

La Mancha Funding #10 LLC v Paramount Sports & Entertainment Mgt., LLC
2020 NY Slip Op 33803(U)
November 13, 2020
Supreme Court, New York County
Docket Number: 650867/2020
Judge: Melissa A. Crane
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
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 PART 15
Justice

LA MANCHA FUNDING #10 LLC,

Plaintiff,

Index No.: 650867/2020

Motion Seq. No.: 001

- against -

PARAMOUNT SPORTS & ENTERTAINMENT
MANAGEMENT, LLC,

The following papers, numbered _ to _ were read on this motion to/for _____.

Notice of Motion/Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

CROSS-MOTION: YES NO

PAPERS NUMBERED

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

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

In this action for payment of money, plaintiff La Mancha Funding #10 LLC (La Mancha), moves, pursuant to CPLR 3213, for summary judgment, in lieu of filing a complaint, against defendant Paramount Sports & Entertainment Management, LLC (defendant or Paramount), on the unconditional, absolute, and irrevocable promise to repay a promissory note, dated November 19, 2018, in the amount of \$700,000.00, agreed to by all parties hereto (Promissory Note); (b) awarding to La Mancha judgment in the amount of \$733,419.35, representing the total outstanding principal balance and outstanding interest payments due and owing to plaintiff, as of February 1, 2020, plus prejudgment and post judgment interest, attorneys' fees, costs and expenses incurred by plaintiff in enforcing its rights.

The motion is unopposed.

Background

On or about November 19, 2018, defendant executed the Promissory Note, wherein defendant unconditionally promised to pay Plaintiff \$700,000.00 by "(i) December 19, 2019 (the

“Maturity Date” or (ii) the date on which the indebtedness otherwise becomes immediately due and payable hereunder” (Promissory Note, ¶ 2.1 [c], NYSCEF Doc. No. 4). Under the Promissory Note’s terms, defendant is in default if it fails to make any payment under the Note within five (5) days after the due date for the payment, among others (*id.*, ¶ 5 [i]).

According to David Kushner, president of La Mancha, on December 19, 2019, i.e., the Maturity Date, defendant failed to remit any payment nor did defendant make any payment by December 24, 2019 (Kushner aff, ¶¶ 8-10; NYSCEF Doc. No. 3). On December 24, 2019, plaintiff notified defendant that it had defaulted on the Note (*id.*, ¶ 9). As of February 1, 2020, defendant continues to fail to honor its payment obligations, and ignores plaintiff’s demand for payment (*id.*, ¶ 10). As of the date of the motion, no principal payments on the Note have been remitted by defendant to plaintiff (*id.*, ¶ 8).

Following an “Event of Default,” the entire outstanding principal balance of the Note accrues interest at a default rate (the "Default Interest") of twenty-four percent (24%) per annum (Promissory Note, ¶ 6.1). In the event of default, the parties agreed that New York Law would govern interpretation of the Note, and that in the event of default, Borrower would pay any costs Lender incurred in enforcing the Note, including attorneys’ fees and expenses and court costs (*id.*, ¶¶ 6.3, 10.11). The parties also agreed that plaintiff could pursue any remedy available to it at law or equity under any of the loan documents (*id.*, ¶ 6.4).

Plaintiff claims that as of February 1, 2020 defendant accrued \$33,419.35 in interest, owing an outstanding balance of \$733,419.35 (Kushner aff, ¶¶ 7, 10).

Discussion

Pursuant to CPLR 3213, “when 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.” The purpose of the

statute “is to provide an accelerated procedure where liability for a certain sum is clearly established by the instrument itself” (*G.O.V. Jewelry, Inc. v United Parcel Serv.*, 181 AD2d 517, 517 [1st Dept 1992]).

A promissory note may qualify as such an instrument, so long as the plaintiff submits proof of the existence of the note and of the defendant's failure to make payment (*Bonds Financial, Inc. v Kestrel Technologies, LLC*, 48 AD3d 230 [1st Dept 2008]; *Seaman-Andwall Corp. v Wright Machine Corp.*, 31 AD2d 136 [1st Dept 1968], *affd* 29 NY2d 617 [1971]). To establish prima facie entitlement to judgment on a promissory note, a plaintiff must show the existence of a promissory note executed by the defendant and the failure of the defendant to pay in accordance with the note's terms (*Griffon V, LLC v 11 East 36th, LLC*, 90 AD3d 705 [2d Dept 2011]; *see also Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A., “Rabobant Intl.,” N.Y. Branch v Navarro*, 25 NY3d 485, 492 [2015]).

Here, the Promissory Note considered together with Kushner’s supporting affidavit as to defendant’s default sufficiently establish plaintiffs’ prima facie entitlement to summary judgment. Defendant, who has neither appeared nor submitted any opposition to this motion despite having been personally served with the papers on February 12, 2020 (*see* affidavit of service, NYSCEF Doc. No. 8), has failed to rebut that prima facie showing by proffering evidentiary proof sufficient to raise a triable issue. The motion is, therefore, granted.

Accordingly, it is

ORDERED that the motion by plaintiff La Mancha Funding #10 LLC is granted on default, and the Clerk is directed to enter judgment in favor of plaintiff, and against defendant Paramount Sports & Entertainment Management LLC, in the principal amount of \$733,419.35, together with interest at the rate of 24% per annum from December 19, 2019, 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.

DATED: November 13, 2020


MELISSA A. CRANE, J.S.C.

Check one: FINAL DISPOSITION ✓ NON-FINAL DISPOSITION

Check if appropriate: MOTION IS: GRANTED IN PART

Check if appropriate: DO NOT POST REFERENCE SETTLE ORDER SUBMIT ORDER
FIDUCIARY APPOINTMENT