

**Lufthansa Technik Aero Alzey GMBH v Synergy
Aerospace Corp.**

2020 NY Slip Op 31402(U)

May 14, 2020

Supreme Court, New York County

Docket Number: 651123/2019

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 3EFM

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LUFTHANSA TECHNIK AERO ALZEY GMBH

INDEX NO. 651123/2019

Plaintiff,

MOTION DATE 12/17/2019

- v -

SYNERGY AEROSPACE CORP.,

MOTION SEQ. NO. 002

Defendant.

**DECISION + ORDER ON
MOTION**

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89 were read on this motion for SUMMARY JUDGMENT.

This is one of two cases in which a Lufthansa entity – here, Plaintiff Lufthansa Technik Aero Alzey GmbH (“LTAA”) – seeks to hold Defendant Synergy Aerospace Corp. (“Synergy”) liable under an unconditional guaranty (the “Guarantee”).¹ LTAA is now seeking summary judgment on its claim for breach of that Guarantee. In opposition, Synergy argues that fact questions surrounding terms in the Guarantee preclude summary judgment. For the reasons set forth below, LTAA’s motion is granted.

BACKGROUND

The Court presumes the parties’ familiarity with the background facts of the case. In a nutshell, Synergy executed a Guarantee in favor of LTAA on October 5, 2017, to secure certain

¹ In the other case, with Index No. 651737/2019, the plaintiff is Lufthansa Technik AG (“LHT”).

obligations and amounts owed by an airline to LTAA under a payment plan agreement² (NYSCEF 72 ¶10 [LTAA Rule 19-a Statement]; *see* NYSCEF 69 [Guarantee]). The Guarantee provided that if the airline “d[id] not pay in time or in full, [Synergy] shall be notified by [LTAA] by email and then [Synergy] shall pay the respective amount of the installment” in accordance with other terms in the Guarantee (NYSCEF 69 ¶1). The airline defaulted under the payment plan on October 31, 2018, when it failed to pay the tenth installment of \$161,667.26 to LTAA (NYSCEF 72 ¶21). The following week, on November 7, LTAA notified Synergy of the airline’s default by email, requesting that Synergy pay the overdue amount within 15 days (*id.* ¶23). Synergy did not pay or otherwise respond. Then, on November 27, LTAA sent a second letter to Synergy, advising that Synergy was now responsible for the full outstanding balance under the payment plan – a total of \$970,003.51 (*id.* ¶26). Synergy did not pay or otherwise respond. Finally, on February 1, 2019, LTAA once again demanded that Synergy pay the full outstanding balance (*id.* ¶29). And once again, Synergy did not pay or otherwise respond (*id.* ¶30).

DISCUSSION

A party moving for summary judgment pursuant to CPLR 3212 must “make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *see also Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Once a prima facie showing has been made, the burden then shifts to the opposing party to produce admissible evidence “sufficient to establish the existence of material issues of fact which require a trial of

² LTAA believes the airline is “a company somehow linked to Synergy,” but the relationship between the companies is unclear on this record and not relevant to deciding the issues before the Court (*see* NYSCEF 67 ¶5 [Hach Aff.]).

the action” (*Alvarez*, 68 NY2d at 324). “[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient” (*Zuckerman*, 49 NY2d at 562; *see Leumi Fin. Corp. v Richter*, 24 AD2d 855, 855 [1st Dept 1965] [“To require a trial such fact issue must be genuine, bona fide and substantial.”] [affirming summary judgment in plaintiff’s favor], *affd*, 17 NY2d 166 [1966]).

“On a motion for summary judgment to enforce an unconditional guaranty, the creditor must prove the existence of the guaranty, the underlying debt and the guarantor’s failure to perform under the guaranty” (*Davimos v Halle*, 35 AD3d 270, 272 [1st Dept 2006], citing *City of New York v Clarose Cinema Corp.*, 256 AD2d 69, 71 [1st Dept. 1998]). “A guaranty is . . . subject to the ordinary principles of contract construction” (*Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A. v Navarro*, 25 NY3d 492 [2015]). Therefore, a written agreement, such as a guaranty, “that is complete, clear, and unambiguous on its face must be enforced according to the plain meaning of its terms” (*see id.* at 493, quoting *Greenfield v Philles Records*, 98 NY2d 562, 569 [2002]).

Synergy does not dispute the existence of the Guarantee, but does identify two issues that it says preclude summary judgment in LTAA’s favor: (1) whether LTAA gave sufficient notice to Synergy to trigger Synergy’s obligations under the Guarantee, and (2) whether LTAA has proffered sufficient proof about the airline’s missed payments. Neither of these arguments, however, raise triable issues of fact.

A. LTAA’s Email Notices to Synergy Satisfied the Terms of the Guarantee

First, there is no triable fact issue over whether LTAA’s multiple emails to Synergy constituted sufficient notice under the Guarantee. Section 1(ii) of the Guarantee provides that, “[i]f Airline does not pay in time or in full, [Synergy] shall be notified by [LTAA] by email

and then [Synergy] shall pay the respective amount of the installment in accordance with this Company Guarantee[.]” (NYSCEF 69 [emphasis added]). Section 10 of the Guarantee, meanwhile, prescribes that “[a]ll notices and other communications hereunder shall be made at the addresses by hand delivery,” or by mail or by fax, *except that* “Section 1(ii) of this Company Guaranty remains unaffected” (*id.*). As mandated under Section 1(ii), LTAA notified Synergy of the airline’s default by email on November 7, 2018 (NYSCEF 70), and for good measure, followed that email with several more emails (*see* NYSCEF 83 ¶¶4, 9-10 [Gutknecht Aff.]). Synergy does not dispute receiving these emails (*see* NYSCEF 76). It is clear, therefore, that LTAA provided sufficient notice to Synergy under the terms of the Guarantee.

Despite this plain language, Synergy detects an “ambiguity” about “whether e-mail alone sufficiently constitutes notice, or whether [LTAA] was required to also deliver notice to Synergy by hand delivery, certified mail or telefacsimile” under Section 10 (*id.*). That mystery is solved by Section 10 itself, which explicitly states that the hand delivery, mail, and fax requirements do not apply to notice under Section 1(ii) – *i.e.*, that “Section 1(ii) . . . remains unaffected” (*id.*). Synergy insists that this language “in no way definitively resolves the ambiguity, particularly at this stage of the litigation,” and recites a string of well-worn interpretive standards governing motions for summary judgment (*id.*). While those may be accurate statements of the law, Synergy fails to come up with any actual ambiguity in the text of the Guarantee.

B. LTAA Provided Adequate Proof of the Airline’s Missed Payments

Second, there is no triable issue of fact regarding proof of the airline’s missed payments. “[S]ubmission of an unconditional guaranty along with an affidavit of nonpayment is sufficient for a judgment under CPLR 3212” (*RCG LV Debt IV Non-Reit Assets Holdings, LLC v Ringel*, 54 Misc 3d 1205(A) [Sup Ct, NY Cty 2016], quoting *European Am. Bank & Trust Co. v*

Schirripa, 108 AD2d 684, 684 [1st Dept 1985]; *see Thor Gallery at S. Dekalb, LLC v Reliance Mediaworks (USA) Inc.*, 143 AD3d 498 [1st Dept 2016] [holding that affidavits from CFO and accounts receivable manager, which included a table of all payments by a defaulting tenant, were sufficient to prove the underlying debt and the guarantor's breach]). Here, LTAA submits the affirmation of its COO, Michael Hach, attesting to Synergy's non-payment under the Guarantee (*see* NYSCEF 67). Moreover, the Guarantee itself shows how the underlying amount, plus interest, is calculated (NYSCEF 69). To the extent Synergy now demands additional proof, "such as cancelled checks or wire transfer notices" (NYSCEF 76), after failing to respond to prior communication from LTAA, those additional requirements find no support in the Guarantee or the governing law.

Therefore, it is:

ORDERED that LTAA's motion for summary judgment is Granted; it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of Plaintiff Lufthansa Technik Aero Alzey GMBH and against Defendant Synergy Aerospace Corp. in the amount of \$970,003.51, together with interest at the statutory rate from the date of October 31, 2018, until the date of the decision and order on this motion, and thereafter at the statutory rate, as calculated by the Clerk, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; it is further

ORDERED that the portion of Plaintiff's motion seeking reasonable attorneys' fees, costs and disbursements is severed, and those issues are referred to a Judicial Hearing Officer (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/suptctmanh at the "Local Rules" link), shall assign this matter to an available Special Referee to determine as specified above; it is further

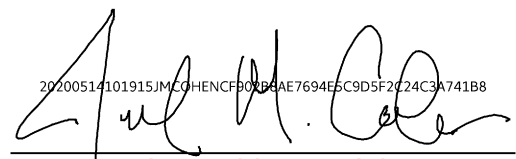
ORDERED that Plaintiff's counsel shall serve a copy of this order with notice of entry on defendants within five days and that counsel for Plaintiff shall, after thirty days from service of those papers, submit to the Special Referee Clerk by fax (212-401-9186) or email an Information Sheet (which can be accessed at <http://www.nycourts.gov/courts/1jd/suptctmanh/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

ORDERED that Plaintiff shall serve this Order with Notice of Entry on Defendant within 5 days of the date of this Order, unless additional time is needed in light of the public health situation.

This constitutes the Decision and Order of the Court.


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JOEL M. COHEN, J.S.C.

5/14/2020
DATE

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input checked="" type="checkbox"/> REFERENCE