

Merchant Advance, LLC v 2331 Roadside, LLC

2021 NY Slip Op 30152(U)

January 13, 2021

Supreme Court, New York County

Docket Number: 654353/20

Judge: Margaret A. Chan

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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. MARGARET A. CHAN PART IAS MOTION 33EFM

Justice

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MERCHANT ADVANCE, LLC

Plaintiff,

- v -

2331 ROADSUDE, LLC and KARL F. WILLIAMS,

Defendants.

INDEX NO.
654353/20

MOTION DATE
1-13-21

MOTION SEQ. NO.
001

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001)
6,7,8,9,10,11,12,13,14,15,16,17

were read on this motion to vacate et al _____.

In this application arising out of a money judgment filed against them by plaintiff Merchant Advance, LLC (“Merchant”), defendants move for an order (i) granting summary judgment in their favor, (ii) vacating a money judgment, (iii) dismissing based on documentary evidence, (iv) compelling Merchant to file a satisfaction of judgment and to return \$3,000 to defendant Karl Williams (“Williams”), and (v) awarding attorneys’ fees and sanctions. Merchant opposes the motion.

Background

On April 18, 2019, defendant 2331 Roadside, LLC (“Roadside”) entered into an agreement with Merchant for the purchase and sale of future receipts, under which Roadside received \$50,000 in exchange for receipts totaling \$66,000 (“Agreement”) (NYSCEF #4). Williams and non-party Julie S. Bogen-Grunberger (“Bogen-Grunberger”), who are officers and owners of Roadside, each executed a personal guaranty of performance of the Agreement, and confessions of judgment in the amount of \$66,000 (NYSCEF #4). Each of the personal guaranties provided that the “[g]uarantor hereby irrevocably, absolutely and unconditionally guarantees to [Merchant] prompt and complete performance of all of [Roadside’s] obligations under the Purchase Agreement.”

Roadside initially performed under the Agreement and made payments totaling \$30,930.87 prior to its default on September 20, 2019, leaving a remaining balance of \$35,069.13. On September 20, 2019, counsel for plaintiff efiled a

confession of judgment executed by Williams (NYSCEF #1); an Affidavit of Facts (NYSCEF #2), a proposed Judgment by Confession against Roadside and Williams in the amount of \$37,077.05 (NYSCEF #3), and a copy of the Agreement (NYSCEF #4).

On September 23, 2019, plaintiff's director of Legal Affairs, Mitchell Levy, executed a document on behalf of Merchant (hereinafter "the Release") which provides, in relevant part, that:

"Merchant ... hereby agrees to accept \$17,500.00 as full and final satisfaction of the total obligation owing of \$35,039.00 pursuant to the terms listed below....

The required date of payment is as follows: \$17,500.00 on or before the 25th of September 2019.

Upon receipt of the above payment, all obligations and liabilities of ... Roadside and the guarantor ... Bogen-Grunberger shall be irrevocably satisfied and paid in full

We shall release and forever discharge ...Roadside, its parents, subsidiaries, all related or affiliate corporations or other entities, including ... Bogen-Grunberger and her successor, assigns, from and against any and all claims, demands, actions ... suits, proceedings, debts, judgments...."

(NYSCEF # 8).

On September 24, 2019, Bogen-Grunberger made the payment of \$17,500 as per the Release (NYSCEF # 9). On September 26, 2019, Williams made a payment of \$3,000 (*id*). On September 10, 2020, a money judgment in the amount of \$40,766.84, consisting of a default amount of \$35,069.13 together with interest and other fees, was filed in by County Clerk against Roadside and Williams (NYSCEF # 5).

Roadside and Williams now move by order to show cause to vacate the judgment, and for related relief, including compelling Merchant to file a satisfaction of judgment and return the \$3,000 paid by Williams, and to remove any restraints on Williams' bank account based on such judgment. In his affidavit in support of the motion, Williams states that when he paid \$3,000 on September 26, 2019, he did not know that Bogen-Grunberger had settled the matter by paying \$17,500 on September 24, 2019 (NYSCEF # 14).

Merchant opposes the motion, arguing that the Release does not cover Williams as it is addressed to Roadside and Bogen-Grunberger and does not mention Williams. In support of its position, Merchant relies on the language of the Release and an email exchange on September 20, 2020, among Merchant's collections team, stating, *inter alia*, "[w]e will be accepting a \$17,500 [settlement in full] for Julie [Bogen-Grunberger] and the business. This does not release Karl [Williams]. I will pursue Karl [Williams] for the balance." (NYSCEF #17).

Discussion

"It is well established that a valid release constitutes a complete bar to an action on a claim which is the subject of the release." *Global Minerals & Metals Corp. v Holme*, 35 AD3d 93, 98 [1st Dept 2006], *lv denied* 8 NY3d 804 [2007]. Moreover, "a valid release which is clear and unambiguous on its face and which is knowingly and voluntarily entered into will be enforced as a private agreement between parties" (*Skluth v United Merchants & Manufacturers, Inc.*, 163 AD2d 104, 106 [1st Dept 1990], *app withdrawn* 79 NY2d 976 [1992] [internal quotation and citation omitted]). The Court of Appeals has characterized a release as "a jural action of high significance without which the settlement of disputes would be rendered all but impossible" (*Mangini v McClurg*, 24 NY2d 556, 563 [1969]; *see also Toledo v West Farms Neighbor Development Fund Co., Inc.*, 34 AD3d 228, 229 [1st Dept 2006]).

Here, while the judgment is filed against Roadside, the express language of the guaranty discharged the debt arising out of the Agreement as against Roadside. Specifically, under the Release, Merchant agreed "to accept \$17,500.00 as full and final satisfaction of the total obligation owing of \$35,039.00." The Release also provided that upon receipt of the \$17,500 payment "all obligations and liabilities of . . . Roadside and the guarantor . . . Bogen-Grunberger shall be irrevocably satisfied and paid in full [and that Merchant] . . . shall release and forever discharge . . . Roadside, its parents, subsidiaries, all related or affiliate corporations or other entities, including . . . Bogen-Grunberger and her successor, assigns, from and against any and all claims, demands, actions . . . suits, proceedings, debts, judgments."

As for Williams, although he is not specifically mentioned in the Release, as his liability to Merchant was solely as guarantor of Roadside's obligations under the Agreement, he would not be subject to liability upon the discharge of Roadside from liability (*see Jones v Gelles*, 125 AD2d 794, 795 ["[a] creditor's release of the principal on a promissory note generally acts to discharge the guarantor as a matter of law"]; *Compagnie Financiere de CIC et de L'Union Europeenne v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 188 F3d 31, 34 [2d Cir 1999] [stating that under New York law, the "creditor's release principal debtor operates to discharge parties such

as guarantors, who are only secondarily liable on a debt. . .”).¹ As the Release unambiguously discharges the debt of Roadside and operates to discharge Williams’ debt based on the guaranty, the parole evidence submitted by Merchants in the form of an email exchange need not be considered. (*See generally, W.W.W. Associates, Inc. v. Giancontieri*, 77 NY2d 157 (1990).)

Accordingly, defendants’ motion is granted to the extent of vacating the judgment filed against them by Merchant on September 10, 2020 (NYSCEF # 5), and vacating any restraints on Williams’ bank account based on such judgment. However, in the absence of an action asserting a claim, defendants’ request for affirmative relief, including the return of the \$3,000 to Williams must be denied. And, CPLR 3124, on which defendants relies, relates to disclosure, and does not provide a basis for compelling the filing of a satisfaction of a judgment. Finally, there is no basis for awarding sanctions or attorneys’ fees.

Conclusion

Accordingly, it is

ORDERED that defendants’ motion is granted to the extent that the money judgment filed on September 10, 2020 in favor of Merchant and against defendants Roadside and Williams (NYSCEF # 5) is hereby vacated and set aside, and therefore any restraints of based on such judgment are also be vacated; and it is further

ORDERED that defendants shall serve a copy of this order upon the Clerk of the Court in accordance with the Protocol on Courthouse and County Clerk Procedures for Electronically File Cases (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/suptmanh).

1/13/2020

DATE

MARGARET A. CHAN, J.S.C.

MARGARET A. CHAN, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED		
<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input type="checkbox"/>	NON-FINAL DISPOSITION		
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:

¹While a debt may be enforced against a guarantor where the provisions of the guaranty preclude a guarantor from raising a defense of release, these issues are not before the court.