

**Medallion Bank v Seme**

2023 NY Slip Op 31177(U)

April 7, 2023

Supreme Court, Kings County

Docket Number: Index No. 512618/2021

Judge: Peter P. Sweeney

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SUPRME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: PART 73

Index No.: 512618/2021  
Motion Date: 12-5-23  
Mot. Seq. No.: 1

-----X  
MEDALLION BANK,

Plaintiff,

-against-

**DECISION/ORDER**

GUY SEME,

Defendant.  
-----X

Upon the following papers, listed on NYSCEF as document numbers 33-50 were read on this motion:

The defendant, Guy Seme, moved by order to show cause for an order granting the following relief: (1) vacating the judgment in the amount of \$197,396.17 entered against him on December 20, 2021, in the action captioned *Medallion Bank v. Guy Seme*, Index No. 532286/2021 (N.Y. Sup. Ct. Kings Cnty) (the “December 2021 Judgment”); (2) directing satisfaction of the judgment in the amount of \$190,230.27 entered on June 7, 2021, in the action captioned *Medallion Bank v. Guy Seme*, Index No. 512618/2021 (N.Y. Sup. Ct. Kings Cnty) (the “June 2021 Judgment”); (3) crediting him \$2,645 in garnished funds; (4) granting a temporary restraining order and preliminary injunction preventing the plaintiff Medallion Bank from enforcing either the December 2021 Judgment or the June 2021 Judgment pending final adjudication of this motion; and (5). granting such other and further relief as this Court may deem just and proper.

By stipulation dated September 22, 2022 and filed on September 27, 2022 (NYSCEF # 26 under Index No. 532286/2021 – the “Stipulation”), the parties stipulated to vacate the Second Judgment and agreed that the funds garnished from Guy Seme’s bank account (less statutory poundage fees required to be paid to the Marshal), would be applied to reduce the principal amount owed by Guy Seme to the plaintiff. Finally, the plaintiff did not oppose Guy Seme’s request for temporary injunctive relief. Considering the stipulation, the only remaining branch of Guy Seme’s motion that must be decided is his request for an order deeming the Judgment satisfied in full, on the basis that the sale of defendant’s taxi medallion was not conducted in a commercially reasonable manner. For the following reasons, that branch of motion is denied,

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without prejudice, and the defendant is granted leave to seek such relief he seeks by plenary action.

In this case, the defendant-borrower defaulted under an installment sales contract with the plaintiff-lender. The loan agreement was secured by a taxi medallion. Uniform Commercial Code § 9–610 authorized the plaintiff-secured creditor to liquidate the security and apply any proceeds obtained to the unpaid balance of the debt (*see General Motors Acceptance Corp. v. Morgese*, 161 A.D.2d 1019, 1021, 557 N.Y.S.2d 590; *Oxford Resources Corp. v. Jenkins*, 168 Misc.2d 436, 438, 642 N.Y.S.2d 488).

When, as here, a secured creditor has liquidated its security, the secured creditor may recover any remaining deficiency from the debtor in an action to enter a deficiency judgment by proving the amount of the debt, the fair market value of the security and the resulting deficiency (UCC 9–615 [d] [2]; *Telemark, Inc. v. Lavigne*, 124 A.D.2d 1055, 508 N.Y.S.2d 737; *Security Trust Co. of Rochester v. Thomas*, 59 A.D.2d 242, 246–247, 399 N.Y.S.2d 511; *Sunrise Credit Corp. v. Lawson*, — Misc.2d —, 2002 WL 31455208 [App Term 2002]). A secured creditor is entitled to maintain an action for the deficiency if notice of the sale was given to the debtor as required by law (UCC 9–611), and the sale was commercially reasonable (*Jefferds v. Ellis*, 132 A.D.2d 321, 324–325, 522 N.Y.S.2d 398; *Kohler v. Ford Motor Credit Co.*, 93 A.D.2d 205, 462 N.Y.S.2d 297).

UCC 9–627(b) provides that a disposition of collateral is commercially reasonable if the secured party either sells it in the usual manner in any recognized market or if it was otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold. UCC 9-610 states that “[e]very aspect of a disposition of collateral, including the methods, manner, time, place, and other terms, must be commercially reasonable” (UCC 9- 610(b)). Further, “New York courts have determined commercial reasonableness by whether the secured party ‘acted in good faith and to the parties’ mutual best advantage” (*Coxall v. Clover Commercial Corp.*, 4 Misc.3d 654, 661 (Civ Ct., Kings Cnty. 2004).

UCC 9-626 sets forth the consequences of failing to sell collateral in a commercially reasonable manner and provides:

(3) Except as otherwise provided in Section 9-628, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of:

(A) the proceeds of the collection, enforcement, disposition, or acceptance; or

(B) the amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

This is not an action to enter a deficiency judgment. The judgment in this case was entered in plaintiff's favor against the defendant by confession. The defendant is not claiming that the judgment was improperly entered and is seeking to have the judgment, or a portion thereof, deemed satisfied claiming that plaintiff's sale of his taxi medallion was not held in a commercially manner.

The case law suggests that if a plaintiff-creditor is desirous of entering a deficiency judgment against a defendant-creditor following a sale of collateral because the proceeds of the sale were insufficient to satisfy the debt owed to the plaintiff, the plaintiff-creditor must commence a plenary action for such relief. Under such circumstances, the plaintiff creditor has the burden of proving the sale was done in a commercially reasonable manner.

Here, the plaintiff-creditor is not seeking a deficiency judgment. As stated, the plaintiff-creditor had secured a judgment against the defendant by confession. The issue presented is whether a defendant, under these circumstances, has the right to proceed by motion in the same action where the judgment was confessed to obtain an order or judgment modifying and/or expunging the confessed judgment on the grounds that the sale of the collateral was not commercially reasonable. The defendant cites no authority, and the Court has found none, allowing for such a motion. Indeed, "[g]enerally, a person seeking relief from a judgment entered upon the filing of an affidavit of confession of judgment must commence a separate plenary

action for that relief” (*Regency Club at Wallkill, LLC v. Bienish*, 95 A.D.3d 879, 879, 942 N.Y.S.2d 894; *see Morocho v. Monterroza*, 170 A.D.3d 710, 711, 93 N.Y.S.3d 574). Here, the grounds for vacatur or partial satisfaction of the judgment relied upon by the defendant do not fall within any known exception to this general rule. The Court notes that CPLR 5021 does not allow for the entry of a full or partial satisfaction of judgment under these circumstances (see, *Piranesi Imports, Inc. v. Furniture Textiles & Wallcoverings, Inc.*, 31 A.D.2d 742, 742, 296 N.Y.S.2d 922, 924).

Accordingly, didn't see hereby

**ORDERED** that the motion is **DENIED**, without prejudice to the defendant’s right to seek the relief he is seeking by plenary action; and it is further

**ORDERED** that the temporary restraining order issued on August 26, 2022 shall remain in effect for 45 days following service of this order with Notice of Entry. Defendant may seek another temporary restraining order if defendant chooses to proceed by plenary action.

This constitutes the decision and order of the Court.

Dated: April 7, 2023

**PPS**

PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020

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