

Deutsche Bank AG, N.Y. Branch v Bolta US Ltd.

2023 NY Slip Op 30986(U)

March 29, 2023

Supreme Court, New York County

Docket Number: Index No. 650172/2023

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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DEUTSCHE BANK AG, NEW YORK BRANCH,	INDEX NO. <u>650172/2023</u>
Plaintiff,	MOTION DATE <u>02/28/2023</u>
- v -	MOTION SEQ. NO. <u>001</u>
BOLTA US LTD (D/B/A BOLTA US INC.), WHITE CAPSTAN LIMITED	
Defendants.	DECISION + ORDER ON MOTION
-----X	

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16

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

Plaintiff, Deutsche Bank AG, New York Branch (“Plaintiff” or the “Bank”) seeks an award of summary judgment in lieu of complaint under CPLR 3213 against defendants Bolta US Ltd. (d/b/a Bolta US Inc.) (“Bolta”) and White Capstan Ltd. (“WCL”), jointly and severally, in the amount of \$7,355,159.97 plus per diem interest of \$1,781.25 from January 8, 2023 to the date of entry of judgment, together with attorneys’ fees and costs of collection. Since the filing of this motion, Plaintiff’s counsel has filed an affirmation with attached email communications showing that WCL is not opposing this motion (*see* NYSCEF 13 [Lillienstein Affirmation [“Lillienstein Affim.”] ¶ 4]; NYSCEF 15), and that the Action against Bolta is stayed due to its Bankruptcy Filing (Lillienstein Affim. ¶ 8–9).

Pursuant to CPLR 3213, a party may commence an action by motion for summary judgment in lieu of complaint when the action is “based upon an instrument for the payment of money only or upon any judgment” (*Oak Rock Fin., LLC v Rodriguez*, 148 AD3d 1036, 1039 [2d

Dept 2017]). An “instrument for the payment of money only” is one that “requires the defendant to make a certain payment or payments and nothing else” (*Seaman-Andwall Corp. v Wright Mach. Corp.*, 31 AD2d 136, 137 [1st Dept 1968]; *Weissman v Sinorm Deli, Inc.*, 88 NY2d 437, 444 [1996]). “It is well settled that a promissory note, as an instrument for the payment of money only, is entitled to the expedited procedure detailed in CPLR 3213” (*R-H-D Const. Corp. v Miller*, 222 AD2d 802, 803 [3d Dept 1995]). To meet its burden on a motion for summary judgment in lieu of complaint on a guarantee, a plaintiff “must prove the existence of the guaranty, the underlying debt and the guarantor’s failure to perform under the guaranty” (*Davimos v Halle*, 35 AD3d 270, 272 [1st Dept 2006]).

Here, the Bank has established a *prima facie* case for summary judgment pursuant to 3213 against WCL by demonstrating that (i) Bolta executed a Promissory Note dated as of September 22, 2015, in favor of the Bank (NYSCEF 5 [the “Note”]) (ii) WCL executed a Guaranty dated as of October 6, 2015 (NYSCEF 6 [the “Guaranty”]), which unconditionally and irrevocably guaranteed to the Bank the payment when due of all amounts due under the Note; (iii) the Bank made loan advances totaling \$6,750,000.00 pursuant to the Note; (iii) Bolta failed to repay the amounts due under the Note (*see* NYSCEF 4 [Affidavit of Jonathan Lidz [“Lidz Aff.”] ¶6; NYSCEF 7 [“Bolta Demand”]); and (iv) WCL has failed to make the payments due to the Bank under the Guaranty, despite the Bank’s demand therefor (Lidz Aff. ¶10; NYSCEF 9 [“White Capstan Demand”]). As of the date of the Lidz Aff. (January 11, 2023), the total amount owed by Bolta under the Note is \$6,750,000.00, plus \$605,159.97 in interest as of

January 8, 2023, for a total amount of \$7,355,159.97¹ (with interest accruing on that amount at the rate of \$1,781.25 per day).

Additionally, WCL agreed to pay “any and all expenses (including counsel fees and expenses) incurred by the Bank in enforcing any rights under this Guaranty” (Lidz Aff., ¶ 9; Guaranty § 1). The Bank submitted a schedule reflecting the attorneys’ fees and expenses incurred by Plaintiff through February 9, 2023 in the amount of \$32,343.00 in connection with Plaintiff’s efforts to collect the amounts due under the Guaranty (NYSCEF 16), which appear reasonable in amount and were necessarily incurred by Plaintiff in connection with its collection of the amounts due under the Guaranty.

As noted, the Bank submitted an Affirmation of Service with attached email communications showing that WCL is not opposing this motion (Lillienstein Affim. ¶ 4; NYSCEF 15), thus WCL fails to raise a fact issue that would avoid enforcement under the Guaranty. The claim against WCL will be severed to permit entry of judgment.

Accordingly, it is:

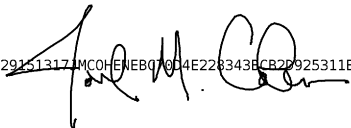
ORDERED that the Bank’s motion for summary judgment in lieu of complaint is **GRANTED** as against WCL and **denied without prejudice** to renew as against Bolta if and when the bankruptcy stay is lifted; it is further

ORDERED that the Bank’s claim against WCL is severed from the remainder of the action. The Clerk of the Court is directed to enter judgment in favor of Deutsche Bank AG, New

¹ The Bank submits the date and amount of each loan advance, the interest rate (based on LIBOR + 3.70%), and the maturity date of each loan advance are reflected in the Loan and Repayment Schedule attached to the Note (NYSCEF 5 at p.5 “Loan and Repayment Schedule”). A schedule showing the calculation of the amount of principal and interest due under the Note is filed at NYSCEF 8.

York Branch, whose address is 1 Columbus Circle, New York, New York and against White Capstan Limited, whose address is Environment House, 6 Union Road, Nottingham, NG3 1DE, United Kingdom, in the amount of \$7,355,159.97, plus interest at the per diem rate of \$1,781.25 from January 8, 2023 to the date of entry of the judgment in the amount of _____, plus the costs of collection, including reasonable attorneys' fees in the amount of \$32,343.00.

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

3/29/2023
DATE

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