

**Finch Prop. Holdings I, Inc. v Blumenfeld**

2023 NY Slip Op 32671(U)

August 1, 2023

Supreme Court, New York County

Docket Number: Index No. 651206/2023

Judge: Melissa A. Crane

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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. MELISSA A. CRANE PART 60M

Justice

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INDEX NO. 651206/2023

FINCH PROPERTY HOLDINGS I, LLC

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 001

- v -

ERIC DARYL BLUMENFELD,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50

were read on this motion to/for SUMMARY JUDGMENT(BEFORE JOIND)

Plaintiff Finch Property Holdings I, LLC ("Finch") moves, pursuant to CPLR 3213, for summary judgment in lieu of complaint as against individual defendant Eric Daryl Blumenfeld ("Blumenfeld" or "Borrower") on a certain Promissory Note dated July 12, 2018. Defendant Blumenfeld opposes the motion and cross-moves, pursuant to CPLR 3211(a)(4), to dismiss Finch's complaint. Blumenfeld also cross-moves, in the alternative, to stay this case. This case is part of a larger dispute that is being litigated in Philadelphia (Divine Intervention Hotel, LP v Susquehanna, Case ID 220600693 [Phila. County, 1st Judicial District PA]).

Background

On or about July 12, 2019, Sponsor Lender (the "Lender"), Finch's assignor, agreed to loan Blumenfeld \$8,700,000.00 and Blumenfeld agreed to repay that amount together with interest and other fees and expenses as identified in the Sponsor Loan Agreement (the "Loan Agreement") (Doc 4 [Sponsor Loan Agreement]). Blumenfeld's obligation to repay the original amount on the

terms set forth in the Loan Agreement was memorialized in a Sponsor Promissory Note (the “Note”) (Doc 5 [Sponsor Promissory Note]).

The Loan Agreement and Note provide, amongst other things, that the: (a) Loan will mature on the Initial Term’s last day, as defined in the Loan Agreement; that (b) the Initial Term may be extended for six (6) months; that (c) in all events the Loan shall be due and payable in full on the Maturity Date (July 6, 2019); and that (d) on the Maturity Date, whether by acceleration prepayment or otherwise, the outstanding principal balance of the Loan, together with all accrued and unpaid interest and any other amounts due and payable to the Lender hereunder or under the other Loan Documents shall be paid in full (Doc 4 [Sponsor Loan Agreement] § 2.2, 2.3.1).

On June 24, 2019, the Lender and Blumenfeld entered into a Forbearance Agreement in which Blumenfeld acknowledged that: (a) he had not made payments of debt service required under the Loan Agreement for March, April, May and June 2019; (b) his failure to make these payments was each an individual Event of Default under the Loan Agreement; and that (c) the Lender had, at that time, the present and immediate right to exercise its rights and remedies under the Loan Documents. Additionally, Blumenfeld ratified and referred to the Loan Documents and agreed that the Forbearance Agreement did not extend the Loan’s Maturity Date. In turn, the Lender agreed to forbear from exercising its rights arising from the Loan Documents until August 9, 2019, despite the existing events of default and the July 6, 2019 Maturity Date.

The Loan matured on July 6, 2019, and all sums due and owing to the Lender at the time were not paid. Nor were any payments made in full to the Lender before on or after the August 9, 2019 expiration of the forbearance period under the Forbearance Agreement.

On October 9, 2019, the Lender notified Blumenfeld that the Loan had matured on July 6, 2019, that its entire unpaid balance, along with all accrued unpaid interest, had become due on the

Maturity Date and remained due and owing. The Lender demanded full payment and satisfaction of the amounts due and owed to it under the Loan Agreement and Note (Doc 7 [First Default Letter]).

On October 29, 2019, the Lender again notified Blumenfeld that the Loan remained in default due to his failure to pay all amounts due and owing under the Loan Agreement and the Note (Doc 8 [Second Default Letter]).

On March 16, 2021, the Lender again notified Blumenfeld that the Loan remained in default due to his failure to pay under the Loan Agreement and Note. The Lender also informed and notified Blumenfeld of additional defaults under the Loan Agreement, and further demanded payment of all amounts due and owing under the Loan Agreement and the Note (Doc 9 [Third Default Letter]). Despite these written demands, Blumenfeld failed to pay the Lender the full debt that became due on, and which has accrued after, the Maturity Date.

#### Discussion

CPLR 3213 provides for accelerated judgment where the instrument sued upon is for the payment of money only and the right to payment can be ascertained from the face of the document without regard to extrinsic evidence, “other than simple proof of nonpayment or a similar *de minimis* deviation from the face of the document” (*Weissman v Sinorm Deli, Inc.*, 88 NY2d 437, 444 [1996]; see *Arbor-Myrtle Beach PE LLC v Frydman*, 2021 NY Slip Op. 30223[U], 2 [Sup Ct, NY County 2021], *affd* 2022 NY Slip Op. 00806 [1st Dept 2022]).

Accelerated judgment under CPLR 3213 is also appropriate where the plaintiff establishes a *prima facie* case by virtue of a note and a failure to make payments called for therein (*Warburg, Pincus Equity Partners, L.P. v O'Neill*, 11 AD3d 327 [1st Dept 2004], citing *DDS Partners v Celenza*, 6 AD3d 347, 348 [1st Dept 2004]). Thus, 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).

The same standards that apply to motions for summary judgment apply to CPLR 3213 motions. The movant must make a *prima facie* case by submitting the instrument and evidence of the defendant's failure to make payments in accordance with the instrument's terms (*see Weissman*, 88 NY2d at 444; *Matas v Alpargatas S.A.I.C.*, 274 AD2d 327, 328 [1st Dept 2000]).

The court grants the motion and denies the cross-motion. Finch has demonstrated its *prima facie* entitlement to summary judgment as a matter of law under the Note, and defendant has neither raised an issue of fact nor established that dismissal is appropriate under CPLR 3211(a)(4).

The Note, which qualifies as an instrument for the payment of money only within the meaning of CPLR 3213, provides the following in Section 8, styled as "*Venue; Service of Process*":

**All actions or proceedings arising in connection with this Note shall be tried and litigated in state or federal courts located in the State of New York** unless such actions or proceedings are required to be brought in another court to obtain subject matter jurisdiction over the matter in controversy. MAKER WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS, TO ASSERT THAT IT IS NOT SUBJECT TO THE JURISDICTION OF SUCH COURTS OR TO OBJECT TO THE VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE HERewith. IN ANY ACTION AGAINST MAKER, SERVICE OF PROCESS MAY BE MADE UPON MAKER BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO ITS ADDRESS ABOVE SET FORTH, WHICH SERVICE SHALL BE DEEMED SUFFICIENT FOR PERSONAL JURISDICTION AND SHALL BE DEEMED EFFECTIVE THREE (3) DAYS AFTER MAILING.

(Doc 5 [Sponsor Promissory Note] § 8).

Further, Section 15.5.3 of the Loan Agreement (Doc 4 [Sponsor Loan Agreement]), titled "Governing Law," also provides the following:

**This Agreement and each of the other Loan Documents shall in all respects be governed, construed, applied and enforced in accordance with the internal laws of the State of New York without regard to principles of conflicts of law. ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER**

**ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING.**

(Doc 4 [Sponsor Loan Agreement] § 15.5.3).

Additionally, in Section 15.5.4, Blumenfeld consents to personal jurisdiction in any state or Federal court located within the County of New York (Doc 4 [Sponsor Loan Agreement] § 15.5.4).

The court rejects defendant's arguments submitted in opposition to Finch's CPLR 3213 motion and in support of its cross-motion. First, the court has jurisdiction over this proceeding and venue in New York is proper. Pursuant to Sections 15.5.3 and 15.5.4 of the Loan Agreement, and Sections 5 and 8 of the Note, Blumenfeld agreed that: (a) New York Law governs both the Loan Agreement and the Note; (b) New York is the appropriate forum for resolving any disputes relating to both the Loan Agreement and the Note; and that (c) Blumenfeld submits to and accepts the personal jurisdiction of the courts of the State of New York with respect to claims brought under both the Loan Agreement and Note.

Further, the pending action in Philadelphia is a separate case that is unrelated to the main issue in this case and on this CPLR 3213 motion. There is no cause of action relating to the performance of the Loan in the Philadelphia action, and the claims in that action concern loans that other lenders made to other borrowers that defendant Blumenfeld owned, not loans made to Blumenfeld personally. Additionally, the complaint in the Philadelphia action asserts neither breach nor wrongdoing by Finch with respect to the Loan Agreement. Thus, the issue on this CPLR 3213 motion is not before the Philadelphia court, and the Philadelphia court would not be able to resolve the issue of Finch's right to collect Blumenfeld's debt under the Note.

Plaintiff establishes, and defendant does not dispute, that the Loan matured on July 6, 2019, that all sums due and owing at the time were not paid, and that these sums were not paid in full before on or after the August 9, 2019 expiration of the forbearance period.

Plaintiff has also established *prima facie* entitlement to \$16,073,444.93 in damages, constituting \$15,692,330.41 in unpaid principal, \$268,513.21 for accrued but unpaid interest, \$130,500 for the Exit Fee pursuant to Section 2.4.2 of the Loan Agreement (*see* Doc 10 [Morris *aff.*] at 10). Defendant does not dispute the amount of principal or interest owed.

Plaintiff has also demonstrated proper service of the required documents under CPLR 3213 on defendant Blumenfeld. As such, Finch has established its *prima facie* case and entitlement to summary judgment in lieu of complaint against defendant Blumenfeld in the amount of \$16,073,444.93. However, because CPLR 3213 is a truncated procedure, and because this case is part of the larger Philadelphia dispute, any enforcement of this judgment must be brought within that larger dispute.

Notwithstanding, the court denies Finch's request for attorneys' fees and costs without prejudice. While Finch may be entitled to recover its reasonable attorneys' fees and costs, it has failed to produce any invoices statements or other proof to establish the amount of reasonable legal fees and costs it incurred.

The court has considered the parties' remaining arguments and finds them unavailing.

Accordingly, it is

ORDERED that plaintiff Finch Property Holdings I, LLC's motion for summary judgment in lieu of complaint, pursuant to CPLR 3213, against individual defendant Eric Daryl Blumenfeld, is granted in part; and it is further

ORDERED that should plaintiff Finch Property Holdings I, LLC bring enforcement proceedings on this judgment, they must be brought within the action in Philadelphia entitled *Divine Intervention Hotel, LP v Susquehanna*, Case ID 220600693 [Phila. County, 1st Judicial District PA] or until further order of that court; and it is further

ORDERED that the clerk is directed to enter judgment, in favor of plaintiff Finch Property Holdings I, LLC, and against defendant Eric Daryl Blumenfeld, in the sum of \$16,073,444.93, together with interest at the contractual rate of 22% per annum, from March 6, 2023 until the date of this decision and order, as calculated by the Clerk, and thereafter at the statutory rate, together with costs and disbursements to be taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that the portion of plaintiff's motion seeking an award of attorneys' fees and costs incurred for this case is denied; and it is further

ORDERED that defendant Eric Daryl Blumenfeld's cross-motion, pursuant to CPLR 3211(a)(4), to dismiss the complaint or, alternatively, to stay this case, is denied; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly and to mark this case as disposed.

8/1/2023  
DATE   
MELISSA A. CRANE, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input checked="" type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	DENIED
			<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT