

HSBC Bank USA, N.A. v Bright Star Diamond (USA) Inc.
2018 NY Slip Op 33004(U)
November 27, 2018
Supreme Court, New York County
Docket Number: 159477/2017
Judge: Debra A. James
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

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HSBC BANK USA, NATIONAL ASSOCIATION,

Plaintiff,

- v -

BRIGHT STAR DIAMOND (USA) INC. and RAJESH BUMB,

Defendants.

INDEX NO. 159477/2017

MOTION DATE 11/27/2018

MOTION SEQ. NO. 001

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33

were read on this motion to/for

SUMMARY JUDGMENT

ORDER

Upon the foregoing documents, it is

ORDERED that the motion for judgment in plaintiff's favor on the first cause of action for breach of contract is granted against defendant Bright Star Diamond (USA) Inc., and it is further

ORDERED that the branch of plaintiff's motion that seeks summary judgment in plaintiff's favor on the fourth cause of action for breach of contract (guaranty) against defendant Rajesh Bumb is granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendants in the sum of \$ 102,367.54, with interest at the rate of 5.25% per annum from the date of September 17, 2017, until the date of the decision on this motion, and thereafter at the statutory rate, as calculated

by the Clerk, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that to the extent that plaintiff seeks recovery of legal fees and disbursements against defendant Rajesh Bumb, as guarantor, such claim is severed and having come on before this court on October 16, 2018, on motion of the plaintiff for summary judgment and the plaintiff, having appeared by Andrew S. Miller, Esq., and the defendant Rajesh Bumb, having appeared by Diana Rubin, Esq., and the court having on its own motion determined to consider the appointment of a referee to hear and report, and it appearing an appointment is appropriate, it is now hereby

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to hear and report to this court on the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose:

the issue of the amount of reasonable attorneys' fees and disbursements incurred by plaintiff that plaintiff shall recover from defendant Rajesh Bumb; and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) for

placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/supctmanh at the "References" link), shall assign this matter at the initial appearance to an available JHO/Special Referee to hear and report as specified above; and it is further

ORDERED that counsel shall immediately consult one another and counsel for plaintiff shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (accessible at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed with the hearing, on the date fixed by the Special Referee Clerk for the initial appearance in the Special Referees Part, subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly; and it is further

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts.

DECISION

In the exercise of its discretion, the court deems the pro se answer served and filed by the individual defendant, upon the appearance of the attorney representing both defendants, to constitute the answer of the corporate defendant, nunc pro tunc.

However, neither such answer nor the affidavit of the individual defendant raises any issue of fact with respect to plaintiff's prima facie establishment of the corporate defendant's breach of the revolving credit Business Lending Agreement, which the individual defendant guaranteed. The affidavit of plaintiff's principal that establishes his personal knowledge of the business records, including the executed credit application and monthly billing statements for May, June, August, September, October and November 2015 are admissible

evidence of such breach. See George S. May Intern. Co. v Thirsty Moose, 19 AD3d 721 (3d Dept. 2005).

11/27/2018
DATE

Debra A. James
DEBRA A. JAMES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE