

**Santander Bank, N.A. v Cheap Apparel Shopping
LLC**

2020 NY Slip Op 34267(U)

December 22, 2020

Supreme Court, New York County

Docket Number: 158367/2019

Judge: Alan C. Marin

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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
COUNTY OF NEW YORK

SANTANDER BANK, N.A.,

Plaintiff,

-against-

DECISION and ORDER

Index no. 158367/2019

Motion no. 001

CHEAP APPAREL SHOPPING LLC and
SAIDUL KIBRIA,

Defendant.

The Court has considered efiled documents 1-6, 8-27, and 29-31.

Defendant Cheap Apparel Shopping LLC ("borrower") executed a \$50,000 promissory note with Santander Bank, N.A. on June 7, 2018, whereby the Bank extended the borrower a commercial line of credit up to that amount. Interest was to be paid monthly, beginning July 7, 2018. The principal and any unpaid interest were due on June 7, 2019 (document 2).

Plaintiff and borrower on that date, on June 7, 2018, also entered into a business loan agreement and defendant Saidul Kibria signed a guarantee for the note and the related or line-of-credit documents. (documents 3 and 4).

The borrower failed to make payments beginning April 7, 2019 and continuing thereafter (the verified complaint, document 1 paragraph 14). By letter dated June 17, 2019, Santander Bank formally notified the defendants that the borrower was in default on the promissory note. There is no reply letter from Mr. Kibria in the record.

On August 27, 2019, Santander filed a summons and complaint, to which defendants failed to answer or otherwise respond. Plaintiff then submitted a proposed judgment to the County Clerk, dated November 8, 2020, for: 1) the amounts in the complaint - - \$50,280 with a late fee of \$75 and \$1,499.67 in interest through July 10, 2019; plus 2) interest from July 11 through September 18, 2019 for \$1,286.68 and \$923.90 for the period from September 19, 2019. The proposed judgment totaled \$54,615.25, along with costs of \$550 (document 9).

The County Clerk returned the proposed judgment for correction on November 22, 2019 for the following reasons:

The complaint seeks a principal amount greater than the amount in the promissory note.

The clerk cannot calculate interest on top of interest. The interest on the account prior to default is equal to the prime rate plus 1%. The complaint seeks interest accrued prior to the event of default. Upload an account ledger showing the calculations of interest and what was paid by defendant. Interest after default is the prime rate plus 8%. The additional 0.50% is only due upon a Preferred Rate reduction Termination Event as outlined in the promissory note. Please upload an affirmation listing the applicable termination event that occurred and the date when said event occurred. For clerk to liquidate the amount owed (including late fees) and enter judgment for the account stated cause of action, upload the statements sent to the defendant. (Document 27).

Santander Bank filed for default against defendants Cheap Apparel Shopping and Saidul Kibria on September 24, 2010. No opposition has been submitted by defendants. Santander's motion papers included an affidavit from its vice-president, Robert L. Hewitt with a payment history and account statement among the attached exhibits.

The payment history shows that Cheap Apparel made a \$20,000 payment on December 13, 2018 against that amount of the outstanding principal, eliminating the balance due. In February of 2019, Santander made advances of \$40,000, \$8,000 and \$2,000, pushing the borrower's balance owed on principal up to the \$50,000 ceiling for the note or line of credit (document 19).

Mr. Hewitt explained why the amount of the principal balance exceeded \$50,000 by \$280¹: "[T]he \$280.00 was needed to cover the negative balance in the Borrower's checking access account and as such, constituted an "advance"" (document 14, paragraph 23).

Hewitt set out the interest rates and accrued interest for the relevant time periods, in accordance with the promissory note (*id.*, paragraph 29):

Interest Rate	Time Period	Accrued and Unpaid Interest
13.75%	Through 7/10/2019	\$1,499.67
13.75%	7/11/19-9/17/19	1,267.48
13.50%	9/18/19-10/29/19	773.06
13.25%	10/30/19-3/2/20	2,257.71
12.75%	3/3/20-3/14/20	195.88
11.75%	3/15/20-9/21/20	<u>3,052.42</u>
		\$9,046.22 Total

Robert L. Hewitt indicated that plaintiff's Loan Interest and Payment Bill (the account statement, document 20), dated August 27, 2019, was sent to the borrower in the ordinary course of

¹ See the Payment History, document 19.

business and no objection was received (*id.*, paragraph 37). He added that:

The Account Statement further reflects the correct amount of outstanding principal due under the Note (\$50,280.00) [as well as reflecting] the amount of outstanding, accrued and unpaid interest and late charges as of said date. The amount sought in the Complaint with respect to interest and late charges is actually less than the amounts set forth in the Account Statement as the Account Statement encompasses a period subsequent to the interest calculations set forth in the Complaint. (Document 14, paragraphs 38 and 39).

* * *

The requisites of CPLR § 3215 for default are proof of the facts underlying the claim (subdivision f) and notice to defendant that plaintiff is seeking such (subdivision g). Subdivision (g) is satisfied with the affidavits that on September 24, 2020, the defendants were mailed notice of this default motion with plaintiff's supporting documents.²

With respect to subdivision (f), we have a verified complaint, the affidavit of facts from Robert L. Hewitt, as well as a payment history and account stated (documents 1, 14, 19 and 20). The Court of Appeals has held:

The affidavit or verified complaint need only allege enough facts to enable a court to determine that a viable cause of action exists. Indeed, defaulters are deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them . . . (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 70-71).

The affidavit of Santander Robert L. Hewitt was both detailed and clear. Plaintiff is entitled to a default judgment against defendants in the amount of \$59,401.22 (\$50,280 principal plus \$9,046.22 in interest through September 21, 2020 plus a \$75 late charge³), with interest at the contractual rate of 11.75% from September 22, 2020 to the date of entry of judgment.

NOW therefore, in view of the foregoing,

IT IS ORDERED that motion no. 001 by plaintiff is granted for a default judgment against defendants Cheap Apparel Shopping LLC and Saidul Kibria in the amount of \$59,401.22 with interest from September 22, 2020 at the rate of 11.75% to the date of entry of judgment, together with costs and disbursements.


² Document 10 is an affidavit that, according to the Department of Defense's Manpower Data Center, defendant Sadul Kibria was not in military service as of October 30, 2019.

³ Other late charges were waived by Santander.

The County Clerk is directed to enter judgment accordingly. A copy of this Order with notice of entry shall be served upon the County Clerk.

ENTER

December 22, 2020



Alan C. Marin J.S.C.

ALAN C. MARIN
JUSTICE OF THE SUPREME COURT