

Vida Longevity Fund, LP v SuttonPark Capital LLC

2022 NY Slip Op 33785(U)

November 4, 2022

Supreme Court, New York County

Docket Number: Index No. 656715/2022

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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VIDA LONGEVITY FUND, LP, VIDA INSURANCE
CREDIT OPPORTUNITY FUND II, LP, VIDA INSURANCE
CREDIT OPPORTUNITY FUND III, LP

INDEX NO. 656715/2022

MOTION DATE 08/17/2022

Plaintiffs,

MOTION SEQ. NO. 002

- v -

SUTTONPARK CAPITAL LLC, SIGNAL FINANCIAL
HOLDINGS LLC,

**DECISION + ORDER ON
MOTION**

Defendants.

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42

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

Plaintiffs Vida Longevity Fund, LP, Vida Insurance Credit Opportunity Fund II, LP, and Vida Insurance Credit Opportunity Fund III, LP (collectively, "Plaintiffs") bring this motion for summary judgment in lieu of complaint, pursuant to CPLR 3213, seeking a deficiency judgment under an unconditional guaranty signed by Defendants SuttonPark Capital LLC and Signal Financial Holdings LLC (collectively, "Defendants") stemming from an alleged default on a loan agreement (NYSCEF 14). In opposition, Defendants, as guarantors, argue that Plaintiffs have failed to submit proper evidentiary support for their motion and that Plaintiffs have failed to establish as a matter of law that the sale of collateral was commercially reasonable (NYSCEF 31). Defendants also submit a cross-motion to dismiss the action or, in the alternative, to consolidate this action with two related actions brought by Plaintiffs seeking remedies arising from the same alleged default (*id.*).

For the reasons stated below, Plaintiffs' motion is **denied**, and Defendants' cross-motion is **granted in part**.

CPLR 3213 enables a plaintiff to seek summary judgment in lieu of complaint “[w]hen an action is based upon an instrument for the payment of money only.” The statute “was enacted to provide quick relief on documentary claims so presumptively meritorious that a formal complaint is superfluous” (*Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A. v Navarro*, 25 NY3d 485, 491 [2015], internal quotation omitted). Such a motion will be granted “if upon all the papers and proof submitted, the cause of action... [is] established sufficiently to warrant the court as a matter of law in directing judgment for the plaintiff” (*Banco Popular N. Am. v Victory Taxi Mgmt., Inc.*, 1 NY3d 381, 383 [2004], internal quotation omitted). A defendant “can defeat a CPLR 3213 motion by offering evidentiary proof sufficient to raise a triable issue of fact” (*Id.*).

As an initial matter, the Court rejects Defendants' argument that Plaintiffs' motion must be denied out of hand because Plaintiffs submitted evidentiary proof in the form of an affirmation (NYSCEF 3) rather than an affidavit. Even assuming this distinction constitutes a procedural error, it “was timely remedied when the same affirmation was submitted in affidavit form in reply papers” (*Berkman Bottger & Rodd, LLP v Moriarty*, 58 AD3d 539, 539 [1st Dept 2009]). Moreover, there is no indication that Defendants were prejudiced by the purported defect (*id.*).

Nevertheless, summary judgment in lieu of complaint is inappropriate on the current record. Defendants contest the commercial reasonableness of the sale of 34,218,366 shares (the “Collateral Shares”) of Randall & Quilter Investment Holdings Ltd., particularly as to the publication of the auction notice, the manner in which the auction was conducted, and the timing of the auction. The “party seeking a deficiency judgment from the debtor after the sale of

collateral bears the burden of showing that the sale was made in a ‘commercially reasonable’ manner” (*Mack Fin. Corp. v Knoud*, 98 AD2d 713, 713-714 [2d Dept 1983], internal citation omitted). New York UCC 9-610 [b] mandates that “every aspect of [the disposition of collateral], including the method, manner, time, place, and other terms, must be commercially reasonable.”

“Whether a sale was commercially reasonable is...a fact-intensive inquiry” (*D2 Mark LLC v Orei VI Investments LLC*, 2020 WL 3432950, at *4 [Sup. Ct. NY County, June 23, 2020]), and where triable issues of fact exist, it “preclude[s] accelerated judgment under CPLR 3213” (*HSBC Bank USA v IPO, LLC*, 735 NYS2d 531, 532-33 [1st Dept 2002]). Here, the Court finds that the record is insufficient to make a conclusive finding on the question of commercial reasonableness.

Defendants’ cross-motion is granted insofar as it seeks to consolidate this action with *Vida Longevity Fund, LP, et al v 777 Partners LLC*, Index No. 652301/2022 (the “Borrower Action”) and *Vida Longevity Fund, LP, et al v Brickell PC Insurance Holdings, LLC*, Index No. 652320/2020 (the “Pledgor Action”), and denied insofar as it seeks to dismiss this action as duplicative of the Borrower Action and Pledgor Action. “When actions involving a common question of law or fact are pending before a court, the court, upon motion... may order the actions consolidated” (CPLR 602 [a]). Here, the three actions each arise out of the same alleged default under the same loan agreement and seek recovery based on the same alleged deficiency.

Accordingly, it is:

ORDERED that Plaintiffs’ motion for summary judgment in lieu of complaint is **denied**; it is further

ORDERED that, pursuant to CPLR 3213, the moving and answering papers shall be deemed the complaint and answer, respectively, but Plaintiffs have leave (if they choose) to file a Complaint to state their claims, in which case Defendants will have 20 days to answer or otherwise respond to such Complaint; it is further

ORDERED that Defendants' cross-motion is **granted** insofar as it seeks to consolidate this action, the Borrower Action, and the Pledgor Action, and is otherwise **denied**; it is further

ORDERED that the above-captioned action is consolidated in this Court with *Vida Longevity Fund, LP, et al v 777 Partners LLC*, Index No. 652301/2022 and *Vida Longevity Fund, LP, et al v Brickell PC Insurance Holdings, LLC*, Index No. 652320/2022, pending in this Court; it is further

ORDERED that the consolidation shall take place under Index No. 656715/2022 and the consolidated action shall bear the following caption:

Vida Longevity Fund, LP, Vida Insurance Credit Opportunity
Fund II, LP, Vida Insurance Credit Opportunity Fund III, LP, and
Vida Capital Management, LLC

Plaintiffs,

-against-

SuttonPark Capital LLC, Signal Financial Holdings LLC, 777
Partners LLC, and Brickell PC Insurance Holdings LLC,

Defendants.

And it is further

ORDERED that, within 30 days from entry of this order, Defendants shall serve a copy of this order with notice of entry on the Clerk of the Court (60 Centre Street, Room 141 B), who shall consolidate the documents in the actions hereby consolidated and shall mark his records to reflect the consolidation; it is further

ORDERED that counsel for Defendants shall contact the staff of the Clerk of the Court to arrange for the effectuation of the consolidation hereby directed; it is further

ORDERED that service of this order upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); it is further

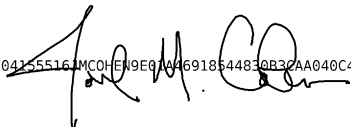
ORDERED that, as applicable and insofar as is practical, the Clerk of this Court shall file the documents being consolidated in the consolidated case file under the index number of the consolidated action in the New York State Courts Electronic Filing System or make appropriate notations of such documents in the e-filing records of the court so as to ensure access to the documents in the consolidated action; it is further

ORDERED that, within 30 days from entry of this order, Defendants shall serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who is hereby directed to reflect the consolidation by appropriately marking the Court’s records; it is further

ORDERED that such service upon the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the aforesaid *Protocol*; and it is further

ORDERED that the parties appear telephonically for a preliminary conference on December 13, 2022 at 11:00 am, with the parties circulating dial-in information to chambers at SFC-Part3@nycourts.gov in advance of the conference.¹

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

11/4/2022
DATE

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

¹ If the parties agree on a proposed preliminary conference order in advance of the conference date (consistent with the guidelines in the Part 3 model preliminary conference order, available online), they may file the proposed order and email a courtesy copy to chambers with a request to so-order in lieu of holding the conference.