

**Capital One Equip. Fin. Corp. v Nikos Barkas Taxi,
Inc.**

2018 NY Slip Op 31652(U)

March 7, 2018

Supreme Court, New York County

Docket Number: 656089/2017

Judge: Saliann Scarpulla

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 39

-----X

CAPITAL ONE EQUIPMENT FINANCE CORP.,
Plaintiff,

INDEX NO. 656089/2017

MOTION DATE 9/27/2017

- v -

MOTION SEQ. NO. 001

NIKOS BARKAS TAXI, INC., NIKOLAOS BARKAS, L.I.C. TAXI
MANAGEMENT INC.

DECISION AND ORDER

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number 2, 7, 8, 9, 10, 11, 12, 13, 14
were read on this application to/for Judgment - Summary In lieu of Complaint

HON. SALIANN SCARPULLA:

The motion of plaintiff Capital One Equipment Finance Corp. f/k/a All Points Capital Corp., d/b/a Capital One Taxi Medallion Finance ("Plaintiff") for summary judgment in lieu of complaint is granted only as to defendant Nikos Barkas Taxi, Inc., and is otherwise denied. Plaintiff has made out a *prima facie* case for judgment against Nikos Barkas Taxi, Inc. by submitting the loan agreement and note executed by Nikos Barkas Taxi, Inc., together with an affidavit attesting to the default and the amount due. Defendant Nikos Barkas Taxi, Inc. has failed to submit any papers in opposition to the motion.

Plaintiff has failed, however, to make out its *prima facie* case against defendants Nikolaos J. Barkas, as Administrator of the Estate of Dimitrios Barkas, and L.I.C. Taxi

Management Inc. In its moving papers Plaintiff submitted the Limited Guaranty executed by defendant L.I.C. Taxi Management Inc., which shows that L.I.C. Taxi Management Inc. only guaranteed payment of monthly interest during the term of the loan, not the balloon payment due at the end of the loan.¹ Plaintiff has failed to demonstrate in its moving papers whether any part of the requested judgment amount relates to defaulted monthly interest payments, or whether defendants simply failed to make the final balloon payment. Accordingly, I deny Plaintiff summary judgment in lieu of complaint against defendant L.I.C. Taxi Management Inc.

As to defendant Nikolaos J. Barkas, as Administrator of the Estate of Dimitrios Barkas (“Barkas”), Plaintiff based its demand for summary judgment on a guaranty of the loan executed by Dimitrios Barkas. Plaintiff, however, did not submit the guaranty in its moving papers. Barkas submitted papers in opposition, in which he properly argued that Plaintiff had failed to make out a *prima facie* case against him. On reply, Plaintiff then submitted the guaranty and its Demand Letter.²

Because Barkas did not have an opportunity evaluate the authenticity of the guaranty and/or raise any defenses to it, I will not consider the guaranty submitted by

¹ In the Limited Guaranty, L.I.C. Taxi Management, Inc. guaranteed payment of the “Debt.” Per the Limited Guaranty, the term Debt “shall solely mean the monthly installment payments of interest only due from [Nikos Barkas Taxi, Inc.] along with any additional accrued interest, late fees or any related fees resulting from the non-payment or delinquent payment thereof.”

² In his affidavit in support of summary judgment in lieu of complaint, Plaintiff’s vice president, Michael P. Robinson, referred to the Demand Letter, but Plaintiff did not submit the Demand Letter in its moving papers.

Plaintiff on reply. Accordingly, I deny Plaintiff summary judgment in lieu of complaint as against defendant Nikolaos J. Barkas, as Administrator of the Estate of Dimitrios Barkas.

In accordance with the foregoing, it is:

ORDERED that plaintiff Capital One Equipment Finance Corp. f/k/a All Points Capital Corp., d/b/a Capital One Taxi Medallion Finance's motion for summary judgment in lieu of complaint is granted only as to defendant Nikos Barkas Taxi, Inc., and is otherwise denied; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff Capital One Equipment Finance Corp. f/k/a All Points Capital Corp., d/b/a Capital One Taxi Medallion Finance and against defendant Nikos Barkas Taxi, Inc. in the amount of \$1,399,863.89, with interest thereon at the rate of 24% from October 1, 2016 to the date judgment is entered; and it is further

ORDERED that the action is severed and shall continue as to defendants L.I.C. Taxi Management Inc. and Nikolaos J. Barkas, as Administrator of the Estate of Dimitrios Barkas; and it is further

ORDERED that plaintiff Capital One Equipment Finance Corp. f/k/a All Points Capital Corp., d/b/a Capital One Taxi Medallion Finance is directed to serve a complaint on defendants L.I.C. Taxi Management Inc. and Nikolaos J. Barkas, as Administrator of

the Estate of Dimitrios Barkas, in which it clearly sets forth the amount it demands from each defendant, within thirty (30) days of the date of this order.

This constitutes the decision and order of the Court.

3/7/2018

DATE

Saliann Scarpulla
SALIANN SCARPULLA J.S.C.

CHECK ONE:

- CASE DISPOSED
- GRANTED
- SETTLE ORDER
- DO NOT POST

DENIED

- NON-FINAL DISPOSITION
- GRANTED IN PART
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: