

Jenzack Partners, LLC v Remi Capital, Inc.
2021 NY Slip Op 31397(U)
April 16, 2021
Supreme Court, New York County
Docket Number: 654049/2020
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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JENZACK PARTNERS, LLC,
Plaintiffs,
- v -
REMI CAPITAL, INC., and ERIK A. KAISER,
Defendants.

INDEX NO. 654049/2020
MOTION DATE
MOTION SEQ. NO. 001
DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8 were read on this motion to/for SUMMARY JUDGMENT (BEFORE JOINDER).

Upon the foregoing documents, the motion of plaintiff Jenzack Partners, LLC ("Plaintiff") for summary judgment in lieu of complaint is granted on default and without opposition.

Discussion

On September 1, 2010, a money judgment in the amount of \$1,560,430.24 (the "Judgment") was entered in favor of Sovereign Bank, N.A. and against defendants Remi Capital, Inc. ("Remi Capital") And Erik A. Kaiser ("Kaiser") (together, "Defendants"), jointly and severally, in the United States District Court for the District of New Jersey (Eisman Affidavit ¶¶ 2-3, NYSCEF Doc 5 [Judgment]). The Judgment was later assigned to the plaintiff Jenzack Partners ("Plaintiff") (id. ¶ 2, NYSCEF Doc 7). Of the original judgment amount, \$113,708.82 remains unsatisfied (Eisman Affidavit ¶ 18). Plaintiff commenced this action on August 26, 2020, by motion for summary judgment in lieu of complaint pursuant to CPLR 3213 and 5014 to renew the Judgment against Defendants. As demonstrated by an affidavit of service filed by

Plaintiff, Kaiser was served with copies of the summons and supporting motion papers (NYSCEF Doc 11). Kaiser did not file opposition to the motion. No affidavit of service was filed demonstrating service on Remi Capital.

A New York money judgment is enforceable for 20 years (CPLR 211 [b]), and it acts as a lien on the judgment debtor's real property for a period of 10 years (CPLR 5203 [a]). After ten years have elapsed since entry of the judgment, the judgment may be "renewed" pursuant to CPLR 5014 (1), which provides that "an action upon a money judgment entered in a court of the state may only be maintained between the original parties to the judgment where . . . (1) ten years have elapsed since the first docketing of the judgment." An action to renew may be commenced "during the year prior to the expiration of ten years since the first docketing of the judgment" (CPLR 5014). Although the property lien associated with the judgment expires ten years after the judgment is first docketed, the judgment is nonetheless enforceable and may be renewed more than ten years after docketing, provided that an action to renew the judgment is commenced within the statute of limitations (*see Rose v Gulizia*, 104 AD3d 757, 757-758 [2d Dept 2013]). A plaintiff will be entitled to a renewal judgment "by demonstrating the existence of the prior judgment, that the defendant was the judgment debtor, that the judgment was docketed at least nine years prior to the commencement of [the] action, and that the judgment remains . . . unsatisfied" (*id.* at 758).

A motion for summary judgment in lieu of complaint may be made where an action is based upon a judgment (*see Lawrence v Kennedy*, 95 AD3d 955, 957 [2d Dept 2012]), and it is governed by the same standards as a motion for summary judgment brought pursuant to CPLR 3212 (*see Gateway State Bank v Shangri-La Private Club for Women, Inc.*, 113 AD2d 791 (2d Dept 1985)). The proponent of a motion for summary judgment pursuant to CPLR 3212 must

establish its entitlement to such relief as a matter of law (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]) by submitting proof in admissible form demonstrating the absence of triable issues of fact (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 (1985)).

Here, Plaintiff has satisfied its *prima facie* burden with respect to Keiser by demonstrating the existence of the prior judgment, that the defendant was the judgment debtor, that the judgment was docketed at least nine years prior to the commencement of this action, and that the judgment remains unsatisfied (*see Premier Capital, Inc. v Dehaan*, 122 AD3d 1414 (4th Dept 2014); *Rose v Gulizia*, 104 AD3d 757 (2d Dept 2013); *see generally Gletzer v Harris*, 12 NY3d 468 (2009); *Levine v Bornstein*, 4 NY2d 241 (1958)). By failing to oppose the motion, Keiser has failed to raise any triable issue of fact. The motion is, therefore, granted as to Kaiser. Whereas Plaintiff has not filed proof of service upon it, the motion is denied as to Remi Capital, with leave to renew upon proof of service on Remi Capital.

Accordingly, it is

ORDERED that the plaintiff's motion is granted in part, and the plaintiff Jenzack Partners, LLC is granted leave to cause to be entered a renewal judgment in its favor and against defendant Erik A. Kaiser in the sum of \$113,708.82, with interest at the statutory rate from September 1, 2010, through the date of satisfaction of judgment, with costs and disbursements as taxed by the Clerk, upon submission of an appropriate bill of costs, and that plaintiff have execution therefor; and it is further

ORDERED that the motion is denied as to defendant Remi Capital, Inc., with leave to renew within 60 days of entry of this order upon the filing of proof of service on said defendant; and it is further

ORDERED that if a renewed motion is not filed within 60 days of entry of this order,

the plaintiff's moving papers, consisting of the summons, notice of motion, memorandum of support, and affidavit of Robert Eisman (NYSCEF Docs 1-8), shall be deemed the complaint in this action; and it is further

ORDERED that counsel are directed to appear for a status conference on June 23, 2021 at 12:00 pm, to be conducted by a Microsoft Teams appearance arranged by the court.

ENTER:

Louis L. Nock

<u>4/16/2021</u>			<u>LOUIS L. NOCK, J.S.C.</u>	
DATE				
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE