

Marisol Holdings LLC v Imagine Airport Ventures LLC
2020 NY Slip Op 33679(U)
November 2, 2020
Supreme Court, New York County
Docket Number: 654908/2019
Judge: Louis L. Nock
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LOUIS L. NOCK PART IAS MOTION 38EFM

Justice

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MARISOL HOLDINGS LLC,

Plaintiff,

- v -

IMAGINE AIRPORT VENTURES LLC and SOLOMON
CRAYTON,

Defendants.

-----X

INDEX NO. 654908/2019

MOTION DATE 09/05/2019

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 10, 11, 13, 14, 15, 16, 17, 18, 19

were read on this motion to/for SUMMARY JUDGMENT(BEFORE JOIND).

Upon the foregoing documents, the motion of plaintiff Marisol Holdings LLC (“Plaintiff”) for summary judgment in lieu of complaint is granted, in accord with the following memorandum decision.

CPLR 3213 provides that “[w]hen an action is based upon an instrument for the payment of money only or upon any judgment, the plaintiff may serve with the summons a notice of motion for summary judgment and the supporting papers in lieu of a complaint” (see *Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A., “Rabobank Intl.,” N.Y. Branch v Navaro*, 25 NY3d 485, 491-492 [2015]). “The purpose of CPLR 3213 is ‘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’” (*SpringPrince, LLC v Elie Tahari, Ltd.*, 173 AD3d 544, 545 [1st Dept 2019], quoting *Weissman v Sinorm Deli*, 88 NY2d 437, 443 [1996]). A promissory note qualifies as an instrument for the payment of money only for the purposes of a CPLR 3213 motion “if a prima

facie case would be made out by the instrument and a failure to make the payments called for by its terms” (*Sinorm Deli*, 88 NY2d at 444). “The instrument does not qualify if outside proof is needed, other than simple proof of nonpayment or a similar de minimis deviation from the face of the document” (*id.*).

Plaintiff has met its *prima facie* burden by submitting, *inter alia*, a copy of the Note signed by defendant Solomon Crayton (“Crayton”) on behalf of himself individually and on behalf of defendant Imagine Airport Ventures, LLC (“IAV”), in his capacity of CEO (Binn aff, exhibit A), and the affidavit of Marisol Binn, the sole member of Plaintiff. In the affidavit, Binn attests that Plaintiff loaned Crayton and IVA (together, “Defendants”), jointly and severally, \$450,000 pursuant to a promissory note dated January 26, 2018 (the “Note”) (Binn aff in support ¶ 7, exhibit A), and that Defendants defaulted pursuant to the terms of the Note by failing to make an interest payment due on March 31, 2018 and other interest payments due thereafter. Binn also attests to the amounts currently due under the Note, which includes principle in the amount of \$450,000, with interest accrued from the date of default (Binn aff ¶ 12). Plaintiff also seeks an award of attorneys’ fees incurred to enforce the Note.

By a brief affidavit, defendant Crayton appeared in this action and opposed the motion, “requesting that all claims and [the] case be dismissed on the grounds that the Plaintiff sought to dissolve the business enterprise” (NYSCEF Doc No 16). No explanation of the business enterprise referred to is offered, but a supplementary affidavit of Marisol Binn elucidates that the loan memorialized by the Note was taken in order to “finance Defendant’s interest in an airport concession business known as Spa Here DFW LLC” (“Spa Here”) (Binn reply aff ¶ 5). Plaintiff holds an 80% ownership interest in the venture and IAV holds a 20% interest (*id.* ¶ 5). Binn asserts that she has no intention of dissolving the Spa Here business, and also attests that Crayton

defaulted on his obligation to manage the day-to-day affairs of the spa (*id.* ¶ 6, 8). Crayton’s allegation that Plaintiff sought to dissolve the business agreement fails to raise a defense as a matter of law. First, although Crayton has the right to appear *pro se* in this action, he cannot appear on behalf of IAV, which must appear by an attorney licensed in New York (NY CPLR 321 [a]; *Salt Aire Trading LLC v Sidley Austin Brown & Wood, LLP*, 93 AD3d 452, 453 [1st Dept 2012]; *Michael Reilly Design, Inc. v Houraney*, 40 AD3d 592, 593 [2d Dept 2007] [“like a corporation or a voluntary association, the LLC make only be represented by an attorney and not by one of its members who is not an attorney admitted to practice in the State of New York”]). Furthermore, Defendants’ obligation to make payments under the Note is not contingent on the continued existence of the business venture. Thus, Crayton fails to raise an issue of fact which requires a trial (*see Dallas-Stephenson v Waisman*, 39 AD3d 303, 306 [1st Dept 2007], citing *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]), and Plaintiff is entitled to summary judgment. Plaintiff’s motion is, therefore, granted.

Additionally, Plaintiff is entitled to an award of reasonable attorneys’ fees. “Under the general rule in New York, attorneys’ fees are deemed incidental to litigation and may not be recovered unless supported by statute, court rule or written agreement of the parties” (*Flemming v Barnwell Nursing Home and Health Facilities, Inc.*, 15 NY3d 375, 379 [2010]). In the present instance, Plaintiff is entitled to an award of attorneys’ fees because the Note contains a provision for the award of such fees (Binn aff, exhibit A § 11 [h]). Nevertheless, Plaintiff did not submit any invoices or identify the amount of legal fees it seeks. Plaintiff may, therefore, file a note of issue and seek inquest for reasonable attorneys’ fees.

Accordingly, it is

ORDERED that the motion of plaintiff Marisol Holdings LLC for summary judgment against defendants Imagine Airport Ventures, LLC and Solomon Crayton is granted, and the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendants, jointly and severally, in the sum of \$450,000, with interest at the rate of ten percent (10%) from August 15, 2019, 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 sum of reasonable attorneys' fees, costs and other amounts expended by Plaintiff for enforcement of the Note, as set forth herein, shall be set down for an inquest to determine the appropriate amount due, and Plaintiff shall file a Note of Issue, pay the appropriate fees, and the action shall be placed on the calendar for such assessment; and it is further

ORDERED that the Clerk shall enter judgment accordingly.

Louis L. Nock

<u>11/2/2020</u>				<u>LOUIS L. NOCK, J.S.C.</u>	
DATE					
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