

**Medallion Fin. Corp. v T.O.S.A.L Hacking Corp.**

2023 NY Slip Op 31869(U)

June 1, 2023

Supreme Court, New York County

Docket Number: Index No. 652447/2021

Judge: Verna L. Saunders

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After being served with the summons and complaint, M. Sapino filed an answer. She asserted five affirmative defenses: failure to state a claim upon which relief can be granted (first affirmative defense); unclean hands (second affirmative defense); fraudulent inducement (third affirmative defense); lack of consideration (fourth affirmative defense); and that the medallions' sale was not commercially reasonable (fifth affirmative defense). (NYSCEF Doc No. 15, *answer*, pg. 6).

In the instant motion, plaintiff moves, pursuant to CPLR 3212, for an order granting it summary judgment against answering defendant on its first and third causes of action; a default judgment against the remaining defendants; dismissal of answering defendant's affirmative defenses; entry of a money judgment against defendants on its first and third causes of action; and contractual costs, disbursements and attorneys' fees. (NYSCEF Doc. No. 17, *memorandum of law in support of motion*, pg. 11).

In opposition to plaintiff's motion, M. Sapino argues that plaintiff's pre-discovery summary judgment motion is premature at this stage in the litigation as it rests on facts not previously made available to her. (NYSCEF Doc. No. 50, *memo in opposition*, pg. 3). She argues that plaintiff is not the proper party in interest and has no standing to enforce the loan documents as they were executed by Medallion Bank, not plaintiff. M. Sapino argues that plaintiff has unclean hands in this matter and should be barred from recovery. She first argues that she would not have agreed to enter into a Modification Agreement with Medallion Bank in 2016 had she known that a Securities and Exchange Commission ("SEC") complaint currently pending against plaintiff alleges that plaintiff was engaged in a scheme to inflate its valuation and falsely represented its financial condition during the years between 2014 and 2017. She also argues that she was induced to sign the power of attorney by her daughter, but did not in fact sign the Promissory Note, Guaranty or Security Agreement, all dated April 1, 2013, and that plaintiff knew or should have known through the exercise of basic due diligence that she did not intend to be bound by any document. (*id.*, at pg. 5). Hence, M. Sapino cross-moves for an order seeking leave to file an amended answer to elaborate upon her defense of fraudulent inducement because she believes that her daughter and defendant R. Sapino falsely and intentionally induced her to grant the power of attorney by representing to her that she was granting power of attorney to her daughter, thereby damaging her by signing these documents with plaintiff on her behalf. (*Id.*, at ¶ 6; *Maria Aff.*, ¶ 5.)

In reply, plaintiff contends that M. Sapino has failed to demonstrate a triable issue of fact and that allegations surrounding the 2013 loan documents are simply meritless insofar as she executed the Reaffirmation of Guaranty, dated December 1, 2016. To the extent she argues that plaintiff lacks standing to bring this action, plaintiff maintains that Medallion Bank (plaintiff's wholly owned subsidiary), sold and transferred the subject loan to plaintiff pursuant to a Sale Agreement dated December 19, 2014. (NYSCEF Doc. No. 57, *memorandum in reply*, pg. 6). Plaintiff argues that M. Sapino's unclean hands allegation fails because plaintiff had no additional duty to investigate the power of attorney executed by her, which was duly notarized and presumptively valid on its face. Furthermore, plaintiff proffers that M. Sapino fails to establish any relationship between the allegation in the SEC complaint and her default under the loan documents, and neither does she identify any damages consequently suffered. (*id.*, at pg. 13). Additionally, plaintiff argues that the cross-motion should be denied because the

affirmative defenses have already been discredited and an amended answer will assert futile boilerplate affirmative defenses. (*Id.*, at pg. 14.)

It is well-settled that the proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact (see *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980].) Once this showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action or show that “facts essential to justify opposition may exist but cannot [now] be stated.” (CPLR 3212 [f]; see *Zuckerman*, 49 NY2d at 562). In order to establish a *prima facie* case on a breach of contract claim, plaintiff must show proof of a contract, plaintiff’s performance under the contract, defendant’s breach thereof, and damages as a result. (see *Belle Light. LLC v Artisan Constr. Partners LLC*, 178 AD3d 605, 606 [1st Dept 2019].)

A motion for a default judgment must be supported with “proof of service of the summons and complaint [,] ... proof of the facts constituting the claim, [and] the default” (CPLR 3215 [f]; see also *Gordon Law Firm, P.C. v Premier DNA Corp.*, 205 AD3d 416, 416 [1st Dept 2022]). “[A] complaint verified by someone or an affidavit executed by a party with personal knowledge of the merits of the claim” satisfies this statutory requirement (*Beltre v Babu*, 32 AD3d 722, 723 [1st Dept 2006]; *Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003] [stating that “the affidavit or verified complaint need only allege enough facts to enable a court to determine that a viable cause of action exists”].) The plaintiff must also offer “some proof of liability ... to satisfy the court as to the prima facie validity of the uncontested cause of action” (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994]). “The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts” (*id.*). A party in default “admits all traversable allegations in the complaint, including the basic allegation of liability, but does not admit the plaintiff’s conclusion as to damages” (*Rokina Opt. Co. v Camera King*, 63 NY2d 728, 730 [1984].)

With respect to the summary judgment motion, this court finds that plaintiff has established its *prima facie* entitlement to summary judgment as against M. Sapino. Although M. Sapino maintains she did not sign the promissory note, guaranty or security agreement, all dated April 1, 2013 (“loan documents”), she, however, does not dispute that she subsequently executed the note modification agreement dated November 5, 2013, note modification agreement, reaffirmation of security agreement and reaffirmation of guaranty, all dated December 1, 2016. As such, M. Sapino ratified the 2013 loan documents by performance, availing herself of the benefits and obligations thereunder. (see *Jaywyn Video Productions, Ltd. v Servicing All Media, Inc.*, 179 AD2d 397, 398 [1st Dept 1992]). In any event, she also fails to establish that plaintiff had a duty to investigate whether her power of attorney was fraudulently procured. M. Sapino’s claim that plaintiff is not the proper party in interest and has no standing to enforce the loan documents is belied by the sale agreement which evinces that, effective December 19, 2014, plaintiff was the sole and current owner of the subject loan (NYSCEF Doc. No. 3, *Sales Agreement*). Plaintiff tenders’ evidence that it possessed the note when it commenced this action, including a copy of the original note, and other supporting material, including an affidavit of possession based on an employee’s review of plaintiff’s business records. (see *JPMorgan*

*Chase Bank, N.A. v Caliguri*, 36 NY3d 953, 954 [2020], citing *Aurora Loan Servs., LLC v Taylor*, 25 NY3d 355, 361 [2015]). Plaintiff has standing to bring this action because the subject loan was sold and transferred to plaintiff pursuant to a sale agreement (NYSCEF Doc. No. 26, *Note*, pg. 11-13). Her unclean hands argument likewise fails. Importantly, “[r]eliance upon the doctrine of unclean hands is applicable only ‘when the conduct relied on is directly related to the subject matter in litigation and the party seeking to invoke the doctrine was injured by such conduct’” (*Citibank, N.A. v American Banana Co., Inc.*, 50 AD3d 593, 594 [1st Dept 2008], quoting *Mehlman v Avrech*, 146 AD2d 753, 754 [2nd Dept 1989]). Here, M. Sapino does not establish how the conduct alleged in the SEC complaint is related to her default and/or how she was injured by such alleged conduct. As such, her unclean hands (second affirmative defense) argument is meritless. Insofar as M. Sapino fails to address the dismissal of her lack of consideration (fourth affirmative defense) and her defense that the medallions’ sale was not commercially reasonable (fifth affirmative defense) in her moving papers, they are deemed abandoned. (see *Wing Hon Precision Indus. Ltd. v Diamond Quasar Jewelry, Inc.*, 154 AD3d 550, 551 [1st Dept 2017]). Therefore, plaintiff’s motion for summary judgment as against M. Sapino is granted.

Now considering that branch of the motion seeking a default judgment against the borrower and R. Sapino, the facts constituting the claims have been established above. Moreover, plaintiff has demonstrated that, through an authorized process server, it duly served both R. Sapino and borrower with the summons and complaint. These defendants still have not appeared in this action and have therefore defaulted, pursuant to CPLR 320(a) and 3215(a).

Next, the court grants that branch of the motion seeking costs and attorney’s fees insofar as costs and attorney’s fees are recoverable when authorized by statute court rule or written agreements of the parties. (see *TAG 380, LLC v ComMet 380, Inc.*, 10 NY3d 507, 515 [2008]). Here, the defendants agreed to be liable for attorney’s fees under the Note and hence, are jointly and severally responsible for plaintiff’s attorney’s fees incurred in this matter. (NYSCEF Doc. No. 26, *Note*, pg. 1). Therefore, the court grants that branch of the motion seeking costs and attorney’s fees.

Turning to the cross-motion seeking leave to amend the answer to elaborate upon her unclean hands (second affirmative defense) and fraudulent inducement defense (third affirmative defense), it is well-settled that “[w]here a court concludes that an application to amend a pleading clearly lacks merit, leave is properly denied” [*Davis & Davis, P.C. v Morson*, 286 AD2d 584, 585 [1st Dept 2001]). Here, M. Sapino has failed to establish the merits of the proposed defense insofar as she simply alleges that, upon information and belief, plaintiff knew or should have that she was fraudulently induced to sign the power of the attorney, but plaintiff did not attempt to contact her at the time the loan documents were being entered into. The court finds that the proposed answer, premised on conclusory allegations, is palpably insufficient. (*Tishman Constr. Corp. v City of New York*, 280 AD2d 374, 377 [1st Dept 2001]). Therefore, the cross-motion is denied. All other arguments have been considered and are either without merit or need not be addressed. Accordingly, it is

**ORDERED** that that branch of the motion seeking summary judgment in favor of plaintiff as against Maria Sapino is granted in its entirety; and it is further

**ORDERED** that that branch of the motion seeking a default judgment against defendant TOSAL HACKING CORP. and defendant Roman Sapino is granted, without opposition; and it is further

**ORDERED** that defendant Maria Sapino’s cross-motion is denied in its entirety; and it is further

**ORDERED** that the Clerk of the Court is directed to enter judgment against defendants, jointly and severally, in the amount of \$977,492.50; and it is further

**ORDERED** that the amount of attorneys’ fees owed by defendants to plaintiff shall be determined by a special referee; and it is further

**ORDERED** that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for plaintiff shall serve a copy of this order, with notice of entry, on defendants, as well as, on the Clerk of the Court, who shall enter judgment in accordance with this decision and order; and it is further

**ORDERED** that counsel for plaintiff shall, within twenty (20) days after this decision and order is uploaded to NYSCEF, serve a copy of this order with notice of entry, together with a completed Information Sheet, upon the Special Referee Clerk in the General Clerk’s Office (Room 119), who is directed to place this matter on the calendar of the Special Referee’s Part for the earliest convenient date; and it is further

**ORDERED** that service 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).

This constitutes the decision and order of this court.

**June 1, 2023**

**HON. VERA L. SAUNDERS, JSC**

CHECK ONE:

CASE DISPOSED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE