

BSDT 2012 LLC v H F Z Capital Group LLC
2022 NY Slip Op 30020(U)
January 5, 2022
Supreme Court, New York County
Docket Number: Index No. 650277/2021
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREW BORROK PART 53

Justice

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BSDT 2012 LLC,

Plaintiff,

- v -

H F Z CAPITAL GROUP LLC, ZIEL FELDMAN, NIR MEIR

Defendant.

-----X

INDEX NO. 650277/2021
MOTION DATE 01/03/2021
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, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53

were read on this motion to/for JUDGMENT - SUMMARY IN LIEU OF COMPLAINT .

Upon the foregoing documents, BSDT 2012 LLC's (the Lender) motion for summary judgment in lieu of complaint must be granted. The Lender makes out a prima facie case for summary judgment - an instrument for the payment of money only, an underlying debt, and a default (Interman Indus. Prods., Ltd. v R.S.M. Electron Power, Inc., 37 NY2d 151, 154-55 [1975]) and the defendants fail to raise a material issue of fact.

To wit, the Lender avers that it made a loan (the Loan) to H F Z Capital Group LLC (the Borrower) in the principal amount of \$3,640,000 pursuant to a certain Promissory Note (the Promissory Note; NYSCEF Doc. No. 4), dated September 3, 2014, by Borrower in favor of Lender. The Loan was guaranteed by Ziel Feldman and Nir Meir (collectively, the Guarantors) pursuant to a Guaranty (NYSCEF Doc. No. 3), dated September 3, 2014, in favor of Lender. The Lender further alleges that the principal sum of \$3,640,000 together with interest at the rate of 15% per year, compounded yearly matured on September 3, 2016 (the Maturity Date) and that

the Borrower defaulted in its obligations to repay the Loan, that it demanded repayment from the Guarantors (NYSCEF Doc. No. 7) and that the Loan remains unpaid.

As such, this a straightforward action to enforce the Guaranty for a sum certain which is due, despite the Defendants' best attempts to manufacture issues of fact to the contrary (CPLR 3213; *see also Banco Popular N. Am. v Victory Taxi Mgmt.*, 1 NY3d 381, 383 [2004]). Thus, summary judgment is appropriate.

To be clear, Mr. Meir does not argue that the documents were invalid or that the loan is not outstanding. Rather Mr. Meir argues the Lender exercised its rights under a letter agreement (**Letter Agreement**; NYSCEF Doc. No. 5), dated September 3, 2014, between Borrower and Lender, which Letter Agreement provided that prior to the Maturity Date of the loan, the Lender could elect to convert the outstanding amounts due into a credit for purchasing Unit 4WTS of 235 West 75th Street, New York, NY (**Astor Property**) from the Borrower, which Mr. Meir argues occurred when the Lender negotiated the sale of the Astor Place between May 22, 2019 and October 19, 2020. The argument fails. Mr. Meir does not provide any evidence to support this alleged election and his *ipse dixit* assertion is insufficient as a matter of law to create an issue of fact necessitating the denial of summary judgment (NYSCEF Doc. No. 46) because pursuant to Section 1 of the Letter Agreement such election had to be provided in writing (NYSCEF Doc. No. 46, ¶ 1). Thus, Mr. Meir remains liable for the outstanding debt under the unconditional Guaranty (NYSCEF Doc. No. 6) which he signed in favor of the Lender.

Ziel Feldman and the Borrower also have not created an issue of fact and otherwise cannot avoid liability by virtue of Mr. Feldman's argument that the stamp of his signature was used without his knowledge or authority by one of his own employees. This argument is immaterial as a matter of law. The Lender is an essence a good faith purchaser for value of the loan made as there are no allegations that the Lender participated in this alleged improper use of his stamp signature. The bad acts of one's employees does not release the principal from liability to innocent third parties (*Cory v Nintendo of Am.*, 185 AD2d 70, 73 [1st Dept 1993]). If one of Mr. Feldman's employees acted without authority and personally benefitted from it, Mr. Feldman may very well have a claim against that employee. However, the fact remains that the loan was advanced by this Lender on facially valid documents, handled by an employee acting under the title Managing Principal of the Borrower – *i.e.*, with apparent authority (*Greene v Hellman*, 51 NY2d 197, 204 [1980]). Mr. Feldman's company benefitted from the transaction which was ratified by the Borrower's subsequent conduct of retaining the money (*Lawyers' Fund for Client Protection v Chemical Bank*, 246 AD2d 403, 403 [1st Dept 1998]). Stated differently, on the record before the court, Mr. Feldman's employee, as his agent, acted with apparent authority and by keeping the money, the Borrower ratified the loan. If Mr. Feldman has a claim, it lies elsewhere and simply does not create an issue of fact relevant to the Lender's rights because the Lender did not participate in this alleged unauthorized use of his stamp signature, nothing would have put the Lender on notice of the alleged problem and Mr. Feldman's company benefitted from the loan and ratified it. Therefore, the Lender's motion for summary judgment in lieu of complaint must be granted.

The court has considered the Defendants' remaining arguments and finds them unavailing.

Accordingly, it is

ORDERED that the Lender’s motion for summary judgment in lieu of complaint is granted; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of BSDT 2012 LLC and against H F Z Capital Group LLC, Ziel Feldman, and Nir Meir, jointly and severally, in the amount of \$3,640,000, plus interest at the rate of 15% per year from September 3, 2014 to September 3, 2016, together with 2% interest from September 3, 2016 through the date of this decision, for a total of \$ _____, plus costs and disbursements as allocated by the Clerk, and the plaintiff shall have execution thereof; and it is further

ORDERED that a Judicial Hearing Officer (“JHO”) or Special Referee shall be designated to determine the issue of reasonable attorneys’ fees, which are hereby submitted to the JHO/Special Referee for such purpose; and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR unless otherwise indicated; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are

posted on the website of this court at www.nycourts.gov/supctmanh at the “References” link), shall assign this matter at the initial appearance to an available JHO/Special Referee to determine as specified above; and it is further

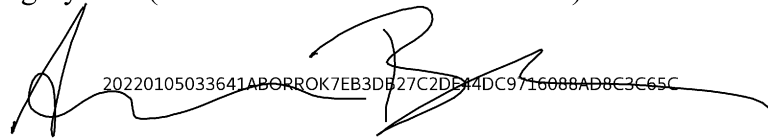
ORDERED that counsel shall immediately consult one another and counsel for plaintiff shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (accessible at the “References” link on the court’s website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed with the hearing, on the date fixed by the Special Referee Clerk for the initial appearance in the Special Referees Part, subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further

ORDERED that on the initial appearance in the Special Referees Part the parties shall appear for a pre-hearing conference before the assigned JHO/Special Referee and the date for the hearing shall be fixed at that conference; the parties need not appear at the conference with all witnesses and evidence; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issues specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly; and it is further

ORDERED that counsel shall file memoranda or other documents directed to the assigned JHO/Special Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and the Special Referees (available at the "References" link on the court's website) by filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules).


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1/5/2022
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE