

Medallion Bank v Makridis

2022 NY Slip Op 33983(U)

November 22, 2022

Supreme Court, New York County

Docket Number: Index No. 654730/2021

Judge: Louis L. Nock

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LOUIS L. NOCK **PART** **38M**

Justice

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MEDALLION BANK,

Plaintiff,

- v -

ELISAVET MAKRIDIS,

Defendant.

-----X

INDEX NO. 654730/2021

MOTION DATE 11/18/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION, JUDGMENT**

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38 were read on this motion for SUMMARY JUDGMENT.

Upon the foregoing documents, the plaintiff’s motion for summary judgment is granted for the reasons set forth in the moving and reply papers (NYSCEF Doc. Nos. 14, 21, and 37) (and the exhibits attached thereto), in which the court concurs. As more specifically set forth therein, plaintiff has established *prima facie* entitlement to summary judgment on the promissory note and security agreement executed by defendant by submission of the note and defendant’s failure to pay (*Nunez v Channel Grocery & Deli Corp.*, 124 AD3d 734, 734-35 [2d Dept 2015]), as well as the security agreement, evidence of plaintiff’s performance thereunder and defendant’s breach thereof, and plaintiff’s damages (*Harris v Seward Park Housing Corp.*, 79 AD3d 425 [1st Dept 2010]). Pursuant to the terms of the security agreement, plaintiff may pursue a money judgment for failure to pay the note upon its maturity, as well as take possession of the collateral (Security Agreement, NYSCEF Doc. No. 23, ¶ 7). Further, plaintiff’s remedies under the security agreement are cumulative, “and shall be in addition to all other remedies in favor of [plaintiff] existing at law or in equity” (*id.*, ¶ 11). Defendant executed a UCC Financing Statement in favor of plaintiff, in which the collateral was defined as Medallion #7A95 and the

taxicab associated with it, and various other equipment and property related to the taxicab and the use of the medallion (UCC Financing Statement, NYSCEF Doc. No. 24).

In opposition, defendant fails to raise a triable issue of fact. Defendant's allegations of predatory lending and unclean hands are conclusory and unsupported by any admissible evidence, nor does defendant suggest that facts relevant to the note and security agreement "essential to justify opposition may exist but cannot [now] be stated" (CPLR 3212[f]; *Morales v Amar*, 145 AD3d 1000, 1003 [2d Dept 2016] [The "mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is an insufficient basis for denying the motion"]). Further, defendant cites no authority or provision of the note or security agreement requiring plaintiff to sell the collateral before seeking any remaining balance, or to renegotiate the terms of the loan.

Defendant's invocation of impossibility of performance is similarly unavailing. "Impossibility excuses a party's performance only when the destruction of the subject matter of the contract or the means of performance makes performance objectively impossible. Moreover, the impossibility must be produced by an unanticipated event that could not have been foreseen or guarded against in the contract" (*Kel Kim Corp. v Central Mkts.*, 70 NY2d 900, 902 [1987]). "[W]here impossibility or difficulty of performance is occasioned only by financial difficulty or economic hardship, even to the extent of insolvency or bankruptcy, performance of a contract is not excused" (*407 E. 61st Garage, Inc. v Savoy Fifth Ave. Corp.*, 23 NY2d 275, 281 [1968]; see also *558 Seventh Avenue Corp. v Times Square Phot Inc.*, 194 A.D.3d 561, 561-62 [1st Dept 2021] [holding that reduced revenues due to the COVID-19 pandemic did not render performance impossible]). Defendant's assertions regarding the collapse of the taxi industry do not, therefore, render performance impossible. To the extent that defendant cites the COVID-19

pandemic and states she was unable to operate her taxicab, the court notes that Executive Order 202.6 deemed as essential all businesses under the category “transportation infrastructure,” and such businesses were allowed to continue to operate without restriction (9 NYCRR 8.202.6).

Finally, defendant’s citations to the Banking Law and to General Business Law § 349 do not defeat the motion. Defendant fails to specify which provision of the Banking Law she is attempting to cite. Claims under General Business Law § 349 must allege conduct that “[has] a broad impact on consumers at large; private contract disputes unique to the parties would not fall within the ambit of the statute” (*New York Univ. v Continental Ins. Co.*, 87 NY2d 308, 320 [1995] [internal quotation marks and citations omitted]). Further, it is settled law that claims of fraud under General Business Law § 349 are committed to the exclusive jurisdiction of the Attorney General under the Martin Act (*see, 511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 285 AD2d 244, 248 [1st Dept 2001], *affd in part*, 98 NY2d 144 [2002]).

Accordingly, it is hereby

ORDERED that the plaintiff’s motion for summary judgment is granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendant in the amount of \$347,812.78, with interest thereon at the rate of 16% per annum from March 28, 2020 through the date of entry of judgment as calculated by the Clerk, and continuing to accrue thereafter at the statutory rate until satisfaction of the judgment, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs, plus attorneys’ fees of \$5,844.04 as provided by the terms of the security agreement (NYSCEF Doc. No. 23, ¶ 12); and it is further

ADJUDGED and DECLARED that plaintiff is entitled to possession of the Medallion described in the UCC Financing Statement (Medallion No. 7A95); and it is further

ORDERED that defendant is directed to turn over said Medallion to plaintiff within 30 days of the date of entry of this order and judgment; and it is further

ORDERED that the Sheriff of any County of the State of New York in which the Medallion is located, upon receipt of a certified copy of this Order and Judgment and payment of proper fees, is directed to break open, enter, search for, and seize said Medallion and deliver same to plaintiff.

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



<u>11/22/2022</u> DATE					<u>LOUIS L. NOCK, J.S.C.</u>		
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE