

Granite State Ins. Co. v Veliz Logistics, Inc.
2022 NY Slip Op 30522(U)
February 14, 2022
Supreme Court, New York County
Docket Number: 160875/2021
Judge: Carol R. Edmead
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. CAROL EDMEAD PART 35

Justice

-----X

GRANITE STATE INSURANCE COMPANY

Plaintiff,

- v -

VELIZ LOGISTICS, INC.,

Defendant.

-----X

INDEX NO. 160875/2021

MOTION DATE 01/20/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 7, 8 were read on this motion to/for JUDGMENT - SUMMARY IN LIEU OF COMPLAINT.

Now before the Court is the Plaintiff's motion pursuant to CPLR 3213 directing the entry of a money judgment against Defendant in the principal amount of \$5,500.

Good cause appearing, due deliberation having been had, and no opposition having been interposed, the Court finds as follows:

This is an action based upon an instrument for the payment of money only, to wit, a duly executed Settlement Agreement and Release ("Agreement," Ex. A to counsel's affirmation) pursuant to which, inter alia, the Defendant acknowledged its indebtedness to Plaintiff and agreed to repay same via scheduled monthly payments. Within the Agreement, "the Parties expressly agree[d] that jurisdiction is proper in the Supreme Court of the State of New York, New York County, in connection with any action on this Agreement." Agreement at VI. ("Other Provisions"), 2. Plaintiff has shown good and timely service of the Summons, Notice of Motion for Summary Judgment, and the supporting papers. Both the return date and the noticed deadline for service of answering papers complied with the minimum time provided by subdivision (a) of Rule 320.

Plaintiff has met its burden in showing proof of the facts constituting the claim. Briefly, and as is detailed within the recitals of the Agreement, Defendant owed to Plaintiff, its liability insurer, the principal sum of \$12,000, representing amounts advanced by the Plaintiff within the Defendant's deductible layer, in connection with the defense and settlement of certain third-party liability claims. Within the Agreement, Defendant acknowledged its indebtedness to Plaintiff in the principal amount of \$12,000 (known therein as the "Settlement Amount"), and made an unconditional promise to pay specified sums at prescribed times. There is no executory performance owed by Plaintiff to Defendant. The Agreement is valid, binding, and enforceable, and satisfies the CPLR 3213 threshold as an "instrument for the payment of money only," as it requires the payment of money that is not contingent upon any other occurrence that requires outside proof, other than simple proof of nonpayment. *Weissman v. Sinorm Deli*, 88 NY2d 437, 444 [1996].

Plaintiff has shown Defendant's breach of the repayment terms of the Agreement. The Agreement, at Section V. ("Consequences of Breach"), provides: "In the event of a failure to timely make any or all of the Settlement Payments, (i) all remaining Settlement Payments shall become immediately due and payable, without further notice or demand; (ii) interest on the entire Settlement Amount (i.e., not solely on the amount of same then outstanding) shall become immediately due and payable, without further notice or demand, which interest shall accrue at 9% from the effective date of this Agreement, and (iii) Veliz Logistics [Defendant herein] agrees that it shall also be responsible for paying the reasonable attorney's fees and costs incurred by Granite State [Plaintiff herein] in pursuing recovery, through court action or otherwise, of the amounts owed by Veliz Logistics under subsections (i) and (ii) hereof."

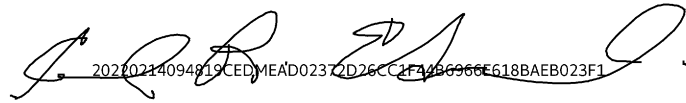
Plaintiff has shown that \$5,500 is the principal amount owed under the Agreement. Plaintiff is entitled to judgment in its favor, against Defendant, in that amount. Additionally, Plaintiff is entitled to interest on the full Settlement Amount (i.e., \$12,000) accruing at 9% from August 31, 2020 (i.e., the “effective date” of the Agreement, per Section IV.3. thereof). Additionally, Plaintiff is entitled to an award of costs in its favor, to be taxed by the Clerk. Finally, Plaintiff is entitled to the reasonable attorney’s fees incurred in pursuing the instant motion. Within ten (10) days from entry of this Order, Plaintiff may request a hearing at which the Court will review Plaintiff’s counsel’s further submissions on that subject; the amount of the recoverable attorney’s fees will thereafter be set by further Order of the Court. In the absence of such request, the Court hereby awards to Plaintiff \$1,000 in attorney’s fees.

Accordingly, it is hereby

ORDERED that Plaintiff’s motion for summary judgment pursuant to CPLR 3213 (Motion Seq. 001) is granted in its entirety; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of Plaintiff and against the Defendant, in the principal sum of \$5,500, plus pre-judgment interest on the Settlement Amount (\$12,000) accruing at 9% from August 31, 2020 through the date of entry, plus costs and disbursements as taxed by the Clerk upon the submission of a proper bill of costs, plus attorney’s fees of \$1,000, for a total amount to be calculated by the Clerk; and it is further

ORDERED that counsel for Plaintiff shall serve a copy of this order, along with notice of entry, on all parties within ten (10) days.


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2/14/2022
DATE

CAROL EDMED, 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