

Santander Bank, N.A. v Axcesso & Co., Inc.

2019 NY Slip Op 33544(U)

November 27, 2019

Supreme Court, Kings County

Docket Number: 504847/19

Judge: Leon Ruchelsman

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

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SANTANDER BANK, N.A.,

Plaintiff,

Decision and order

- against -

Index No. 504847/19

AXCESSO & CO., INC., YOEL KLEIN a/k/a
JOEL KLEIN & MOLLY KLEIN

ms # 1

Defendants,

November 27, 2019

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PRESENT: HON. LEON RUCHELSMAN

The plaintiff moves pursuant to CPLR §3212 seeking summary judgement concerning all the allegations contained in the complaint. The defendants oppose the motion arguing that the plaintiff has failed to satisfy its burden that there are no questions of fact. Papers were submitted by all parties and arguments held. After reviewing the arguments of all parties this court now makes the following determination.

Background

On May 1, 2014 the plaintiff extended a line of credit to the defendants. Indeed, on May 1, 2014 the defendants Joel and Molly Klein executed a promissory note in the amount of \$500,000, the same amount as the line of credit. Further, on May 1, 2014 the plaintiff extended the defendants a term loan in the amount of \$250,000 and the defendants executed a second promissory note in that amount. As of May 31, 2019 the plaintiff alleges the defendants owe \$508,246.62 for the \$500,000 loan and

\$101,918.54 for the second loan. The plaintiff has now moved seeking summary judgement arguing there are no questions of fact those amounts remain unpaid. The defendants have opposed the motion arguing the plaintiff has failed to satisfy its burden that no issues of fact exist.

Conclusions of Law

Summary judgement may be granted where the movant establishes sufficient evidence which would compel the court to grant judgement in his or her favor as a matter of law (Zuckerman v. City of New York, 49 NY2d 557, 427 NYS2d 595 [1980]). Summary judgement would thus be appropriate where no right of action exists foreclosing the continuation of the lawsuit.

Generally, it is for the jury, the trier of fact to determine the legal cause of any injury (Aronson v. Horace Mann-Barnard School, 224 AD2d 249, 637 NYS2d 410 [1st Dept., 1996]). However, where only one conclusion may be drawn from the facts then the question of legal cause may be decided by the trial court as a matter of law (Derdiarian v. Felix Contracting Inc., 51 NY2d 308, 434 NYS2d 166 [1980]).

Thus, to succeed on a motion for summary judgement it is necessary for the movant to make a prima facie showing of an entitlement as a matter of law by offering evidence demonstrating the absence of any material issue of fact (Winegrad v. New York

University Medical Center, 64 NY2d 851, 487 NYS2d 316 [1985])).

Moreover, a movant cannot succeed upon a motion for summary judgement by pointing to gaps in the opponents case because the moving party must affirmatively present evidence demonstrating the lack of any questions of fact (Velasquez v. Gomez, 44 AD3d 649, 843 NYS2d 368 [2d Dept., 2007])).

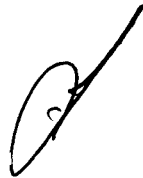
It is well settled that where a party introduces evidence of the existence of promissory notes, personal guarantees and the defendant's failure to make payments according to the terms of the instruments then summary judgement is proper (see, Manufacturers & Traders Trust Co., v. Capital Building and Development Inc., 114 AD3d 912, 980 NYS2d 813 [2d Dept., 2014])). In this case, the plaintiff submitted the affidavit of Robert Monaco a vice president of the plaintiff who stated that he reviewed the bank's records in connection with the loans extended. He further stated that all the documents he reviewed were maintained in the regular course of business and all such records were made near their occurrence with someone who had knowledge at that time and that the bank's standard practice is to keep such records in the ordinary course of business. Thus, the plaintiff has established the admissibility of the records relied upon since Mr. Monaco had knowledge of the bank's practices and procedures (see, Cadlerock Joint Venture L.P. v. Trombley, 150 AD3d 957, 54 NYS3d 127 [2d Dept., 2017])).

Therefore, the plaintiff established its entitlement to summary judgement. The defendants have failed to raise any question of fact. Consequently, the motion seeking summary judgement is granted.

So ordered.

ENTER:

DATED: November 27, 2019
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC

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