

<b>Santander Bank, N.A. v Manhattan Fragrances, Inc.</b>
2017 NY Slip Op 32276(U)
October 24, 2017
Supreme Court, New York County
Docket Number: 159243/16
Judge: Lynn R. Kotler
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYNN R. KOTLER, J.S.C.

PART 8

SANTANDER BANK, N.A.

INDEX NO. 159243/16

- v -

MOT. DATE

MOT. SEQ. NO. 001

MANHATTAN FRAGRANCES, INC. et al.

The following papers were read on this motion to/for summary judgment

Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits

NYSCEF DOC No(s). 8-21

Notice of Cross-Motion/Answering Affidavits — Exhibits

NYSCEF DOC No(s).

Replying Affidavits

NYSCEF DOC No(s).

This is an action arising from breach of a promissory note and guaranties. Plaintiff now moves for summary judgment against the defendants, Manhattan Fragrances Inc. ("borrower"), Pupinder Singh Madhaan a/k/a Pupinder S. Madhaan a/k/a Pupinder Madhaan a/k/a Pupinder Singh Madhan a/k/a Pupinder S. Madhan a/k/a Pupinder Madhan a/k/a Pupineder Singh Madhaan a/k/a Pupineder S. Madhaan a/k/a Pupineder Madhaan a/k/a Pupineder Singh Madhan a/k/a Pupineder S. Madhan a/k/a Pupineder Madhan a/k/a Madhaan S. Pupinder a/k/a Madhaan Pupinder a/k/a Mabhaan Pupinber a/k/a Pupinder Mabhaan ("P. Madhaan") and Jatinder Kaur Madhaan a/k/a Jatinder K. Madhaan a/k/a Jatinder Madhaan a/k/a Jatinder Kaur Madbaan a/k/a Jatinder K. Madbaan a/k/a Jatinder Madbaan ("J. Madhaan", and together with P. Madhaan, "guarantors", and collectively with borrower, "defendants") and an order dismissing defendants' affirmative defenses. The motion has been submitted on default despite proof of service. Issue has been joined but note of issue has not yet been filed. Therefore, summary judgment relief is available.

Plaintiff's motion is supported by the sworn affidavit of Robert L. Hewitt, and the borrower's account ledger. The borrower executed a promissory note dated February 6, 2015 (the "note") in favor of plaintiff whereby plaintiff agreed to loan funds under a line of credit to borrower in the original principal amount of \$100,000. Under the note, the borrower agreed to pay all costs and expenses incurred in prosecuting this action, including reasonable attorneys fees.

As additional security for the loan, the guarantors jointly executed an Unconditional Personal Guaranty of Payment (the "guaranties") of the borrower's obligations to plaintiff. Pursuant to the terms of the guaranty, guarantors jointly and severally, absolutely and unconditionally guaranteed full payment of all borrower's obligations under the note to plaintiff. Guarantors further agreed to pay plaintiff's expenses and reasonable attorneys fees incurred in prosecuting this action.

By letter dated November 3, 2015, plaintiff sent the borrower a letter entitled "Deferred Repayment

Dated: 10/24/17

HON. LYNN R. KOTLER, J.S.C.

- 1. Check one: [X] CASE DISPOSED [ ] NON-FINAL DISPOSITION
2. Check as appropriate: Motion is [ ] GRANTED [ ] DENIED [X] GRANTED IN PART [ ] OTHER
3. Check if appropriate: [ ] SETTLE ORDER [ ] SUBMIT ORDER [ ] DO NOT POST
[ ] FIDUCIARY APPOINTMENT [ ] REFERENCE

Option Letter", notifying the borrower that plaintiff was exercising its right to cease making advances under the note and requiring the borrower to repay the balance of the loan over 48 months, as follows: \$2,073.00 principal plus interest monthly beginning December 8, 2015 with a final payment consisting of all unpaid principal and accrued interest due on November 8, 2019.

According to plaintiff, the borrower defaulted under the note and Deferred Repayment Option Letter by failing to remit the full payment due on or before May 8, 2016. Plaintiff thereafter sent a letter to the borrower and guarantors advising of the default and demanding payment in full of all amounts due and payable on the note. To date, neither the borrower nor the guarantors have made any payment on the note.

In the summons and complaint, plaintiff has asserted four causes of action: [1] breach of the note against the borrower; [2] account stated against the borrower; [3] unjust enrichment against the borrower; and [4] breach of the guaranties against the guarantors. Defendants' answers consist of general denials and boilerplate affirmative defenses.

Plaintiff now seeks a money judgment representing: [1] outstanding principal in the amount of \$91,208.00; [2] accrued interest in the amount of \$3,205.15 as of August 24, 2016; [3] accrued late charges in the amount of \$727.75 as of August 24, 2016; and [4] additional late charges and interest from August 25, 2016 at the default interest rate; and [5] other charges and attorneys fees. The default interest rate is defined as 8% above the interest rate otherwise payable under the note. Ordinarily, interest under the note is calculated at prime rate plus 5.25% and no less than 8.5%. The other charges are not delineated or otherwise specified and plaintiff has provided no information in support of its claim for attorneys fees.

## DISCUSSION

On a motion for summary judgment, the proponent bears the initial burden of setting forth evidentiary facts to prove a *prima facie* case that would entitle it to judgment in its favor, without the need for a trial (CPLR 3212; *Winegrad v. NYU Medical Center*, 64 NY2d 851 [1985]; *Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]). The party opposing the motion must then come forward with sufficient evidence in admissible form to raise a triable issue of fact (*Zuckerman, supra*). If the proponent fails to make out its *prima facie* case for summary judgment, however, then its motion must be denied, regardless of the sufficiency of the opposing papers (*Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]; *Ayotte v. Gervasio*, 81 NY2d 1062 [1993]).

Granting a motion for summary judgment is the functional equivalent of a trial, therefore it is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue (*Rotuba Extruders v. Ceppos*, 46 NY2d 223 [1977]). The court's function on these motions is limited to "issue finding," not "issue determination" (*Sillman v. Twentieth Century Fox Film*, 3 NY2d 395 [1957]).

The four elements required of a cause of action for breach of contract are: [1] formation of a contract between the parties; [2] performance by plaintiff; [3] defendant's failure to perform; and [4] resulting damage (*Furia v. Furia*, 116 AD2d 694 [2d Dept 1986]). An account stated exists when bills, invoices or statements evidence a party's indebtedness and that party does not object within a reasonable time (*Russo v. Heller*, 80 AD3d 531 [1st Dept 2011]; see also *Ryan Graphics, Inc. v. Bailin*, 39 AD3d 249 [1st Dept 2007]). Where either no account has been presented or there is any dispute regarding the correctness of the account, the cause of action fails (*Abbott, Duncan & Wiener v. Ragusa*, 214 AD2d 412 [1st Dept 1995]). Based upon the foregoing, plaintiff has established a *prima facie* cause of action for breach of the note and account stated against the borrower and breach of the guaranties against the guarantors. Accordingly, plaintiff is granted summary judgment on the first, second and fourth causes of action.

However, the unjust enrichment claim must be severed and dismissed. An unjust enrichment claim is a quasi-contract arising when a defendant was enriched at plaintiff's expense and it is against equity

and good conscience that defendant retain what is sought to be recovered (*Travelsavers Enterprises, Inc. v. Analog Analytix, Inc.*, 149 AD3d 1003 [2d Dept 2017]). An unjust enrichment claim does not lie where there is an enforceable agreement between the parties (*Accurate Copy Serv. of America, Inc. v. Fisk Bldg. Assocs. L.L.C.*, 72 AD3d 456 [1st Dept 2010] citing *Singer Asset Fin. Co., LLC v. Melvin*, 33 AD3d 355, 358 [2006]). Since the note and guaranties are enforceable contracts, plaintiff's motion as to the third cause of action is denied and the third cause of action is severed and dismissed.

Based upon the foregoing, plaintiff is entitled to a money judgment representing the principal amount due \$91,208.00; [2] accrued interest in the amount of \$3,205.15 as of August 24, 2016; [3] accrued late charges in the amount of \$727.75 as of August 24, 2016. Plaintiff has otherwise failed to provide sufficient information to the court from which the court could conclude what the applicable default interest would be. Further, plaintiff's request for legal costs and reasonable attorneys fees must also be denied since plaintiff has neither asked for any specific amount or otherwise demonstrated the reasonableness of such fees.

Accordingly, that portion of the motion seeking interest from August 24, 2016 and legal costs including reasonable attorneys fees is denied without prejudice to renew within 90 days. The failure to renew its application for interest and legal costs and attorneys fees within 90 days of this decision/order will be deemed an abandonment of those claim.

Accordingly, it is hereby

**ORDERED** that plaintiff's motion is granted to the following extent:

[1] plaintiff is entitled to summary judgment on the first and second causes of action against Manhattan Fragrances, Inc. and the clerk is directed to enter judgment accordingly; and

[2] plaintiff is entitled to summary judgment on the fourth cause of action against Pupinder Singh Madhaan a/k/a Pupinder S. Madhaan a/k/a Pupinder Madhaan a/k/a Pupinder Singh Madhan a/k/a Pupinder S. Madhan a/k/a Pupinder Madhan a/k/a Pupinder Singh Madhaan a/k/a Pupinder S. Madhaan a/k/a Pupinder Madhaan a/k/a Pupinder Singh Madhan a/k/a Pupinder S. Madhan a/k/a Pupinder Madhan a/k/a Madhaan S. Pupinder a/k/a Madhaan Pupinder a/k/a Mabhaan Pupinber a/k/a Pupinder Mabhaan ("P. Madhaan") and Jatinder Kaur Madhaan a/k/a Jatinder K. Madhaan a/k/a Jatinder Madhaan a/k/a Jatinder Kaur Madbaan a/k/a Jatinder K. Madbaan a/k/a Jatinder Madbaan, and the clerk is directed to enter judgment accordingly; and

[3] the third cause of action for unjust enrichment is severed and dismissed; and

[4] defendants' affirmative defenses are dismissed; and

[5] the clerk is directed to enter a money judgment in favor of plaintiff and against Manhattan Fragrances, Inc., for \$91,208, plus \$3,205.15 representing interest through and including August 24, 2016, plus \$727.75 for late fees through August 24, 2016; and

[6] the clerk is directed to enter a money judgment in favor of plaintiff and against Pupinder Singh Madhaan a/k/a Pupinder S. Madhaan a/k/a Pupinder Madhaan a/k/a Pupinder Singh Madhan a/k/a Pupinder S. Madhan a/k/a Pupinder Madhan a/k/a Pupinder Singh Madhaan a/k/a Pupinder S. Madhaan a/k/a Pupinder Madhaan a/k/a Pupinder Singh Madhan a/k/a Pupinder S. Madhan a/k/a Pupinder Madhan a/k/a Madhaan S. Pupinder a/k/a Madhaan Pupinder a/k/a Mabhaan Pupinber a/k/a Pupinder Mabhaan ("P. Madhaan") and


Jatinder Kaur Madhaan a/k/a Jatinder K. Madhaan a/k/a Jatinder Madhaan a/k/a Jatinder Kaur Madbaan a/k/a Jatinder K. Madbaan a/k/a Jatinder Madbaan, joint and severally, for \$91,208, plus \$3,205.15 representing interest through and including August 24, 2016, plus \$727.75 for late fees through August 24, 2016;

And it is further

**ORDERED** that plaintiff may renew its application to recover prejudgment interest from August 24, 2016 and legal costs including reasonable attorneys fees upon a proper showing within 90 days from the date of this decision/order. The failure to renew the application within 90 days of this decision/order will be deemed an abandonment of the aforementioned claims.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly denied and this constitutes the Decision and Order of the court.

Dated: 10/24/17  
New York, New York

So Ordered:  
  
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Hon. Lynn R. Kotler, J.S.C.