

**Origen Capital Invs. II, LLC v Silver Spurs I Family
L.P.**

2019 NY Slip Op 32253(U)

July 29, 2019

Supreme Court, New York County

Docket Number: 652418/2017

Judge: Robert R. Reed

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ROBERT R. REED PART 43

Justice

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ORIGEN CAPITAL INVESTMENTS II, LLC,

Plaintiff,

- v -

SILVER SPURS I FAMILY LIMITED PARTNERSHIP, MARKELLA
PIRGOUSIS, GEORGE PIRGOUSIS

Defendant.

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INDEX NO. 652418/2017

MOTION DATE 05/03/2018

MOTION SEQ. NO. 002

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 002) 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37

were read on this motion for

JUDGMENT - SUMMARY

Upon the foregoing documents, it is ordered that this motion is granted.

Plaintiff moves for summary judgment, pursuant to CPLR 3212, in its favor against defendants. Plaintiff also moves, pursuant to CPLR 3211, to strike defendants' affirmative defenses. Defendants oppose the motion.

On or about January 12, 2008, Millennium Bcpbank, N.A. and defendant Silver Spurs I Family Limited Partnership ("Silver Spurs") entered into a credit agreement in which Silver Spurs was extended a loan in the principal amount of \$100,000.00 (see NYSCEF Doc. No. 27). Defendants Markella Pirgousis and George Pirgousis each signed a personal guaranty in support of the loan (see NSYCEF Doc. Nos. 4 and 5). Plaintiff asserts that Millennium Bcpbank, N.A assigned the loan to plaintiff on or about December 28, 2015 (see NYSCEF Doc. No.6bit E). Plaintiff asserts that defendants stopped making payments towards the loan on or about May 19, 2017. On or about March 4, 2017, plaintiff notified defendants of their default (see NYSCEF DOC. No. 27).

The proponent of a motion for summary judgment carries the initial burden of production of evidence as well as the burden of persuasion (*Alvarez v Prospect Hospital*, 68 NY2d 320). Thus, the moving party must tender sufficient evidence to demonstrate as a matter of law the absence of a material issue of fact. Once that initial burden has been satisfied, the “burden of production” (not the burden of persuasion) shifts to the opponent, who must now come forward and produce sufficient evidence in admissible form to establish the existence of a triable issue of fact.

Plaintiff’s motion must be granted as to defendant Silver Spurs based upon the clear breach of the express terms of the loan. The elements of a breach of contract claim are: (1) the existence of a valid contract; (2) the plaintiff’s performance thereunder; (3) the defendant’s breach of the contract; and (4) resulting damages. (*Harris v Seward Park Hous. Corp.*, 79 AD3d 425, 426 [1st Dept 2010]). Plaintiff has established these elements by submitting an affidavit by plaintiff’s officer (NYSCEF Doc. No. 27), who avers that defendants have stopped making payments toward the loan.

In opposition, defendants fail to raise a triable issue of fact. They do not contest that they owe money to plaintiff pursuant to the loan. The only legal stance in opposition to the motion is that plaintiffs did not notify defendants in writing of the default as soon as was practicable (*see* NYSCEF Doc No. 36). Summary judgment must also be granted as against defendants Markella Pirgousis and George Pirgousis. Markella and George Pirgousis are liable to plaintiff pursuant to the personal guaranties. Importantly, Markella and George Pirgousis each executed the guaranty in writing. “[W]here a guaranty is clear and unambiguous on its face and, by its language, absolute and unconditional, the signer is conclusively bound by its terms absent a showing of fraud, duress or other wrongful act in its inducement” (*Citibank, N.A. v Uri Schwartz & Sons*

Diamonds Ltd., 97 AD3d 444, 446-47 [1st Dept 2012]). Thus, the plain language of guaranty, in conjunction with the agreement, and the factually uncontested nonpayment, renders Markella and George Pirgousis also liable for Silver Spurs' contractual obligations.

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment is granted as against defendant Silver Spurs I Family Limited Partnership; and it is further

ORDERED that plaintiff's motion for summary judgment is granted as against defendants Markella Pirgousis and George Pirgousis; and it is further

ORDERED that the branch of plaintiff's motion that seeks to strike defendants' affirmative defenses is granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff and against all named defendants, jointly and severally, in the amount of \$75,371.36, with interest at the statutory rate from March 4, 2017, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the portion of plaintiff's motion that seeks the recovery of attorney's fees is severed; and it is further

ORDERED that counsel for the plaintiff shall, within 30 days from the date of this order, submit an attorney fees affidavit, pursuant to the e-filing protocol; and it is further

ORDERED that counsel should file a working copy of the attorney fees affidavit with the Part 43 clerk.

7/29/2019
DATE



ROBERT R. REED, 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