

Lord Sec. Corp. v Moorer
2021 NY Slip Op 33706(U)
October 29, 2021
Supreme Court, New York County
Docket Number: Index No. 652392/2021
Judge: Laurence Love
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LAURENCE LOVE PART 63M

Justice

-----X

LORD SECURITIES CORPORATION, AS
ADMINISTRATIVE TRUSTEE OF THE IJARA 2.0 TRUST
2018-1

Plaintiff,

- v -

SEALE MOORER,

Defendant.

-----X

INDEX NO. 652392/2021

MOTION DATE 09/24/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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

Upon the foregoing documents, it is

The following read on plaintiff's motion for a default judgment in lieu of complaint, CPLR 3213, for the sum of \$10,290,670.85 under a personal guarantee agreement dated April 4, 2018.

An admission of service has been submitted by Eric J. Wittenberg, apparent counsel for named defendant Seale Moorer (see NYSCEF Doc. No. 12). CPLR 306(e) states, "[a] writing admitting service by the person to be served is adequate proof of service." Said submitted document does not have any verification from named defendant Seale Moorer.

Plaintiff alleges service through CPLR 308(4) – affix – and – mail, at 1755 Riverstone Dr., Delaware, OH 43015. This court cannot determine if that is defendant's place of business or abode. Plaintiff submits no documentation establishing that address as defendant's.

CPLR 3213 states, "[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.” “Summary judgment in lieu of a complaint is proper when: 1) the instrument itself, and 2) proof of non-payment without more, make out a prima facie cause of action” (see *Seaman-Andwall Corp. v. Wright Machine Corp*, 31 A.D.2d 136 [1st Dept. 1986]); aff’d 29 N.Y.2d 617 [1971]).

Plaintiff submits an alleged personal guaranty by defendant that is not notarized and has what appears to be the number eight over the signature line (see NYSCEF Doc. No. 4). A submission has been made of a lease and equipment schedule (see NYSCEF Doc. No. 5) and an assignment and purchase agreement (see NYSCEF Doc. No. 6). The assignment and purchase agreement have an exhibit that shows “original equipment cost - \$7,500,000” (see NYSCEF Doc. No. 6 P. 7). This court cannot determine what this deal or contract entails.

An affidavit from Edward O’Connell, Senior Vice President of Lord Security Corporation affirms, “[t]he lease included equipment schedule No. 001” (see NYSCEF Doc. No. 3 Par. 7).

Through a review of the documents submitted there remains questions to this court. Questions remain about service upon defendant, contents of the i) lease and equipment schedule, ii) the assignment and purchase agreement, and iii) the personal guaranty.

ORDERED that plaintiff’s motion for summary judgment in lieu of complaint, CPLR 3213, is DENIED.

<p><u>10/29/2021</u> DATE</p>			 <hr/> LAURENCE LOVE, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED	<input type="checkbox"/> SUBMIT ORDER	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		