

<b>Sterling Natl. Bank v Freidman</b>
2017 NY Slip Op 30141(U)
January 18, 2017
Supreme Court, New York County
Docket Number: 655557/2016
Judge: Jeffrey K. Oing
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[\* 1]  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 48  
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STERLING NATIONAL BANK,

Plaintiff,

-against-

EVGENY FREIDMAN, CARRERA TAXI INC.,  
CANARY TRANS CORP., COTE DZUR TAXI INC.,  
ERIQUE TAXI INC., ENAF TAXI, INC., GRAPPA  
TAXI LLC, GREY GOOSE TAXI, LLC, JACK  
DANIEL TAXI LLC, MADRID TAXI INC., MARGO  
EXPRESS CAB CORP., MEGEVE TAXI LLC,  
PATRON TAXI, LLC, PRAVDA TAXI LLC, RJIG  
HACKING CORP., RUM TAXI LLC, SAKE TAXI  
LLC, and SIBERIA TAXI LLC,

Defendants.  
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DECISION AND ORDER

JEFFREY K. OING, J.:

In this CPLR 3213 action, plaintiff Sterling National Bank ("Sterling") seeks an order granting it summary judgment in lieu of complaint against defendant Evgeny Freidman and the seventeen entity defendants with which Freidman is affiliated in the amount of \$2,171,497.58 pursuant to a certain promissory note and guaranty, with interest thereon from the date of October 14, 2016 through the date of entry of judgment.

#### Background

Defendant Freidman borrowed \$2 million dollars from plaintiff Sterling. To that end, Freidman executed and delivered to Sterling a Revolving Credit Agreement and Note, both dated March 25, 2014, in the principal amount of \$2 million (the

"Loan") (Katz Aff., Exs. A, B). The Revolving Credit Agreement was subsequently amended by Amendment No. 1 to Revolving Credit Agreement dated April 30, 2015 (the "Amendment") so as to extend the Revolving Credit Facility Termination Date from March 25, 2015 to January 4, 2016 (Id., Ex. C). As a condition of Sterling's agreement to enter this Amendment, the seventeen entity defendants agreed to absolutely and unconditionally guaranty payment of the \$2 million note and executed a separate Guaranty dated April 30, 2015 (Id., Ex. D).

Sterling claims Freidman defaulted on the Loan by failing to make monthly payments pursuant to the terms of the Revolving Credit Agreement and Amendment on December 1, 2015, and then defaulted again by "failing to pay the Note in full when it matured on January 4, 2016" (Katz Aff., ¶¶ 4-5). The default persisted after Sterling provided Freidman notice of the default and an opportunity to cure (Id., Exs. E, F). The guarantor entity defendants did not repay the Loan either.

In opposition to the instant motion, Freidman proffers an affidavit stating only that, "the parties have not engaged in any discovery and [he has] not been afforded the opportunity to review the volumes of documentary evidence, including significant e-mail correspondence, that bears upon significant issues of fact that are vehemently disputed in this case" (Freidman Aff., ¶ 9).

Freidman does not indicate what these vehemently disputed issues of fact might be nor does he dispute the defendants' default under the Loan documents and Guaranty. Rather, defense counsel attempts to create an issue of fact by arguing in its opposing brief that Sterling has not produced any proof that it performed its obligations under the Note and Revolving Credit Agreement or that defendants defaulted.

#### Discussion

CPLR 3213 provides a speedy and effective means for resolving claims where the action is "based upon an instrument for money only" (CPLR 3213; Banco Popular N. Am. v Victory Taxi Mgmt., Inc., 1 NY3d 381, 383 [2004]). "It was enacted to provide quick relief on documentary claims so presumptively meritorious that a formal complaint is superfluous, and even the delay incident upon waiting for an answer and then moving for summary judgment is needless (Cooperative Centrale Raiffeisen-Boerenleenbank, B.A. v Navarro, 25 NY3d 485, 491-92 [2015] [quotation and citation omitted]). A plaintiff establishes its prima facie entitlement to judgment as a matter of law by setting forth the existence of an instrument for payment of money only, e.g., a Note or a Guaranty, executed by the defendant, containing an unequivocal and unconditional obligation to pay, and the failure by the defendant to pay in accordance with the terms set

forth therein (Lugli v Johnston, 78 AD3d 1133, 1135 [2d Dept 2010]). To defeat a 3213 motion, a defendant must raise a triable issue of fact as to a bona fide defense (New York Community Bank v Fessler, 88 AD3d 667 [2d Dept 2011]).

Sterling has established its prima facie entitlement to judgment as a matter of law by submitting the Loan documents and notices of default. Freidman has failed to raise any triable issues of fact concerning the default. Notably, he does not deny his default in his affidavit, nor does he identify any obligation that Sterling allegedly failed to perform. To the extent that there are "volumes" of underlying documents, Freidman does not explain how he was precluded from examining these documents prior to opposing this motion. Finally, defendants cite no authority for their argument that the entity defendants would somehow be deprived of their due process rights by this Court's decision to grant plaintiff's 3213 motion based on their default of the unconditional guaranty (cf. Cooperative Centrale Raiffeisen-Boerenleenbank, B.A. v Navarro, 25 NY3d 485, 491 [2015] [granting summary judgment in lieu of complaint on unconditional guaranty]).

Accordingly, it is

ORDERED that plaintiff's motion for summary judgment in lieu of complaint is granted, and the Clerk is directed to enter

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judgment in favor of plaintiff and against the defendants in the sum of \$2,171,497.58, with interest at the rate provided for in the Loan agreement from the date of October 14, 2016 through the date of entry of judgment, and at the statutory rate thereafter, as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk.

This memorandum opinion constitutes the decision and order of the Court.

Dated:

1/18/17

  
HON. JEFFREY K. ONG, J.S.C.  
JEFFREY K. ONG  
J.S.C.