

**TD Bank, N.A. v Request Model Mgt. Inc.**

2020 NY Slip Op 30078(U)

January 6, 2020

Supreme Court, New York County

Docket Number: 650455/2019

Judge: Melissa A. Crane

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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: MELISSA A. CRANE  
Justice

PART 15

HON. MELISSA CRANE

TD BANK, N.A.

INDEX NO. 650455/2019  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 001  
MOTION CAL. NO. \_\_\_\_\_

- v -

REQUEST MODEL MANAGEMENT INC. and  
ANN MARIE NOEL,  
\_\_\_\_\_

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
REASON(S): \_\_\_\_\_  
FOR THE FOLLOWING

Notice of Motion/Order to Show Cause — Affidavits — Exhibits ...  
Answering Affidavits — Exhibits \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_

<u>PAPERS NUMBERED</u>	
_____	_____
_____	_____

CROSS-MOTION: YES NO

Upon the foregoing papers, it is ordered that this motion is

Plaintiff, TD BANK N.A. (“plaintiff”) moves for summary judgment against defendants Request Model Management Inc. (“Request Model”) and Ann Marie Noel (“Noel”) (collectively as, “defendants”) pursuant to CPLR 3212, without opposition.

On January 24, 2019, plaintiff commenced this action by filing a Summons and Complaint. On February 6, 2019, plaintiff served a copy of the summons and complaint on defendant Request Model, and on February 9, 2019, plaintiff served a copy of the summons and complaint on defendant Noel. On April 4, 2019, defendants filed a verified answer.

Subsequently, on August 1, 2019 plaintiff moved (i) for summary judgment against defendants jointly and severally, for the amount of \$199,919, plus accrued interest and late charges, and for an amount of \$4,085 for attorneys’ fees, costs, and expenses; (ii) for summary judgment against Request Model, restraining and enjoining it from selling, moving, liquidating, disposing or permitting the removal of the collateral as per a security agreement that was signed

between plaintiff and Request Model, as well as further relief as to the collateral as detailed in the plaintiff's notice of motion (NYSCEF Doc. No. 20).

The parties, pursuant to a stipulation, dated December 6, 2018, agreed to adjourn the return date for the plaintiff's motion to September 18, 2019, and to extend time for the defendants to file their opposition papers by September 11, 2019. Defendants failed to file their opposition papers by the stipulated date.

The court now grants plaintiff's unopposed motion pursuant to CPLR 3212 and strikes defendants' Answer and affirmative defenses. Plaintiff demonstrates prima facie that plaintiff and Request Model entered into a business loan agreement under which plaintiff extended Request Model a commercial line of credit in the amount of \$200,000 ("LOC Agreement"), and that defendant failed to pay in accordance with the agreement. The LOC Agreement is evidenced by a June 19, 2015 SBA Note ("LOC Note"). In addition, the LOC Note provides that should a default occur, all amounts owed would become immediately due and payable in full. Defendant Noel signed a commercial guaranty, dated June 19, 2015. Plaintiff provided to defendant Request Model the agreed upon line of credit and defendant defaulted. Pursuant to LOC Note, plaintiff seeks to recover all amounts due under the LOC Note. As of the filing of this action, the principal amount owed to plaintiff under the LOC Note was \$199,919.00 plus accrued interest, late fees, and inspection fees.

In addition, in order to secure the payment of the LOC Note, defendant Request Model executed and delivered to plaintiff a commercial security agreement, dated June 19, 2015, which granted plaintiff security interest in a defined business assets of defendant Request Model as a collateral ("Collateral"). The security interest was perfected with a UCC-1 Financing Statement, which was filed with the New York Secretary of State on July 15, 2015. After defendant

defaulted, plaintiff demanded defendant assemble the Collateral, and make it available for plaintiff's inspection, evaluation, possession and sale, but defendant failed to do so.

Accordingly, it is

**ORDERED** that plaintiff's motion for summary judgment is granted without opposition; and it is further

**ORDERED** that the court strikes defendants' Answer and affirmative defenses; and it is further

**ORDERED** that the Clerk is directed to enter judgment in favor of plaintiff in the sum of \$199,919.00, with interest at the statutory rate of 9% from January 24, 2019 until entry of judgment together with costs and disbursements upon the submission of an appropriate bill of costs; and it is further

**ORDERED** that the court directs the clerk to award attorney's fees in the amount of \$3,565.00; and it is further

**ORDERED** that the court directs the clerk to enter a judgment against defendant Request Model Management, Inc:

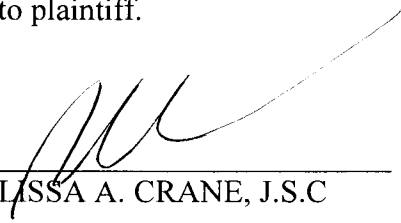
- a. Restraining and enjoining Request Model Management, Inc. its agents, employees, accountants, attorneys and such other persons acting at the direction of or on behalf of Request Model Management, Inc. from selling, moving, liquidating, disposing or permitting the removal of the Collateral;
- b. Compelling Request Model Management, Inc. its agents, employees, accountants, attorneys and such other persons acting at the direction of or on behalf of Request

- Model Management, Inc. to segregate in an account controlled by plaintiff all proceeds of accounts receivable;
- c. Compelling Request Model Management, Inc. its agents, employees, accountants, attorneys and such other persons acting at the direction of or on behalf of Request Model Management, Inc. to turn over to plaintiff, in their original form, all payments of accounts receivable now and hereafter received;
  - d. Compelling Request Model Management, Inc. its agents, employees, accountants, attorneys and such other persons acting at the direction of or on behalf of Request Model Management, Inc. to turn over to plaintiff a statement setting forth the names and addresses of Request Model Management, Inc. debtors and amount owed by each of them;
  - e. Compelling Request Model Management, Inc. its agents, employees, accountants, attorneys and such other persons acting at the direction of or on behalf of Request Model Management, Inc. to assemble and make the Collateral available or deliver the Collateral to plaintiff for inspection, appraisal and sale or other disposition pursuant to the Uniform Commercial Code in order to satisfy the amounts due to plaintiff;
  - f. Authorizing plaintiff to sell, liquidate, dispose of or retain the Collateral in a commercially reasonable manner, with the proceeds from same being applied first to the costs of such sale or other disposition, including reasonable attorneys' fees, and then in reduction of the amounts due to plaintiff;
  - g. Appointing a receiver, or other agent of the court, to manage the affairs of Request Model Management, Inc. as an alternative to (e) and (f) above, to take possession of

the Collateral on behalf of plaintiff and any other creditors of Request Model Management, Inc. and to hold the Collateral pending further order of this court;

- h. Ordering that the sheriff of any county of the State of New York wherein the Collateral is found, be directed to seize the Collateral at issue, and for the purpose, if the Collateral is not delivered to him or her, to break open, enter and search for the Collateral in the place specified to hold collateral pursuant to CPLR 7101;
- i. Issuing Writ of Replevin directed to the Sheriff to other lawfully authorized officers of New York County where the Collateral may be found and directing that such Sheriff or other officers to seize and/or take immediate possession of the collateral and deliver same to plaintiff, the court-appointed receiver or other court appointed agent, as this court may direct;
- j. Barring and foreclosing Request Model Management, Inc. from all equity of redemption in and to the Collateral; and
- k. Directing that to the extent any of such Collateral has already been sold or otherwise liquidated, Request Model Management, Inc. account for the proceeds derived from such sale or liquidation and remit such proceeds to plaintiff.

DATED: January 6, 2020



MELISSA A. CRANE, J.S.C

**HON. MELISSA A. CRANE**

Check one:  FINAL DISPOSITION     NON-FINAL DISPOSITION  
 Check if appropriate: MOTION IS:  GRANTED     DENIED     GRANTED IN PART     OTHER  
 Check if appropriate:  DO NOT POST     REFERENCE     SETTLE ORDER     SUBMIT ORDER  
 FIDUCIARY APPOINTMENT