

City Natl. Bank v Sparkling Jewels (USA) LLC
2019 NY Slip Op 33740(U)
December 17, 2019
Supreme Court, New York County
Docket Number: 653928/2019
Judge: Joel M. Cohen
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**PRESENT: HON. JOEL M. COHEN

PART

IAS MOTION 3EFM

*Justice*INDEX NO. 653928/2019

CITY NATIONAL BANK,

MOTION DATE 08/23/2019

Plaintiff,

MOTION SEQ. NO. 001

- v -

SPARKLING JEWELS (USA) LLC, SCINTILLATING
REALTY, INC., SCINTILLATING JEWELS,
LLC, RANVIRSINGH SISHODIA, MANISH SHAH**DECISION + ORDER ON
MOTION**

Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 15, 16, 17, 18
were read on this motion for SUMMARY JUDGMENT IN LIEU OF COMPLAINT.

Upon the foregoing documents:

Plaintiff, City National Bank ("City National"), seeks an award of Summary Judgment in Lieu of a Complaint based on Defendants' breach of a Promissory Note and associated Guaranty pursuant to CPLR 3213. Plaintiff filed the instant motion on June 10, 2019. Defendants have not opposed the motion. For the following reasons, City National's motion is Granted.

CPLR 3213 provides: "When an action is based upon an instrument for the payment of money only . . . the plaintiff may serve with the summons a notice of motion for summary judgment and the supporting papers in lieu of a complaint." "CPLR 3213 was enacted to provide quick relief on documentary claims so presumptively meritorious that a formal complaint is superfluous, and even the delay incident upon waiting for an answer and then moving for summary judgment is needless." *Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A. v. Navarro*, 25 N.Y.3d 485, 491-92 (2015) (internal quotation marks and citation omitted). Under CPLR 3213, a plaintiff makes out a prima facie case for summary judgment in lieu of complaint

by proof of an instrument and the defendant's failure to make payment according to its terms. See *Seaman-Andwall Corp. v. Wright Machine Corp.*, 31 A.D.2d 136, 137 (1st Dep't 1968). The burden then shifts to the defendant to establish, by admissible evidence, the existence of a triable issue of fact in order to avoid enforcement. *Simoni v. Time-Line, Ltd.*, 272 A.D.2d 537, 537 (2nd Dep't 2000).

Here, there is no question that this action is based on an instrument for the payment of money only. On July 5, 2017 Defendant Sparkling Jewels executed a promissory note with Plaintiff which was unconditionally guaranteed by Defendants Scintillating Realty, Inc. ("Scintillating Realty"), Scintillating Jewels, LLC ("Scintillating Jewels"), Ranvirsingh Sishodia and Manish A. Shah (collectively, the "Guarantors," and, with Sparkling Jewels, "Defendants"). Pursuant to the Note, Sparkling Jewels initially promised to repay plaintiff City National Bank ("CNB") the unpaid principal amount of a \$700,000 revolving loan on July 5, 2018. Sparkling Jewels further agreed to pay accrued interest from the date of each disbursement of the loan reflected in the Note, in accordance with its terms. Sparkling Jewels was unable to satisfy its payment obligations and entered into a Loan Revision Agreement whereby the repayment deadline was extended to January 9, 2019 in exchange for Sparkling Jewels' reaffirmance of the validity of the debt under the Note. (NYSCEF 5).

Despite the entry of the Loan Revision Agreement, Sparkling Jewels failed to repay the monies owed and stopped making payments towards the debt in December 2018. A default notice and demand for payment was served on Sparkling Jewels on March 5, 2019, however, at the time of the filing of the instant motion, \$697,255.02 remains unpaid toward the principal sum plus interest in the amount of \$27,251.73 which has accrued as of July 2, 2019, for a total amount of \$724,506.75 (NYSCEF 11).

Defendant Sparkling Jewels' default, as outlined above, triggered the guaranteeing Defendants' obligations under the Guaranty which Defendants have failed to satisfy.

Advancing these allegations, offering proof of entry into both the Promissory Note and the Guaranty, and evidencing Defendants' respective failures to remit payment under the agreements, City National has made a prima facie case for Summary Judgment in Lieu of Complaint. As noted above, Defendants have not submitted any opposition to the motion and thus have failed to suggest any material issues of fact that would preclude awarding summary judgment in favor of City National. *Mitsubishi Trust & Banking Corp. v. Housing Servs. Assocs.*, 227 A.D.2d 305, 305 (1st Dep't 1996) (plaintiff entitled to summary judgment in lieu of complaint because proof that notes were duly executed and defendant defaulted in its payment obligations was sufficient); *Tongkook America, Inc. v. Bates*, 295 A.D.2d 202 (1st Dep't 2002) (defendants' failed to raise a triable issue of fact to avoid summary judgment in lieu of complaint where agreement was clear on its face that they owed sums certain to plaintiff, despite the defendants' obligations having been partially satisfied).

Therefore, City National's Motion for Summary Judgment in Lieu of Complaint is Granted. The matter will be referred to a Judicial Hearing Officer for a determination as to the amount of collection costs and attorneys' fees as provided for in the Promissory Note.

Accordingly, it is:

ORDERED that City National's unopposed Motion for Summary Judgment in Lieu of Complaint is Granted; it is further

ORDERED that the Court clerk is directed to enter judgment against Defendants Sparkling Jewels (USA) LLC, Scintillating Realty, Inc., Scintillating Jewels, LLC, Ranvir Singh

Sishodia and Manish Shah, jointly and severally, in the amount of \$724,506.75 together with 6.75% interest per annum from July 2, 2019 until the Note is paid; it is further

ORDERED City National's request for collection costs and attorneys' fees is Granted and is referred to a JHO to hear and determine; 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) 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 "Local Rules" link), shall assign this matter to an available Special Referee to determine as specified above; it is further

ORDERED that City National's counsel shall serve a copy of this order with notice of entry on defendants within five days and that counsel for City National 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/ljd/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

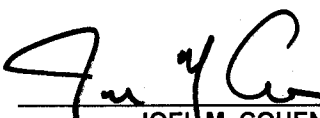
ORDERED that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR § 4318) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and that the parties shall appear for the reference hearing, including

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; 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 it is further

ORDDERED that City National shall serve this Order with Notice of Entry on Defendants within 5 days of the date of this Order.

This constitutes the Decision and Order of the Court.

<u>12/17/2019</u>			
DATE		JOEL M. COHEN, 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