

Santander Bank, N.A. v Capri N.Y. Ltd.
2020 NY Slip Op 32314(U)
July 14, 2020
Supreme Court, New York County
Docket Number: 150412/2019
Judge: Debra A. James
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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. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

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INDEX NO. 150412/2019

SANTANDER BANK, N.A.,

MOTION DATE 11/07/2019

Plaintiff,

MOTION SEQ. NO. 001

- v -

CAPRI NEW YORK LTD. and MARCO PIPOLO,

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41

were read on this motion for

JUDGMENT - SUMMARY

ORDER

Upon the foregoing documents, it is

ORDERED that the plaintiff's motion for summary judgment on the complaint herein is granted to the extent that the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendants in the sum of \$ 103.434.27 , with interest at the rate of 17.5% per annum from the date of December 20, 2018, until the date of the decision on this motion, and thereafter at the statutory rate, as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the foreclosure of plaintiff's security interests in all of the Borrower's assets and personal property

(Collateral), in accordance with the requisites of UCC § 9-101 et seq, is directed; and it is further

ORDERED that defendants and their agents, employees, officers, assigns, representatives and all other persons in active concert and participation with such defendants are enjoined from moving, selling, assigning, transferring, secreting or otherwise disposing of the Collateral; and it is further

ORDERED that defendants are directed to assemble and deliver to plaintiff possession of collateral, including but not limited to inventory, equipment, machinery, fixtures and furnishings, or in the alternative, make such Collateral available to plaintiff at a reasonably convenient time and place; and, it is further

ORDERED, should the defendants fail to assemble and deliver possession of the Collateral to the plaintiff, upon further application of the plaintiff, the court shall issue an order of seizure as to the Collateral or so much thereof which has not been surrendered and delivered by the defendants to plaintiff, directing defendants to turn over the Collateral to the Marshal, Sheriff and/or other appropriate legal authority, and if the defendants fails to turn over to Collateral as aforesaid, that the Marshal, Sheriff, and/or any other appropriate legal authority may break open, enter and search for the Collateral and/or proceeds thereof at 777 Third Avenue, New York, New York 10017 , or wherever

such Collateral and/or the proceeds thereof may be located whether within or with the State of New York; and it is further

ORDERED and ADJUDGED that the issue of reasonable attorney's fees to be assessed against defendants CAPRI NEW YORK LTD and MARCO PIPOLO is severed, shall continue, and is referred for determination pursuant CPLR 3215 (b) to a Special Referee and that within 60 days from the date of this Order the plaintiff shall cause a copy of this order with notice of entry, including proof of service thereof, to be filed with the Special Referee clerk (Room 119M, 646-386-3028 or spref@courts.state.ny.us) to arrange a date for a reference to determine pursuant to CPLR 4317 (b); and it is further

ORDERED and ADJUDGED that pursuant to CPLR 3215 (b) the Clerk is directed to enter judgment in favor of plaintiff MSQ ELECTRIC CORP. and against defendants MCGOVERN & COMPANY, LLC and DANIEL MCGOVERN in accordance with the report of the aforementioned Special Referee without any further application.

DECISION

Plaintiff brings this action upon an unpaid promissory note and guaranty. Defendants do not dispute the execution of same and the only defense they raise on plaintiff's pre-discovery summary judgment motion is that the individual defendant did not intend to be personally bound. The court finds that argument unavailing according the express terms of the instruments. See

Abele Tractor Equipment Co., Inc. v Trustco Bank Corp., 167 AD3d
1256 (3d Dept. 2018).

07/14/2020
DATE

Debra A. James
DEBRA A. JAMES, 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