

Citizens Bank, N.A. v Zyr
2021 NY Slip Op 32177(U)
October 28, 2021
Supreme Court, Kings County
Docket Number: Index No. 508851/21
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

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CITIZENS BANK, N.A.,

Plaintiff,

Decision and order

- against -

Index No. 508851/21

MOSHE ZYRL,

Defendant,

October 28, 2021

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PRESENT: HON. LEON RUCHELSMAN

The plaintiff moves pursuant to CPLR §3212 seeking summary judgement regarding money owed based upon lines of credit and related guarantees. The defendant opposes the motion arguing that the plaintiff has failed to satisfy its burden that there are no questions of fact. Papers were submitted by all parties and after reviewing the arguments of all parties this court now makes the following determination.

Background

On April 11, 2019 the plaintiff extended a line of credit in the amount of \$150,000. The agreement that was executed in connection with the line of credit required monthly payments beginning thereafter. The defendant Moshe Zyrl executed a guaranty on the same date. The defendant failed to make any payments as of August 11, 2020 and was informed that he was now in default and notified him of the default amount. Thereafter this lawsuit was commenced. The plaintiff has now moved seeking summary judgement arguing there are no questions of fact those

amounts remain unpaid. The defendant has opposed the motion arguing the plaintiff has failed to satisfy its burden that no issues of fact exist.

Conclusions of Law

Summary judgement may be granted where the movant establishes sufficient evidence which would compel the court to grant judgement in his or her favor as a matter of law (Zuckerman v. City of New York, 49 NY2d 557, 427 NYS2d 595 [1980]). Summary judgement would thus be appropriate where no right of action exists foreclosing the continuation of the lawsuit.

Generally, it is for the jury, the trier of fact to determine the legal cause of any injury (Aronson v. Horace Mann-Barnard School, 224 AD2d 249, 637 NYS2d 410 [1st Dept., 1996]). However, where only one conclusion may be drawn from the facts then the question of legal cause may be decided by the trial court as a matter of law (Derdiarian v. Felix Contracting Inc., 51 NY2d 308, 434 NYS2d 166 [1980]).

Thus, to succeed on a motion for summary judgement it is necessary for the movant to make a prima facie showing of an entitlement as a matter of law by offering evidence demonstrating the absence of any material issue of fact (Winegrad v. New York University Medical Center, 64 NY2d 851, 487 NYS2d 316 [1985]). Moreover, a movant cannot succeed upon a motion for summary

judgement by pointing to gaps in the opponents case because the moving party must affirmatively present evidence demonstrating the lack of any questions of fact (Velasquez v. Gomez, 44 AD3d 649, 843 NYS2d 368 [2d Dept., 2007]).

It is well settled that where a party introduces evidence of the existence of a line of credit, personal guarantees and the defendant's failure to make payments according to the terms of the instruments then summary judgement is proper (see, JPMorgan Chase Bank N.A., v. Bauer, 92 AD3d 641, 938 NYS2d 190 [2d Dept., 2012]). In this case, the plaintiff submitted the affidavit of Donna Plaisted a recovery officer of the plaintiff who stated that she reviewed the bank's records in connection with the loans extended. She further stated that all the documents she reviewed were maintained in the regular course of business and all such records were made near their occurrence with someone who had knowledge at that time and that the bank's standard practice is to keep such records in the ordinary course of business. Thus, the plaintiff has established the admissibility of the records relied upon since Ms. Plaisted had knowledge of the bank's practices and procedures (see, Cadlerock Joint Venture L.P. v. Trombley, 150 AD3d 957, 54 NYS3d 127 [2d Dept., 2017]). Therefore, the plaintiff established its entitlement to summary judgement.

In opposition, the defendant argues there are questions of


fact whether any funds were actually forwarded to the defendant. However, the plaintiff has presented uncontroverted evidence that such funds were forwarded. Indeed, in this case the plaintiff has surely presented prima facie evidence it is entitled to summary judgement since it has presented uncontroverted evidence of the note, an obligation to pay and evidence of non-payment (Loewenberg v. Basnight, 172 AD3d 1356, 99 NYS3d 661 [2d Dept., 2019]).

The defendant has failed to raise any questions of fact. Consequently, the plaintiff's motion seeking summary judgement is granted.

So ordered.

ENTER:

DATED: October 28, 2021
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC