

<b>Maguire Ft. Hamilton LLC v Pfeiffer</b>
2022 NY Slip Op 31106(U)
April 5, 2022
Supreme Court, New York County
Docket Number: Index No. 653031/2021
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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MAGUIRE FT. HAMILTON LLC,  Plaintiff,  - v -  SAMUEL PFEIFFER, DINA KRAUSZ  Defendant.	INDEX NO. <u>653031/2021</u>  MOTION DATE <u>05/07/2021</u>  MOTION SEQ. NO. <u>001</u>  <b>DECISION + ORDER ON                  MOTION</b>
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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 were read on this motion to/for JUDGMENT - SUMMARY IN LIEU OF COMPLAINT.

Upon the foregoing documents, and for the reasons set forth on the record (4.5.22), Maguire Ft. Hamilton LLC’s (the **Lender**) motion for summary judgment in lieu of complaint pursuant to CPLR 3123 is granted. The Lender establishes the existence of a guaranty, an underlying debt pursuant to a promissory note which is in default and remains unpaid and that the guarantors failed to perform under the guaranties (*Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A., "Rabobank Intl.," N.Y. Branch v Navarro*, 25 NY3d 485, 492 [2015]). Samuel Pfeiffer and Dina Krausz (the **Guarantors**) fail to raise a material issue of fact in the opposition papers. Thus, the Lender is entitled to judgment as a matter of law.

To wit, in support of the motion, the Lender adduces (i) a certain Promissory Note (the **Original Note**; NYSCEF Doc. No. 4), dated November 19, 2018, by 4218 Partners LLC (the **Borrower**) and executed by Mr. Pfeiffer, Managing Partner of the Borrower, on behalf of the Borrower and in favor of Ice Lender XVII LLC (the **Original Lender**), as assigned and endorsed to the Lender

pursuant to a certain Allonge (the **Allonge**; the Original Note as amended by a certain Allonge, hereinafter, collectively, the **Note**), dated March 6, 2019 by the Original Lender in favor of the Lender (NYSCEF Doc. No. 7), (ii) a certain Assignment and Assumption Agreement, dated March 6, 2019, by and between the Original Lender and the Lender (NYSCEF Doc. No. 8) pursuant to which all of the loan documents executed in connection with the loan were assigned from the Original Lender to the Lender, (iii) a Guaranty (the **Pfeiffer Guaranty**), dated November 19, 2019, by Mr. Pfeiffer in favor the Original Lender (NYSCEF Doc. No. 5) pursuant to which Mr. Pfeiffer guaranteed full payment and satisfaction of the Borrower's obligations under the Note (*id.*, at 2), (iv) a Guaranty (the **Krausz Guaranty**), dated November 19, 2019, by Ms. Krausz in favor of the Original Lender (NYSCEF Doc. No. 6) pursuant to which Ms. Krausz guaranteed full payment and satisfaction of the Borrower's obligations under the Note (*id.*, at 2), (v) an Affirmation of Marvin Azrak, principal of the Lender, dated January 27, 2021 indicating that there was a default under the Note, and that \$11,617,815.00 was due as of January 27, 2021 (NYSCEF Doc. No. 3) and that the Guarantors have failed to pay the amounts due under the Note, and (vi) an Affirmation of Joseph Oved, principal of the Original Lender, dated September 15, 2021 indicating that there was a default under the Note (NYSCEF Doc. No. 32). As such, they have made a prima facie showing of their entitlement to judgment pursuant to the Pfeiffer Guaranty and the Krausz Guaranty (*Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A., "Rabobank Intl.," N.Y. Branch v Navarro*, 25 NY3d 485, 492 [2015]; *Ipayment, Inc. v Silverman*, 192 AD3d 586, 587 [1st Dept 2021]). The defenses raised in opposition are unavailing. First, to the extent that the defendants argue that the Lender does not have standing, the loan documents unequivocally demonstrate that the loan was properly sold and assigned to the Lender from the Original Lender. The argument that the Borrower may have

claims against the Lender is unavailing because the defenses of a Borrower are not available to a Guarantor and this is an action for a sum certain (*I Bldg, Inc. v Hong Mei Cheung*, 137 AD3d 478, 478 [1st Dept 2016]). It is also of no moment that the loan documents contained additional covenants. The default here is based on the monetary default and it is for a sum certain. The court has considered the remaining arguments and finds them unavailing. For completeness, the Pfeiffer Guaranty and the Krausz Guaranty provides for the payment of attorneys' fees.

Accordingly, it is

ORDERED that the Plaintiff's motion for summary judgment in lieu of complaint is hereby granted; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of Maguire Ft. Hamilton LLC and against Samuel Pfeiffer and Dina Krausz, jointly and severally, in the amount of \$11,617,815.00, plus interest at the rate of 12% per year from January 27, 2021 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 is 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; and it is further

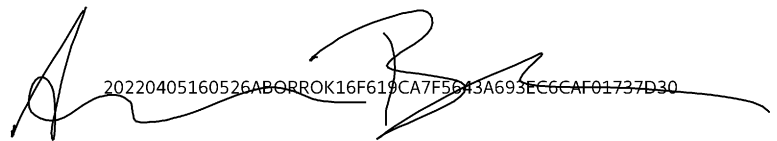
ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or [spref@nycourts.gov](mailto:spref@nycourts.gov)) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at [www.nycourts.gov/supctmanh](http://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 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 issue 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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4/5/2022  
DATE

ANDREW BORROK, 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