

System View Consulting LLC v Dogma Spa LLC
2021 NY Slip Op 31770(U)
May 25, 2021
Supreme Court, New York County
Docket Number: 651774/2021
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 14

Justice

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SYSTEM VIEW CONSULTING LLC,
Plaintiff,

- v -

DOGMA SPA LLC, JUN TAKAMA
Defendants.

-----X

INDEX NO. 651774/2021
MOTION DATE N/A
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 12, 13, 14, 15, 16 were read on this motion to/for JUDGMENT - SUMMARY IN LIEU OF COMPLAINT.

The motion by plaintiff for summary judgment in lieu of complaint is granted.

Plaintiff claims that defendants executed a note in favor of plaintiff in connection with a loan for \$50,000. It asserts that one of the signatories (and guarantors) to the note, Jarvis W. Irving (defendant Takama’s ex-husband), passed away and so plaintiff is not seeking relief against this person. Plaintiff claims that defendants failed to repay the principal before the maturity date (June 1, 2020). It maintains that it sent a notice of default to the defendants on July 15, 2020 that demanded the default be cured by July 25, 2020. Plaintiff argues that defendants did not cure the default.

In opposition, defendants claim that there are issues of fact with respect to whether Jun Takama (a guarantor) “knowingly executed a personal guarantee” and suggest that her husband (Jarvis Irving) assured her that she would not be personally liable for any debts. Defendants characterize this as a false and fraudulent promise from Mr. Irving to Takama.

Defendants explain that Takama operated Dogma and that Irving was the accountant. They contend that Irving began to access Dogma's accounts and used it as his personal bank account. They also question whether defendants ever received money under this loan and that there is a lack of evidence as to whether defendants defaulted on their obligations under the note.

In reply, plaintiff emphasizes that it established defendants' default through the affidavits it submitted in support of the motion. It also observes that defendant Takama does not deny defaulting under the terms of the note and that any agreement Takama may have entered into with Irving about assuming Dogma's debts is irrelevant to this case.

Discussion

"CPLR 3213 provides for this accelerated relief where the contract allegedly breached was 'an instrument for the payment of money only.' But the remedy is not available where there are other issues and considerations presented by the writing. For example, this procedural avenue is foreclosed if the liabilities and obligations can only be ascertained by resort to evidence outside the instrument, or if more than simple proof of nonpayment or a de minimis deviation from the face of the document is involved" (*Kerin v Kaufman*, 296 AD2d 336, 337, 745 NYS2d 22 [1st Dept 2002]). "An unconditional guaranty is an instrument for the payment of 'money only' within the meaning of CPLR 3213" (*Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A. v Navarro*, 25 NY3d 485, 492, 15 NYS3d 277 [2015]).

The Court grants the motion. The promissory note attached in support of the motion clearly shows that Dogma executed the subject note and that Irving and Takama guaranteed the loan (NYSCEF Doc. No. 4). And plaintiff submits the affidavit of Mr. Carrier (owner of plaintiff) who claims that defendants defaulted. That establishes plaintiff's prima facie burden on this motion.

Defendants do not raise an issue of fact in opposition. Takama, in her affidavit submitted in opposition, does not dispute that she signed the note and guaranty. Instead, she argues that the Court should look at an assumption of debt agreement she entered into with her now-dead ex-husband Irving (NYSCEF Doc. No. 10). But this agreement has no bearing on the instant dispute. It does not invalidate her signature on the subject note and her agreement with her ex-husband is dated December 21, 2018 while the note is dated January 24, 2018. In other words, the fact that two borrowers entered into a debt agreement twelve months after taking out a loan has no effect on the parties' relationship with the lender (who was not a party to the debt agreement and never let anyone off the hook).

The Court also observes that plaintiff attached a copy of the check it sent to defendant Dogma for the loan amount (NYSCEF Doc. No. 13). Therefore, defendants' claim that it never received any money is insufficient to defeat the motion.


Moreover, Takama admits in her affidavit that she "did not fully read the agreement and relied on Irving's assurances" about her potential liability (NYSCEF Doc. No. 11 at 1). Unfortunately, that does not invalidate the note at issue here. The fact is that defendants took out a loan, personally guaranteed repayment of the loan, defaulted under the loan and now plaintiff seeks recovery pursuant to the parties' agreement. That Takama clearly had some issues with her ex-husband and co-guarantor about the finances of Dogma does not constitute a material issue of fact that could compel the Court to deny the motion.

Accordingly, it is hereby

ORDERED that the motion for summary judgment in lieu of complaint is granted and the Clerk is directed to enter judgment in favor of plaintiff and against defendants jointly and severally in the amount of \$25,269.10 plus interest at the contractual rate from March 17, 2021

until the date of this judgment and then at the statutory rate along with costs and disbursements upon presentation of proper papers therefor.

5/25/2021
DATE


ARLENE P. BLUTH, J.S.C.

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