

<b>Interpleader Fin., LLC v Fields</b>
2019 NY Slip Op 31219(U)
May 1, 2019
Supreme Court, New York County
Docket Number: 651293/2019
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 3EFM

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INTERPLEADER FINANCE, LLC,	<b>INDEX NO.</b>	<u>651293/2019</u>
Plaintiff,	<b>MOTION DATE</b>	<u>03/25/2019</u>
- v -	<b>MOTION SEQ. NO.</b>	<u>001</u>
RICHARD FIELDS,		
Defendant.		

**DECISION AND ORDER**

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2-15  
 were read on this motion for SUMMARY JUDGMENT IN LIEU OF COMPLAINT.

Upon the foregoing documents:

Plaintiff, Interpleader Finance LLC, seeks an Order awarding Summary Judgment in Lieu of a Complaint against Defendant Richard Fields pursuant to CPLR §3213. Defendant has not appeared in this action or otherwise opposed this motion. For the following reasons, Plaintiff's motion is granted.

CPLR §3213 provides that a party may seek summary judgment, in lieu of filing a complaint, when the action is based upon an instrument for the payment of money only. CPLR §3213. This case involves the repayment of monies allegedly due and owing pursuant to an unconditional guaranty and, therefore, treatment under CPLR §3213 is appropriate. New York courts have long held that such a guaranty qualifies as an "instrument for the payment of money only" under the terms of CPLR §3213. *See, e.g., Cooperative Centrale Raiffeisen-Boerenleenbank, B.A. v. Navarro*, 25 N.Y.3d 485, 492 (2015); *European American Bank & Trust Co. v. Schirripa*, 108 A.D.2d 684 (1st Dep't 1985); *Manufacturers Hanover Trust Co. v. Green*, 651293/2019 INTERPLEADER FINANCE, LLC, vs. FIELDS, RICHARD  
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95 A.D.2d 737 (1st Dep't 1983); *Seaman-Andwall Corp. v. Wright Machine Corp.*, 31 A.D.2d 136 (1st Dep't 1968), *aff'd*, 29 N.Y.2d 617 (1971).

To meet its prima facie burden on its summary judgment motion, Plaintiff must prove the existence of the guaranty, the underlying debt and the guarantor's failure to perform under the guaranty. *Cooperative Centrale Raiffeisen-Boerenleenbank, B.A. v. Navarro*, 25 N.Y.3d at 492. Thereafter, the burden shifts to the Defendant to establish, by admissible evidence, the existence of a triable issue with respect to a bona fide defense. *Id.*

Here, on or about May 30, 2013, Plaintiff and non-party Coastal Development Massachusetts, LLC (“Coastal”) entered into a Warrant Purchase Agreement (the “Warrant Agreement”) (NYSCEF 6). Pursuant to the Warrant Agreement, Plaintiff paid \$6,000,000 to Coastal for the right to purchase 2% of the direct and indirect economic rights of non-party Sterling Suffolk Racecourse, LLC (“Sterling”) for an exercise price of \$4,000,000. (*Id.* ¶ 2.). Among other things, the Warrant Agreement also granted Plaintiff a put option enabling it to sell the warrant back to Coastal for its purchase price by sending a “Put Notice” to Coastal, with a copy to defendant Fields, with payment being due not later than seven business days thereafter. (*Id.* ¶ 16(b)(iii), (v).)

In the Warrant Agreement, Defendant Fields gave his Unconditional Guaranty to “absolutely, unconditionally and irrevocably guarantee[], as primary obligor and not merely as surety the obligations of [Coastal] under and pursuant to the [Warrant Agreement], including, without limitation, the full and timely payment” of the agreed upon purchase price due under the put option. (*Id.* ¶ 16(f).) In the Warrant Agreement, Defendant Fields waived all defenses with respect to his Unconditional Guaranty. (*Id.*)

On or about December 31, 2016, the parties entered into a Second Amendment to Warrant Purchase Agreement whereby, among other things, Plaintiff paid \$1,000,000 in exchange for a \$2,000,000 reduction in the exercise price from \$4,000,000 to \$2,000,000. (*Rodriguez Affid.*, ¶9). On or about April 16, 2014, the parties entered into a Third Amendment to Warrant Purchase Agreement whereby, among other things, Interleader Finance LLC paid \$1,000,000 million in exchange for a \$2,000,000 reduction in the exercise price from \$2,000,000 to the \$1,000,000 paid, thereby relieving it of the obligation to make any additional payments to Coastal to purchase the economic rights of Sterling. (*Id.* ¶10.)

On January 13, 2015, Plaintiff exercised its put option by sending a Put Notice to Coastal and Defendant Fields. (NYSCEF 9). The Put Notice specified the exercise price as \$8,000,000. *Id.*; *Rodriguez Affidavit*, ¶12. Coastal failed to pay the exercise price. *Id.* ¶13. Defendant Fields also failed to pay it. *Id.*,

On January 11, 2016, Defendant Fields admitted in writing, among other things, the amount due under his Unconditional Guaranty - i.e., \$8 million – and he again waived all defenses and claims with respect to its repayment. (NYSCF 10, ¶5 and Schedule A). Pursuant to the April 16, 2014 mortgage granted by Defendant Fields to Plaintiff to secure the Unconditional Guaranty (NYSCEF 11), when Defendant Fields sold his mortgaged ranch in September 2018, Plaintiff received \$5,542,423.03 (*Rodriguez Affidavit*, ¶15; NYSCEF 12), leaving a balance of \$2,457,576.97 which Plaintiff argues is owed by Defendant Fields under the Unconditional Guaranty, plus Plaintiff's collection costs<sup>1</sup>.

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<sup>1</sup> Under the Warrant Agreement, Plaintiff is entitled to reasonable attorneys' fees and expenses incurred in connection with claims arising under the agreement

Having received no opposition to this motion, there being no triable issues of fact raised, the Court grants Plaintiff's motion for Summary Judgment in Lieu of Complaint.

It is therefore:

**ORDERED** that Plaintiff's motion for Summary Judgment in Lieu of a Complaint is Granted and the County Clerk is directed to enter judgment in favor of Plaintiff in the amount of \$2,457,576.97 against Defendant; it is further

**ORDERED** that Plaintiff's request for reasonable attorneys' fees and collection costs shall be referred to a Judicial Hearing Officer ("JHO") for a hearing and determination; it is further

**ORDERED** that a JHO or Special Referee shall be designated to determine the amount of attorneys' fees and collection costs owed to Plaintiff by Defendant; it is further

**ORDERED** that the powers of the JHO/Special Referee to determine shall not be limited further than as set forth in the CPLR; it is further

**ORDERED** that this matter is hereby referred to the Special Referee Clerk (Room 119 M, 646-386-3028 or [spref@courts.state.ny.us](mailto:spref@courts.state.ny.us)) 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](http://www.nycourts.gov/supctmanh) at the "Local Rules" link), shall assign this matter to an available Special Referee to determine as specified above; it is further

**ORDERED** that Plaintiff's counsel shall serve a copy of this order with notice of entry on Defendant within five days from the date of this Order and that counsel for Plaintiff shall, after thirty days from service of those papers, submit to the Special Referee Clerk by fax (212-401-9186) or email an Information Sheet (which can be accessed at

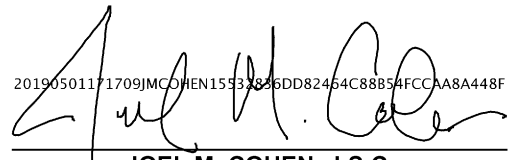
http://www.nycourts.gov/courts/1jd/supctmanh/refpart-infosheet-10-09.pdf) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; it is further

**ORDERED** that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR § 4318) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and that the parties shall appear for the reference hearing, including with all such witnesses and evidence as they may seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referee's 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.

This constitutes the Decision and Order of the Court

5/1/2019  
DATE

  
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JOEL M. COHEN, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE