

Citibank, N.A. v Vert Gardens, Inc.

2020 NY Slip Op 30580(U)

February 27, 2020

Supreme Court, New York County

Docket Number: 153232/2019

Judge: W. Franc Perry

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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. W. FRANC PERRY PART IAS MOTION 23EFM

Justice

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INDEX NO. 153232/2019

CITIBANK, N.A.,

MOTION DATE 07/25/2019

Plaintiff,

MOTION SEQ. NO. 001

- v -

VERT GARDENS, INC. AND, ALEXANDER GUNN

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23

were read on this motion to/for

JUDGMENT - SUMMARY

In motion sequence 001, Plaintiff seeks to sever the bankrupt Defendant from the case and seeks summary judgment on its claim for breach of guaranty against Alexander Gunn.

BACKGROUND

This action arises out of a loan agreement between Vert Gardens, Inc., ("Vert Gardens") and Citibank, N.A., ("Citibank"), which was personally guaranteed by Alexander Gunn, the President and 100% owner of Vert Gardens. Vert Gardens defaulted on the loan in late 2018 and Citibank filed its Verified Complaint on March 27, 2019, setting forth six claims, five of which pertain to Vert Gardens. (NYSCEF Doc No. 1.) After Defendants filed their Answer on May 7, 2019, Plaintiff filed a motion for summary judgment and accompanying documents in support thereof. (NYSCEF Doc Nos. 9, 11, 12, 18.) Defendants have not opposed the motion.

Plaintiff also seeks an order of severance, alleging that Vert Gardens filed for bankruptcy in the United States Bankruptcy Court for the Southern District of New York, thus invoking the automatic stay protections under 11 USCA § 362. (NYSCEF Doc No. 24.) Plaintiff requests that

the court, pursuant to CPLR 603, sever the bankrupt Defendant and permit the case to proceed as to Mr. Gunn.

DISCUSSION

CPLR 603 provides that “[i]n furtherance of convenience or to avoid prejudice the court may order a severance of claims, or may order a separate trial of any claim, or of any separate issue.” “Whether a severance should be directed lies within the sound discretion of the trial court . . . [and] will generally be sustained on appeal[.]” (1 NY Jur. 2d Actions § 72.)

Appellate courts have generally upheld decisions severing a bankrupt defendant from an action because the “automatic stay provisions of the Federal bankruptcy laws do not extend to nonbankrupt codefendants.” (*Merrill Lynch, Pierce, Fenner & Smith, Inc., v Oxford Venture Partners, LLC*, 13 AD3d 89, 89 [1st Dept 2004]; see also *Golden v Moscovitz*, 194 AD2d 385 [1st Dept 1993] [upholding decision to sever bankrupt corporate defendant from action and allowing action to proceed against individual defendants who had absolutely and unconditionally personally guaranteed loan in default].) The severance of a bankrupt defendant is prudent where a plaintiff would be “unduly prejudiced if required to await the conclusion of lengthy and complex reorganization proceedings before obtaining any remedy.” (*Lottes v Slater*, 114 AD2d 438, 439 [3d Dept 1985].)

Here, Citibank would be prejudiced if it had to await the outcome of Vert Gardens’ bankruptcy proceeding before obtaining a remedy on its claim against Mr. Gunn. Thus, the court will sever Vert Gardens from this action.

Plaintiff also seeks summary judgment as to its single claim against Mr. Gunn for breach of guaranty. As noted above, the motion is submitted without opposition.

“The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case.” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985].) “[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] [internal quotation marks omitted], citing *National Westminster Bank USA v Sardi's Inc.*, 174 AD2d 470, 471 [1st Dept 1991].)

Here, the personal guaranty is clear, unambiguous, and “absolutely and unconditionally guarantees to Citibank” that Mr. Gunn will fulfill any debt obligation incurred by Vert Gardens. (NYSCEF Doc No. 2.) Mr. Gunn’s signature and initials appear multiple times in the document. (*Id.* at 6-7.) Not only does Mr. Gunn not dispute or oppose the claim, he even admits in his Answer that he was the guarantor and that he is unconditionally obligated to make the payment under the terms of the agreement. (NYSCEF Doc No. 9 at ¶ 14.)

Thus, the court finds that Citibank has met its burden showing entitlement to judgment as a matter of law. For the reasons set forth above, it is hereby

ORDERED that the action is severed as to Defendant Vert Gardens, Inc.; and it is further

ORDERED that further proceedings in this severed action are stayed as to Defendant Vert Gardens, Inc., except for an application to vacate or modify said stay; and it is further

ORDERED that either party may make an application by order to show cause to vacate or modify this stay upon the final determination of, or vacatur of the stay issued by the Bankruptcy Court in the proceeding *In re Vert Gardens, Inc.*, pending before the United States Bankruptcy Court for the Southern District of New York, Action No. 19-12183-scc; and it is further

ORDERED that Plaintiff's motion for summary judgment as to Mr. Gunn is granted; and it is further

ORDERED that the Clerk shall enter judgment in favor of Plaintiff and against Alexander Gunn in the principal amount of \$192,837.87, plus interest accrued thereon in the sum of \$6,744.77 and late fees in the sum of \$210.00, together with default interest continuing to accrue thereon at the Default Interest Rate of 8% from March 18, 2019 until entry of judgment as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk; and it is further

ORDERED that movant is directed to serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119) within ten days from entry and the Clerk shall mark the action severed as to Defendant Vert Gardens, Inc., and stayed as provided herein; and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases.

Any requested relief not expressly addressed by the court has nonetheless been considered and is hereby denied and this constitutes the decision and order of the court.

2/27/20

DATE

W. FRANC PERRY, 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