

Bank v Hudson Produce, Inc.
2019 NY Slip Op 31619(U)
June 7, 2019
Supreme Court, New York County
Docket Number: 655868/2018
Judge: Jennifer G. Schechter
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

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NOAH BANK,

Index No.: 655868/2018

Plaintiff,

DECISION & ORDER

-against-

HUDSON PRODUCE, INC.,

Defendant.
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JENNIFER G. SCHECTER, J.:

Plaintiff Noah Bank (the Bank) moves for summary judgment in lieu of complaint against defendant Hudson Produce, Inc. (Hudson). Its motion is granted on default.

“Pursuant to CPLR 3213, a party may commence an action by motion for summary judgment in lieu of complaint when the action is ‘based upon an instrument for the payment of money only’” (*Lawrence v Kennedy*, 95 AD3d 955, 957 [2d Dept 2012]). A motion under CPLR 3213 is an appropriate means to collect on a promissory note (*Poah One Acquisition Holdings V Ltd. v Armenta*, 96 AD3d 560 [1st Dept 2012], citing *Bank of Am., N.A. v Solow*, 59 AD3d 304 [1st Dept 2009]). “To establish prima facie entitlement to summary judgment in lieu of complaint, a plaintiff must show the existence of a promissory note executed by the defendant containing an unequivocal and unconditional obligation to repay and the failure of the defendant to pay in accordance with the note’s terms” (*Zyskind v FaceCake Marketing Techs., Inc.*, 101 AD3d 550, 551 [1st Dept 2012]). “Once the plaintiff submits evidence establishing these elements, the

burden shifts to the defendant to submit evidence establishing the existence of a triable issue with respect to a bona fide defense” (*id.*).

The Bank established that Hudson executed an \$850,000 note, dated February 28, 2012, in its favor (Dkt. 4 [the Note]). The Note has an interest rate of prime plus 2.75% and a maturity date of February 28, 2022 (*id.* at 2-3). Hudson was required to make monthly payments of \$9,436.74 until maturity (*id.* at 3). Hudson was required to make monthly payments of \$9,436.74 until maturity (*id.* at 3). The failure to make a monthly payment is a default, upon which the Bank may collect the full amount due under the Note (*id.* at 5). Hudson defaulted on the Note when it failed to make the monthly payment due on February 1, 2015.

The Bank’s motion is granted on default. Hudson was served; yet, it failed to oppose this summary judgment motion.

Soyoun Park (Park), the surviving wife and Administrator of Jae Ho Lee (Lee), who until his death owned Hudson, purported to oppose the motion and to cross-move for dismissal or a stay of this action. Ms. Park, a non-party to this action who is represented by the attorney who served as Hudson’s counsel repeatedly in earlier litigation between the parties to this case, requests, among other things, that this action be consolidated with another one that deals with a different debt related to a different entity that Lee controlled. She also requests that this action be stayed because she and Lee’s son from a former marriage are contesting each other’s rights with respect to ownership and control of Hudson in a New Jersey action.

The court is well aware that there are questions about who currently controls Hudson. That dispute is not a basis for denying the Bank--Hudson's creditor--relief pending disposition of the New Jersey litigation however long it may take particularly, where, as here, there has been extensive litigation between the parties and there is no indication that Hudson has ever disputed that it defaulted on the Note nor is there any indication that Hudson has a potentially meritorious defense in this action.

For example, in 2016, the Bank sued Hudson on the Note and obtained a default judgment (*Noah Bank v Hudson Produce, Inc.* [*Noah 2016*], Index No. 650212/2016, Dkt. 43). Hudson (represented by the same counsel appearing for Park here) moved to vacate its default, urging that it was not properly served and that it had a meritorious defense because the Bank had conspired with others to induce Lee to purchase a failing business--Basic Food Groups, LLC (Basic Food)--in December 2012 and to induce Hudson to guarantee the Basic Food loan that was issued when Lee bought that business pursuant to a totally separate note. The Appellate Division ultimately held that a traverse hearing was required in that case but if service was proper "then the motion to vacate the default judgment [was to] be denied . . . as [Hudson] failed to raise a meritorious defense" (161 AD3d 573, 574 [1st Dept 2018]).¹ The *Noah 2016* action, which unlike this one was not served on the Secretary of State, was subsequently dismissed for improper service. The Bank then commenced this case.

¹ In Basic's bankruptcy proceedings, Lee's claims against the Bank concerning Basic Food were adjudicated in the Bank's favor (*In re Basic Food Grp., LLC*, 2018 WL 5805943 [Bankr SDNY Oct. 31, 2018] [the Bankruptcy Court Decision]). Similar claims were also rejected by a New Jersey court (*see* Dkt. 32).

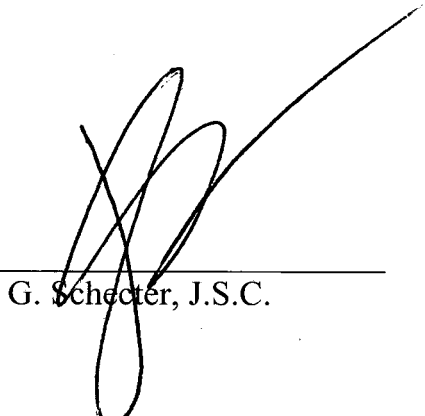
Bankruptcy proceedings related to Basic Food, moreover, do not require a stay of this action because Basic Food is not a party (*In re Calpine Corp.*, 365 BR 401, 409 [SDNY 2007], accord *In re Stillwater Asset Backed Offshore Fund Ltd.*, 565 BR 42, 47 [SDNY 2017], *affd* 729 F Appx 69 [2d Cir 2018]; see *Merrill Lynch, Pierce, Fenner & Smith, Inc. v Oxford Venture Partners, LLC*, 13 AD3d 89 [1st Dept 2004] [“it is well settled that the automatic stay provisions of the Federal bankruptcy laws . . . do not extend to nonbankrupt codefendants”]).

In the end, Hudson was served, Noah sufficiently established entitlement to judgment and Hudson failed to oppose. Park does not have standing to defeat the relief sought or to seek affirmative relief in this case.

Accordingly, it is ORDERED that the Bank’s motion for summary judgment in lieu of complaint against Hudson is granted, and the Clerk is directed to enter judgment in favor of the Bank and against Hudson in the amount of \$853,873.04, plus \$144.38 for each day after November 26, 2018 until the date judgment is entered.

Dated: June 7, 2019

ENTER:



Jennifer G. Schechter, J.S.C.