31078(U)

June 9, 2016

Supreme Court, New York County

Docket Number: 653178/2015

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

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FLUSHING BANK successor to
FLUSHING SAVINGS BANK, F.S.B.,

Plaintiff,

- v -

A 2 Z PERFUMES, INC., BHUPINDER SINGH
and MANJIT KAUR,

Defendants.

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HON. EILEEN A. RAKOWER, J.S.C.

Index No.
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**DECISION
and ORDER**

Mot. Seq. 1, 2, 3, 4

On or about September 22, 2015, plaintiff Flushing Bank, successor to Flushing Savings Bank, F.S.B. (“Plaintiff”) commenced this action against defendants A 2 Z Perfumes, Inc. (“A 2 Z Perfumes” or the “corporate defendant”), Bhupinder Singh (“Singh”), and Manjit Kaur (“Kaur”) (collectively, the “defendants”), to recover from defendants based upon defendants’ default on two loans. Plaintiff asserts causes of action for breach of the domestic note, breach of the foreign note, breach of the guaranty, unjust enrichment, account stated, possession of the collateral, and replevin.

Plaintiff alleges in the Verified Amended Complaint that plaintiff extended a line of credit loan to the corporate defendant in May 2009. As evidence of the 2009 loan, the corporate defendant executed a Line of Credit Note (Domestic) in favor of the Plaintiff (the “2009 Note”). On or about April 12, 2013, Plaintiff extended two loan facilities to the corporate defendant in the aggregate maximum principal amount of \$2,500,000.00, identified in a letter dated April 12, 2013 as the Domestic Line of Credit Loan and a Foreign Line of Credit Loan (collectively, the “Loans”).

As evidence of the Loans, on or about June 5, 2013, the corporate defendant executed two Line of Credit Notes consisting of an Amended and Restated Line of Credit Note in the maximum principal amount of \$1,500,000 (the “Domestic Note”) and a Line of Credit Note in the maximum principal amount of \$1,000,000 (the “Foreign Note” and together with the Domestic Note, the “Notes”).

As further security for the Loans, on or about June 5, 2013, the corporate defendant executed an Amended and Restated Security Agreement (the “Security Agreement”) granting the Plaintiff a security interest in the collateral of the corporate defendant, as defined in the Security Agreement.

On or about June 5, 2013, defendants Singh and Kaur executed an Amended and Restated Guaranty, guaranteeing all of the obligations of the corporate defendant to the Plaintiff under the Loans.

Plaintiff’s security interest was perfected by the filing of a UCC-1 Financing Statement on September 26, 2007, which has been continued with the filing of UCC-3 Statements, and which has a current lapse date of September 26, 2017.

By a letter dated September 3, 2015 (the “Acceleration Letter”), Plaintiff gave notice to the corporate defendant that “Events of Default” had occurred under the Loans, including the corporate defendant’s (a) failure to timely deliver to Plaintiff its quarterly financial statement as required by the Line of Credit Letter; (b) failure to provide a monthly borrowing base certificate for the month of July 2015 and thereafter; (c) failure to provide Plaintiff with access to its premises for an inspection of the collateral and its books and records as required by section 9(2) of the Security Agreement; (d) failure to maintain the export credit insurance policy required by Section 9(9) of the Security Agreement; and (d) receipt by Plaintiff of an order from the Superior Court of New Jersey dated August 6, 2015 restraining the corporate defendant from disposing of the funds and inventory of the corporate defendant other than in the ordinary course of business. Plaintiff alleges that the corporate defendant failed to repay its indebtedness under the Notes.

Plaintiff moves for an order pursuant to CPLR § 3215 granting Plaintiff a default judgment against defendants A 2 Z Perfumes, Inc. and Bhupinder Singh for the relief demanded in the Verified Amended Complaint. In support, Plaintiff submits the attorney affirmation of Linda Mandel Gates, Esq., dated March 22, 2016, which annexes, *inter alia*, a copy of the Amended Summons and Amended

Verified Complaint, which were filed on September 24 and September 30, 2014, and served on defendant A 2 Z Perfumes and Singh between September 30, 2015 and November 2, 2015. Additional copies of the Complaint were mailed to defendants A 2 Z Perfumes and Singh between October 9, 2015 and November 12, 2015. Gates avers that defendants A 2 Z Perfumes and Singh are in default, having failed to answer or appear.

Pursuant to CPLR § 3215(a), “[w]hen a defendant has failed to appear, plead or proceed to trial of an action reached and called for trial, or when the court orders a dismissal for any other neglect to proceed, the plaintiff may seek a default judgment against him.”

Plaintiff also moves for an order pursuant to CPLR § 3212, granting Plaintiff summary judgment against defendant Manjit Kaur for the relief demanded in the Seventh Cause of Action alleged in the Amended Verified Complaint (Breach of the Guaranty) on the grounds that no triable issues of material fact exist; and dismissing defendant Kaur’s answer and cross-claims filed on October 22, 2015, and striking the affirmative defenses therein. In support, Plaintiff submits, *inter alia*, the affidavits of service on defendant Kaur, the 2007 Guaranty, the 2009 Guaranty, the 2013 Amended and Restated Guaranty, the Revolving Credit Note (\$1,500,000.00) dated May 27, 2009, the Acceleration Letter dated September 3, 2015, and the affidavit of Joseph Baldasare, sworn to January 12, 2016 (the “Baldasare Affidavit”).

The proponent of a motion for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law. That party must produce sufficient evidence in admissible form to eliminate any material issue of fact from the case. Where the proponent makes such showing, the burden shifts to the party opposing the motion to demonstrate by admissible evidence that a factual issue remains. (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]).

Through the submission of copies of the relevant loan documents and Baldasare’s affidavit attesting to defendant’s default, Plaintiff has demonstrated *prima facie* entitlement to summary judgment to recover the monies owed as a result of defendant’s default under the Loans, Notes, Security Agreement and Guaranty. Where the movant has established a *prima facie* showing of entitlement to summary judgment, the motion, unopposed on the merits, shall be granted. (*See generally Access Capital v. DeCicco*, 302 A.D. 2d 48, 53–54 [1st Dept. 2002]).

Wherefore, it is hereby

ORDERED that Plaintiff's motion for default judgment against defendants A 2 Z Perfumes, Inc. and Bhupinder Singh is granted without opposition; and it is further

ORDERED that the Clerk enter judgment in favor of Plaintiff and against defendants A 2 Z Perfumes, Inc. and Bhupinder Singh, jointly and severally, (a) in the amount of \$1,490,934.27; and (b) in the amount of \$975,000.00, together with interest as prayed for allowable by law until the date of entry of judgment, as calculated by the Clerk, and thereafter at the statutory rate; and it is further

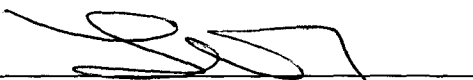
ORDERED that Plaintiff's motion for summary judgment is granted against defendant Manjit Kaur without opposition; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff Flushing Bank and against defendant Manjit Kaur (a) on the Foreign Note in the principal amount of \$975,000.00, and (b) on the Domestic Note in the principal amount of \$1,320,513.88, together with interest as prayed for allowable by law until the date of entry of judgment, as calculated by the Clerk, and thereafter at the statutory rate, together with costs and disbursements, as taxed by the Clerk.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

DATED: ^{June} ~~MAY~~ 9, 2016

JUN 09 2016


Eileen A. Rakower, J.S.C.