

Pentagon Fed. Credit Union v Fress Tr. LLC
2022 NY Slip Op 31359(U)
April 25, 2022
Supreme Court, New York County
Docket Number: Index No. 654531/2019
Judge: Suzanne Adams
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. SUZANNE ADAMS PART 39TR

Justice

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PENTAGON FEDERAL CREDIT UNION, AS SUCCESSOR BY MERGER TO PROGRESSIVE CREDIT UNION,

Plaintiff,

INDEX NO. 654531/2019

MOTION DATE 09/09/2021

MOTION SEQ. NO. 001

- v -

FRESS TRANSIT LLC, GRUZIN TRANSIT LLC, SABRINA BIRNBAUM, VICTOR WEINGARTEN

Defendant.

DECISION + ORDER ON MOTION AND JUDGMENT

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, and oral argument having been held via remote videoconference by the court on February 18, 2022, it is ordered that plaintiff's motion is granted. Plaintiff commenced this action in August 2019 seeking a money judgment against defendants arising out of their alleged breach of certain loan agreements and guaranties thereon, and for turnover of certain New York City taxi medallions that were used as collateral for the loans. Plaintiff now moves for summary judgment pursuant to CPLR 3212 for damages on its breach of contract claims and for replevin with respect to the taxi medallions, and pursuant to CPLR 3211(a)(1), (5) and (7) for dismissal of defendants' counterclaims. Defendants oppose the motion.

It is well-settled that "the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. Alvarez v. Prospect Hospital, 68 N.Y.2d

320, 324 (1986) (citing *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 (1985)). The party opposing a motion for summary judgment is entitled to all reasonable inferences most favorable to it. *Assaf v. Ropog Cab Corp.*, 153 A.D.2d 520, 521 (1st Dep't 1989). Summary judgment will only be granted if there are no genuine, triable issues of fact. *Assaf*, 153 A.D.2d at 522. Furthermore, “[o]n a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction (*see*, CPLR 3026). We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory.” *Leon v. Martinez*, 84 N.Y.2d 83, 87-88 (1994).

As set forth in the moving papers, in December 2021, plaintiff loaned defendants Fress Transit, LLC, Sabrina Birnbaum and Victor Weingarten the principal amount of \$1,550,000, secured by certain collateral which included New York City Taxi Medallions Nos. 8K68 and 4P90; and loaned defendants Gruzin Transit, LLC, Birnbaum and Weingarten the principal amount of \$1,550,000, secured by certain collateral which included New York City Taxi Medallions Nos. 8L72 and 8L73. Defendants thereafter defaulted on their respective debt obligations, and plaintiff commenced this action in August 2019. Subsequently, the parties entered into a Settlement Agreement and a Discounted Payoff Agreement, effective February 13, 2020; an Addendum to the Discounted Payoff Agreement, effective April 17, 2020; and a Second Addendum to the Discounted Payoff Agreement, dated as of June 2020. (Affidavit of Cathyann Frank in Support of Motion, Exhibit 9) Defendants defaulted under the Settlement Agreement and Discounted Payoff Agreement by failing to pay the amounts due on May 12, 2021 and October 12, 2020, respectively, and were so advised by plaintiff. (Frank Affidavit, ¶¶ 23-24)

Plaintiff has established *prima facie* entitlement to summary judgment for the requested relief, proving the existence of a promissory note executed by defendants herein and defendants' failure to make payments in accordance with the note's terms. *Nunez v. Channel Grocery & Deli Corp.*, 124 A.D.3d 734, 735 (2nd Dep't 2015). Plaintiff has also established the right of replevin with respect to the taxi medallions used by defendants as collateral. *See Stewart Family LLC v. Stewart*, 184 A.D.3d 487, 490 (1st Dep't 2020) (citing *Khoury v. Khoury*, 78 A.D.3d 903, 904 (2nd Dep't 2010)). In opposing the motion, defendants fail to raise any material questions of fact regarding their obligations under the Settlement Agreement, the Discounted Payoff Agreement, the Addendum to the Discounted Payoff Agreement, or the Second Addendum to the Discounted Payoff Agreement, and their respective defaults thereunder, notwithstanding the legally and factually unsupported counterclaims asserted. The court has considered defendants' contentions and finds them to be without merit.

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment and for dismissal of counterclaims is granted, and all counterclaims are dismissed with prejudice; and it is further

ORDERED that the Clerk shall enter judgment in favor of plaintiff on its First Cause of Action against defendants Sabrina Birnbaum a/k/a Sabrina Weingarten, having an address of 60 E. 8th Street, Apt. 7B, New York, New York 10003, Victor Weingarten, having an address of 201 East 66th Street, Unit PHD, New York, New York 10065 and Fress Transit LLC, having an address of 75 Canal Street West, Bronx, NY 10451, jointly and severally, in the amount of \$1,430,825.65, with interest at the statutory rate from the date of June 16, 2021, through the date of entry of judgment, as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk; and it is further

ORDERED that the Clerk shall enter judgment in favor of plaintiff on its Third Cause of Action against defendants Sabrina Birnbaum a/k/a Sabrina Weingarten, having an address of 60 E. 8th Street, Apt. 7B, New York, New York 10003, Victor Weingarten, having an address of 201 East 66th Street, Unit PHD, New York, New York 10065 and Gruzin Transit LLC, having an address of 75 Canal Street West, Bronx, NY 10451, jointly and severally, in the amount of \$1,430,825.65, with interest at the statutory rate from the date of June 16, 2021, through the date of entry of judgment, as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk; and it is further


ORDERED and ADJUDGED that plaintiff shall have immediate and permanent possession of New York City Taxi Medallion Nos. 8K68, 4P90, 8L72 and 8L73 (collectively, the “Medallions”) from the respective defendants, and said defendants shall cooperate with plaintiff and deliver at their sole cost and expense the Medallions to plaintiff and/or assist plaintiff in obtaining possession of the Medallions wherever they may be located so that the Medallions may be disposed of; and it is further

ORDERED and ADJUDGED that if defendants fail to deliver their respective Medallions to plaintiff within seven (7) days of entry of this Order and Judgment, the Sheriff of the County of Bronx or other authorized official of any county where the Medallions are found, is hereby directed to seize and immediately deliver same to plaintiff without bond, and if the Medallions are not delivered to the Sheriff or other authorized official, the Sheriff or other authorized official be and is hereby required, immediately upon receipt of a certified copy of this Order, to break open, enter, and search for the Medallions at 75 Canal Street West, Bronx, New York 10451, or any other place where the Medallions are located.

This constitutes the decision, order and judgment of the court.

4/25/2022

DATE



SUZANNE ADAMS, 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