

Itria Ventures LLC v Singh Oil Corp.

2023 NY Slip Op 31809(U)

May 26, 2023

Supreme Court, New York County

Docket Number: Index No. 654098/2022

Judge: Margaret A. Chan

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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 49M

ITRIA VENTURES LLC Plaintiff, - v - SINGH OIL CORPORATION, J&P SINGH MANAGEMENT L.P, DEEP SERVICES INC., NARROWS ROAD, L.L.C., PETRO RUN MANAGEMENT LLC, BINGH OIL TURNERSVILLE SOUTH INC., BINGH OIL CHERRY HILL INC., and GURPREET SINGH Defendants.	INDEX NO. <u>654098/2022</u> MOTION DATE <u>12/07/2022</u> MOTION SEQ. NO. <u>001</u> DECISION + ORDER ON MOTION
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HON. MARGARET A. CHAN:

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, 17, 18, 19 were read on this motion to/for Summary Judgment in Lieu of Complaint

Plaintiff Itria Ventures LLC extended a term loan (the Loan) to defendants Singh Oil Corporation and J&P Singh Management L.P. (collectively, Borrowers). This Loan was guaranteed by defendants Deep Services Inc., Narrows Road, LLC, Petro Run Management LLC, Bingham Oil Turnersville South Inc., Bingham Oil Cherry Hill Inc. and Gurpreet Singh (collectively, Guarantors). When the Loan matured, the Borrowers defaulted, and the Guarantors failed to pay the Loan as required. Plaintiff now moves, pursuant to CPLR 3213, for summary judgment in lieu of complaint for a judgment against the Borrowers and the Guarantors. There is no opposition to the motion.

In support of its motion, plaintiff presents a loan and security agreement among plaintiff and all defendants except Gurpreet Singh, and a term loan note between plaintiff and Borrowers, both dated November 19, 2018 (NYSCEF # 4 – the Loan Agreement; NYSCEF # 5 — the Note). Gurpreet Singh signed both documents as the authorized signatory for Borrowers and Guarantors. As evidenced by the Loan Agreement and the Note, the Loan has a principal balance of \$1,000,000 with a fixed interest rate of 11%, compounded annually. The Note obligates Borrowers to pay plaintiff (i) interest accrued on the Loan on a monthly basis, beginning on December 1, 2018, and (ii) the entire principal balance of the loan, in one lump sum, on November 1, 2020, if not sooner paid. In the event of a default, the Note allows for an increase of interest rate from 11% to 16% and a late charge equal to 5% of the amount defaulted (NYSCEF # 5 at 1, 2).

Plaintiff also presents five guaranty agreements on the Loan between plaintiff and each Guarantor except for Petro Run Management LLC (NYSCEF # 6 — the Guaranty Agreements).¹ The Guaranty Agreements provide that each Guarantor except for Petro Run Management LLC “unconditionally guarantees, and becomes surety for, the prompt payment and performance of all loans, advances, debts, liabilities, obligations, covenants and duties owing by the Borrower to the Lender of any kind or nature . . . and all costs and expenses of the Lender incurred in the . . . collection . . . including reasonable attorneys’ fees and expenses” (*id.* § 1).

On November 1, 2020, the Loan matured but Borrowers and Guarantors did not pay plaintiff in full. On November 15, 2020, plaintiff sent a notice of default to Gurpreet Singh, demanding that Borrowers and Guarantors immediately pay plaintiff the full outstanding amount of the Loan, which was \$1,076,000 as of the letter date (NYSCEF # 7). Over the next couple of years, defendants remitted to plaintiff various payments in amounts ranging from \$536.60 to \$5,071.69 (NYSCEF # 8 – Payment Record). The payments, however, fell short of the aggregate amount defendants owed. As of October 28, 2022, the aggregate balance of the Loan increased to \$1,217,924.10, consisting of a principal amount of \$1,000,000 and accrued interest of \$217,924.10 (NYSCEF # 9 — MOL at 5). Since then, interest under the Loan has continued to accrue at a rate of 16% per annum, or \$444.44 per day (*id.*).

Plaintiff seeks summary judgment against defendants, jointly and severally, for (i) the amount of \$1,217,924.10 (i.e., the aggregate outstanding balance as of October 28, 2022), plus additional interest accrued at an annual rate of 16% from October 29, 2022, through the date of judgment, and (ii) recovery of plaintiff’s attorneys’ fees and expenses incurred to enforce the Note and the Guaranty Agreements.

All defendants were served on or before December 1, 2022 (NYSCEF #’s 12-19), except Bingh Oil Cherry Hill Inc., for which plaintiff has not submitted proof of service. None of the defendants has appeared or responded.

Discussion

CPLR 3213 permits “actions based upon an instrument for the payment of money only to be commenced with a motion for summary judgment rather than a complaint” (*Banco Popular N. Am. v Victory Taxi Mgt., Inc.*, 1 NY3d 381, 383 [2004]). This is to provide “a speedy and effective means of securing a judgment on claims presumptively meritorious” (*Interman Indus. Prods., Ltd. v R.S.M. Electron Power, Inc.*, 37 NY2d 151, 154 [1975]). To qualify for this expedited treatment, a plaintiff suing on an instrument must establish that (i) the instrument sued upon is “for the payment of money only,” meaning that it contains “an unconditional promise to pay a sum certain . . . due on demand or at a definite time” (*Weissman v Sinorm Deli, Inc.*, 88 NY2d 437, 444 [1996]); and (ii) a prima facie case for plaintiff’s

¹ Plaintiff did not e-file a guaranty agreement of Petro Run Management LLC. But Petro Run Management LLC signed the Loan Agreement as one of the Guarantors.

right to payment can be ascertained from the face of the instrument, without outside proof or extrinsic evidence other than “simple proof of nonpayment or a similar de minimis deviation from the face of the document” (*id.*).

A promissory note is a “typical example of an instrument within the meaning of [CPLR 3213]” (*DDS Partners, LLC v Celenza*, 6 AD3d 347, 348 [1st Dept 2004], citing *Weissman*, 88 NY2d at 444). A plaintiff suing on a promissory note proves a prima facie case where “[i]t is undisputed that Defendant has failed to pay on the note” (*LaBoeuf v Saide*, 134 AD3d 515, 516 [1st Dept 2015]; *see also Seaman-Andwall Corp. v Wright Mach. Corp.*, 31 AD2d 136, 137 [1st Dept 1968] [applying CPLR 3213 to a promissory note for “[i]t is incontestable that plaintiff would prove a prime facie case by proof of the note and a failure to make the payments called for by its terms”]).

Here, by supplying the Note and the Loan Agreement, which are instruments for the payment of money only, and an undisputed Payment Record that shows Borrowers’ failure to pay the outstanding balance in full, plaintiff has established a prima facie case under CPLR 3213 against Borrowers for full payment due under the Note.

Plaintiff, however, is not entitled to summary judgment against Guarantors. At the onset, plaintiff’s action against Bingham Oil Cherry Hill Inc. and Petro Run Management LLC is procedurally defective because plaintiff failed to prove service of summons and pleading papers on Bingham Oil Cherry Hill Inc. and failed to present a guaranty agreement of Petro Run Management LLC.

Further, plaintiff’s case against Guarantors does not qualify for CPLR 3213 treatment because the Guaranty Agreements require the performance of nonmonetary obligations in addition to payment on the Loan (*see Bank of Am., N.A. v Filho*, 203 AD3d 594 [1st Dept 2022] [finding that CPLR 3213 does not apply to guaranties where a guarantor “shall . . . punctually perform any and all Obligations not requiring the payment of money”]; *Punch Fashion, LLC v Merchant Factors Corp.*, 180 AD3d 520, 521 [1st Dept 2020] [holding that a guarantee of both payment and performance does not qualify for CPLR 3213]).

Here, the Guaranty Agreement requires “the prompt payment and performance of all loans . . . obligations, covenants and duties owing by the Borrower to the Lender,” which, according to the Loan Agreement, included several nonmonetary obligations such as furnishing plaintiff with the annual financial statements and tax returns of Borrowers and the annual personal financial statements and tax returns of Gurpreet Singh, refraining from pledging or transferring any of the collateral without plaintiff’s prior written consent, and maintaining insurance with respect to Borrowers’ property and business (*see PDL Biopharma, Inc. v Wohlstadter*, 147 AD3d 494, 495 [1st Dept 2017] [finding that the guarantor’s performance obligations such as furnishing plaintiff with borrower’s annual and quarterly did not qualify as instruments for the payment of money only]). While plaintiff claims that the Guaranty Agreements are eligible for CPLR

3213 treatment, it does not address the performance requirement placed on the Guarantors (NYSCEF # 9 at 8).

Plaintiff also seeks attorneys' fees as provided by the Loan Agreement (NYSCEF # 4, § 2.5) and the Guaranty Agreements (NYSCEF # 6, § 10). Attorneys' fees that are "reasonable and adequate" may be awarded (542 E. 14th St. LLC v Lee, 66 AD3d 18, 24 [1st Dept 2009]). The First Department has awarded reasonable attorneys' fees when granting summary judgment in lieu of complaint (see Chase Manhattan Bank, N.A. v Marcovitz, 56 AD2d 763 [1st Dept 1977]; Manufacturers Hanover Tr. Co. v Green, 95 AD2d 737 [1st Dept 1983]). Therefore, Borrowers should be liable for the reasonable attorneys' fees plaintiff incurred to enforce the Note. A determination of the amount of such attorneys' fees, per plaintiff's request, will be severed and scheduled for a separate inquest.

Conclusion

Based on the foregoing, it is

ORDERED that plaintiff Itria Ventures LLC's motion for summary judgment in lieu of complaint against defendants Singh Oil Corporation and J&P Singh Management L.P. is granted; it is further

ORDERED that plaintiff shall have judgment against defendants Singh Oil Corporation and J&P Singh Management L.P. in the amount of \$1,217,924.10 with interest accrued at a rate of 16% per annum from October 29, 2022, through the date of judgment; it is further

ORDERED that plaintiff shall have judgment against defendants Singh Oil Corporation and J&P Singh Management L.P. as to liability for reasonable attorneys' fees and expenses incurred by plaintiff in connection with this motion, with an amount to be determined by the court upon plaintiff's submission of invoices and an affirmation(s) from counsel regarding the basis for the fee charged and its reasonableness; it is further

ORDERED that plaintiff's motion for summary judgment in lieu of complaint against defendants Deep Services Inc., Narrows Road, L.L.C., Petro Run Management LLC, Bingham Oil Turnersville South Inc., Bingham Oil Cherry Hill Inc. and Gurpreet Singh is denied; and it is further

ORDERED that the Clerk of the Court enter judgment accordingly.

5/26/2023

DATE

MARGARET A. CHAN, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE