

Kitchen Winners NY Inc. v Triptow
2022 NY Slip Op 31516(U)
May 9, 2022
Supreme Court, Kings County
Docket Number: Index No. 500699/2022
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

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KITCHEN WINNERS NY INC.,

Plaintiff, Decision and order

- against -

Index No. 500699/2022

DAVID TRIPTOW and TT RED SOLUTIONS, LLC,
Defendants,

5/9/2022

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PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved pursuant to CPLR §3213 seeking summary judgement in lieu of a complaint. The defendant has cross-moved seeking to stay this action pending the resolution of another action in China. The motions have been opposed respectively. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

In February 2021 the plaintiff entered into agreements with non-parties Humpf Industrial Company Limited and Legeld Sport Limited for the purchase of disposable medical examination gloves. On February 8, 2021 the defendant executed a guaranty promising to pay the plaintiff \$450,000 in the event the goods were not delivered on time. The defendants have paid \$50,000 thus the plaintiff seeks recovery of \$400,000 and has moved seeking summary judgement in lieu of a complaint arguing there are no issues the money is owed. The defendants have opposed the motion arguing there are questions which cannot be summarily resolved.

Conclusions of Law

It is well settled that in order to be entitled to judgement as a matter of law pursuant to CPLR §3213 the movant must demonstrate that the other party executed an instrument that contains an unequivocal and unconditional promise to repay the party upon demand or at a definite time and the party failed to pay according to the terms of the instrument (Mirham v. Awad, 131 AD3d 1211, 17 NYS3d 473 [2d Dept., 2015]). Thus, "on a motion for summary judgment to enforce a written guaranty, all that the creditor need prove is an absolute and unconditional guaranty, the underlying debt, and the guarantor's failure to perform under the guaranty" (H.L. Realty LLC v. Edwards, 131 AD3d 573, 15 NYS3d 413 [2d Dept., 2015]). In this case the plaintiff has presented the necessary evidence to obtain summary judgement in lieu of a complaint. Once the plaintiff establishes a prima facie entitlement to judgement as a matter of law, the burden shifts to the defendant to raise a triable issue of fact (Cooperative Centrale Raiffeisen-Boerenleenbank B.A. v. Navarro, 25 NY3d 485, 15 NYS3d 277 [2015]).

The issues of fact raised by the defendant are that the guaranty itself contains contradictions and more importantly that the guaranty does not reference the purchase and sales contract under which the guaranty was based. In 27 West 72nd Street Note Buyer LLC v. Terzi, 194 AD3d 630, 150 NYS3d 54 [1st Dept., 2021]

the court held that words contained in a guaranty that might affect its status as an unconditional instrument do not raise any questions of fact where the operative paragraphs of the guaranty are unaffected. Moreover, a guaranty is a proper instrument for summary judgement in lieu of a complaint unless outside proof is necessary to establish the underlying obligation (Century City Mall LLC v. Waxman, 193 AD3d 499, 147 NYS3d 10 [1st Dept., 2021]). In this case there is no outside evidence necessary to establish the defendant's obligations, they are so obligated by the guaranty itself. While the guaranty might not reference other agreements there is no dispute the guaranty promises to pay for the non-delivery of the goods and that such non-delivery occurred.

Furthermore, there can be no issue of fact that the guaranty is inextricably intertwined with other agreements whereby a breach of such agreements may be sufficient to give rise to a defense of non-payment (Margarella v. Ullian, 164 AD3d 898, 83 NYS3d 569 [2d Dept., 2018]). Indeed, there are no allegations any other breaches occurred. The only issue raised by defendants is that the guaranty does not reference the correct agreements. However, there is no question of fact the guaranty specifically referred to the contract submitted even if the guaranty called it by a different term. Thus, there are no questions of fact the guaranty is an unconditional promise to pay and consequently the

motion seeking summary judgement in lieu of a complaint is granted.

Turning to the defendants cross motion, the defendants argue the plaintiff has already obtained judgement on this debt in China and that an award here would amount to being paid twice for the same debt. However, the documents submitted from the Chinese court list T-Z Cargo Company Ltd., as the plaintiff and Textile Printing and Dyeing Company Ltd., as the defendant. The decision does note that a purchase order was made for Kitchen Winner, however, there is no evidence at all that Kitchen Winner, the plaintiff here, received a judgement in the Chinese court or that the plaintiff in the Chinese case is the "proxy" of Kitchen Winner sufficient to grant a stay in this proceeding. The defendants' mere conclusory assertion that Kitchen Winners and the plaintiff in the Chinese action are the same entity, without any proof at all, cannot demand of stay of this action.


Therefore, the cross-motion seeking a stay is denied.

So ordered.

ENTER:

DATED:

5/9/22
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC