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| <b>Signature Fin. LLC v Goldfeld</b>   |
| 2018 NY Slip Op 31585(U)   |
| July 9, 2018   |
| Supreme Court, New York County   |
| Docket Number: 151341/17   |
| Judge: Nancy M. Bannon   |
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : IAS PART 42

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SIGNATURE FINANCIAL LLC,

Plaintiff,

DECISION, ORDER, and  
JUDGMENT

-against-

Index No. 151341/17

ALEKSANDR GOLDFELD,

MOTION SEQ 002

Defendant.

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Nancy M. Bannon, J.S.C.

In this action for breach of a loan agreement and replevin of a taxi medallion and appurtenances, the plaintiff Signature Financial, LLC (Signature), moves, pursuant to CPLR 2221(e), for leave to renew its prior summary judgment motion and, upon renewal, to vacate in part and modify this court's decision and order entered November 1, 2017 (the prior order). The motion is granted, without opposition.

In the prior order, the court granted, without opposition, Signature's motion for summary judgment on the first, fourth, and fifth causes of action, which were respectively to recover for breach of a loan agreement, foreclosure pursuant to a security agreement, and replevin of the secured collateral, consisting of New York City taxicab medallion no. 8D48 and appurtenances thereto, including taxi roof lights and a meter. The court denied that branch of the prior motion which was for summary judgment on the third cause of action, which sought to recover on an account stated. The court denied, without prejudice to renew upon proper papers, that branch of the motion which was for an award of attorney's fees.

The court directed the Clerk of the Court to enter a money judgment in favor of Signature in the amount of \$851,917.73, together with statutory interest from December 26, 2016. The court also directed the Clerk to enter judgment in favor of Signature permanently foreclosing Goldfeld's right or title to, or interest in, the collateral that is the subject of UCC-1 Financing Statement 201306138244393 dated June 14, 2013.

A motion for leave to renew “shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination; . . .and shall contain reasonable justification for the failure to present such facts on the prior motion.” CPLR 2221(e)(2), (3). In support of the motion to renew, Signature advises the court that, during the pendency of the prior motion, Goldfeld filed for Chapter 7 bankruptcy, and that it only learned of the filing after the prior motion was made on May 1, 2017. Signature further informs the court that, once it learned of the bankruptcy filing, it moved in the United States Bankruptcy Court to modify the automatic stay imposed on the instant action pursuant to 11 USC § 362. See Howell v New York Post Co., 81 NY2d 115 (1993). By order dated July 27, 2017, United States Bankruptcy Court Judge Elizabeth Stong granted Signature's motion and directed that the automatic stay be modified to permit Signature to pursue its contractual and legal rights under applicable law with respect to the collateral only. See Matter of Goldfeld, US Bankr Ct, ED NY, 1-17-42581-ess, Stong, J., Jul. 27, 2017. In light of the Bankruptcy Court order limiting Signature's rights against Goldfeld to those with respect to the collateral, Signature seeks to vacate so much of the prior order as directed the entry of a money judgment, without modifying the remainder of the prior order.

Signature's motion is granted without opposition. It established a reasonable justification

for failing to present the facts surrounding the bankruptcy proceedings in connection with the prior motion. Signature only learned of Goldfeld's bankruptcy filing while the prior motion was pending, and the limited vacatur of the bankruptcy stay was effectuated after Signature had already served and filed all of the papers in connection with the prior motion, but before this court rendered a determination thereon. Moreover, the new facts change the outcome of the prior motion, since the bankruptcy filing and the limited nature of the vacatur of the automatic stay precluded this court from directing the entry of a money judgment against Goldfeld. "[T]he Supreme Court is possessed of broad discretion in granting renewal, and the application of that discretion and the governing principles are to be flexibly applied to advance the interests of justice." Pastore v Schwartz, 151 AD3d 1071, 1071 (2<sup>nd</sup> Dept. 2017) (internal quotation marks and citation omitted); see CPLR 2221(e). In order to permit the plaintiff to proceed in accordance with the Bankruptcy Court order, renewal is warranted here.

Accordingly, it is

ORDERED that the plaintiff's motion for leave to renew is granted, without opposition, and, upon renewal, the determination set forth in this court's prior order entered November 1, 2017, awarding summary judgment to the plaintiff on the first cause of action and directing the Clerk to enter a money judgment in favor of the plaintiff and against the defendant on that cause of action is vacated; and it is further,

ADJUDGED that the defendant Aleksandr Goldfeld is forever barred and foreclosed of all right or title to, or interest or equity of redemption in, the collateral that is the subject of UCC-1 Financing Statement 201306138244393, dated June 14, 2013, consisting of New York City taxicab medallion no. 8D48, and appurtenances thereto, including but not limited to taxi roof

lights and meters; and it is further,

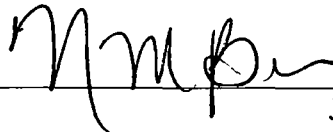
ADJUDGED and DECLARED that the plaintiff, Signature Financial, LLC, is entitled to possession of the collateral that is the subject of UCC-1 Financing Statement 201306138244393, dated June 14, 2013, consisting of New York City taxicab medallion no. 8D48, and appurtenances thereto, including but not limited to taxi roof lights and meters; and it is,

ORDERED that within 20 days after service of a copy of this order with notice of entry upon him, the defendant shall deliver to the plaintiff New York City taxicab medallion no. 8D48 and all other collateral, including but not limited to taxi meters and roof lights.

This constitutes the Decision, Order, and Judgment of the court.

Dated: July 9, 2018

ENTER:

  
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J.S.C.

HON. NANCY M. BANNON