

<b>La Casa De Salud, Inc. v RV Pharm. Corp.</b>
2021 NY Slip Op 33176(U)
November 1, 2021
Supreme Court, Bronx County
Docket Number: Index No. 809889/2021E
Judge: Eddie J. McShan
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: PART IA-32

LA CASA DE SALUD, INC.,

*Plaintiff,*

*-against-*

RV PHARMACY CORP.

and

JUAN HIDALGO,

*Defendants.*

**DECISION AND ORDER**

INDEX NO.: 809889/2021E

MOTION SEQ. NO.: 001

**PRESENT:**  
**HON. EDDIE J. MCSHAN**

The following e-filed documents, listed on NYSCEF as document numbers 2, 3, 4, 5, 6, 7, 10, 12, 13 (Motion Seq. #001) were read on this motion seeking summary judgment in lieu of complaint.

Upon the foregoing cited papers, the Decision and Order of this Motion is as follows:

Plaintiff’s application for entry of summary judgment in lieu of complaint pursuant to CPLR 3213 is granted without opposition. CPLR 3213 provides, “[w]hen an action is based upon an instrument for the payment of money only or upon any judgment, the plaintiff may serve with the summons a notice of motion for summary judgment and the supporting papers in lieu of a complaint” (*see for example Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A., “Rabobank Intl.,” N.Y. Branch v Navarro, 25 NY3d 485 [2015]*). “The purpose of CPLR 3213 ‘to provide quick relief on documentary claims so presumptively meritorious that a formal complaint is superfluous, and even the delay incident upon waiting for an answer and then moving for summary judgment is needless’” (*SpringPrince, LLC v Elie Tahari, Ltd., 173 AD3d 544 [1<sup>st</sup> Dept 2019]*, quoting *Weissman v Sinorm Deli, 88 NY2d 437 [1996]*).

In the instant matter, Plaintiffs made a *prima facie* showing of their entitlement to

summary judgment against Defendant RV Pharmacy Corp. Plaintiffs established that the parties' Agreement dated January 25, 2021 is an instrument for the payment of a sum of money only, namely \$176,470 to be paid in installments, and that the Agreement requires Defendant RV Pharmacy Corp. "to make certain payments and nothing else" (*see Seaman-Andwall Corp. v Wright Mach. Corp.*, 31 AD2d 136 [1<sup>st</sup> Dept 1968]). There is nothing in the parties' Agreement requiring this Court to "resort to extrinsic material to establish the amounts payable" which would be indicative that the agreement is not an instrument for the payment of money only and therefore, an accelerated judgment pursuant to CPLR 3213 would be inappropriate (*see for example Tradition North America, Inc. v Sweeney*, 133 AD2d 53 [1<sup>st</sup> Dept 1987]).

The Court finds that Plaintiff also established that Defendant RV Pharmacy Corp. has defaulted on its obligation to make the installment payments in accordance with their Agreement. It is undisputed on this record that Defendant RV Pharmacy Corp. failed to tender the agreed upon monthly installments including the initial payment of \$26,470 that was paid at the signing of the Agreement as the check for that payment bounced. Plaintiff sent Defendants a Demand Letter on or about June 14, 2021 accelerating the amount due and Defendant Rv Pharmacy Corp. has not satisfied its obligation. There is nothing on the record to dispute Plaintiff's prima facie case and therefore Plaintiff is entitled to entry of a judgment in the amount of \$176,470 against Defendant RV Pharmacy Corp, plus statutory interest, costs, and disbursements.

The Court further finds that Plaintiff failed to establish a prima facie case for summary judgment against Defendant Juan Hidalgo. It is well settled that the elements of a breach of contract include "the existence of a contract, the plaintiff's performance thereunder, the defendant's breach thereof, and resulting damages" (*see Harris v Seward Park Housing Corp.*,

79 AD3d 425 [1<sup>st</sup> Dept 2010]). “Liability for breach of contract does not lie absent proof of a contractual relationship or privity between the parties” (*see Hamlet at Willow Creek Development Co., LLC v Northeast Land Development Corp.*, 64 AD3d 85 [2d Dept 2009]). Moreover, “[o]ne cannot be held liable under a contract to which he or she is not a party” (*Arroyo v Central Islip UFSD*, 173 AD3d 814 [2d Dept 2019], quoting *Victory State Bank v EMBA Hylan, LLC*, 169 AD3d 963 [2d Dept 2019]).

This Court’s review of the Agreement relied upon by the Plaintiff in the instant matter finds that Defendant Juan Hidalgo signed the agreement as the President of RV Pharmacy Corp. Plaintiff does not establish the existence of an agreement or guaranty with Defendant Juan Hidalgo that would make him a party to the contract and therefor individually liable for Plaintiff’s damages (*Victory State Bank*, 169 AD3d 963). Accordingly, Plaintiff’s application for entry of summary judgment against Defendant Juan Hidalgo must be denied.

In addition, Plaintiff’s request for an award of counsel fees must be denied. It is well settled “[c]ounsel fees may not be recovered unless an award is authorized by agreement between the parties, by statute, or by court rule (*see for example Specialized Products and Services, Inc. v Steelbro International Co., Inc.*, 161 AD3d 1127 [2d Dept 2018]). The Court finds nothing in the parties’ Agreement authorizing an award of counsel fees. Moreover, Plaintiff has not presented a statute or court rule that would authorize an award of counsel fees in this matter.

In light of the foregoing, it is hereby

**ORDERED AND ADJUDGED** that the motion seeking summary judgment in lieu of complaint is hereby granted against Defendant RV Pharmacy Corp. in accordance with the Court’s findings hereinabove; and it is further

**ORDERED AND ADJUDGED** that the motion seeking summary judgment in lieu of complaint is hereby denied against Defendant Juan Hidalgo in accordance with the Court's findings hereinabove; and it is further

**ORDERED AND ADJUDGED** that the Clerk shall enter judgment in favor of Plaintiff, La Casa De Salud, Inc., and against Defendant, RV Pharmacy Corp., in the amount of one-hundred and seventy-six thousand four-hundred and seventy dollars (\$176,470.00), together with statutory interest from June 17, 2021, and statutory costs in accordance with the Court's findings hereinabove; and it is further

**ORDERED AND ADJUDGED** that plaintiffs shall serve a copy of this Decision and Order upon the defendants within ten (10) days from the date of this Decision and Order.

The foregoing shall constitute the decision and order of this Court.

Dated: November 1, 2021



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**Hon. Eddie J. McShan, J.S.C.**