

Deutsche Bank AG, N.Y. Branch v RBH Inv. II, LLC

2023 NY Slip Op 34295(U)

November 20, 2023

Supreme Court, New York County

Docket Number: Index No. 654630/2023

Judge: Barry Ostrager

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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. BARRY R. OSTRAGER	PART	IAS MOTION 61EFM
<i>Justice</i>			
-----X		INDEX NO.	654630/2023
DEUTSCHE BANK AG, NEW YORK BRANCH,		MOTION DATE	
Plaintiff,		MOTION SEQ. NO.	001
- against -			
RBH INVESTOR II, LLC,			
Defendant.		DECISION + ORDER ON MOTION	
-----X			

HON. BARRY R. OSTRAGER

Before the Court is a motion by plaintiff Deutsche Bank AG, New York Branch (“Deutsche Bank”), for summary judgment in lieu of complaint against defendant RBH Investor II, LLC (“RBH”) to recover principal, interest, and attorney’s fees allegedly due on a Note. The parties originally stipulated to a briefing schedule (NYSCEF Doc. No. 16), but counsel thereafter confirmed that RBH had decided not to oppose the motion (NYSCEF Doc. No. 18). Based on the papers submitted, the motion by Deutsche Bank is granted as provided below.

In support of its *prima facie* case, Deutsche Bank has submitted an affidavit on personal knowledge from Cheryl Gladstone, Director at Deutsche Bank Trust Company Americas, an indirect wholly owned subsidiary of plaintiff Deutsche Bank (NYSCEF Doc. No. 3). Ms. Gladstone has confirmed the details of the parties’ transaction and the authenticity of the relevant documents as follows.

On or about September 30, 2014, Deutsche Bank lent RBH the sum of \$9,760,000.00. The terms of the loan were described in a Senior Commercial Leverage Loan Agreement dated September 30, 2014 and signed by both parties (“the Loan Agreement”, NYSCEF Doc. No. 4). Pursuant to the Loan Agreement, RBH executed a Senior Commercial Leverage Loan Note of

even date ("the Note", NYSCEF Doc. No. 5). The Note provides for a rate of interest of 5.5% per year with respect to the principal balance of \$9,760,000.00, commencing with the date of execution of the Note.

The maturity date of the Note was September 30, 2021 (the "Maturity Date"). Pursuant to Section 3 of the Note, RBH agreed to repay the balance due under the Note as follows: Interest payments quarterly with Interest calculated on the Principal advanced and outstanding, on the 15th day of September, December, April, and June; Principal payments annually into a sinking fund; and the unpaid Principal and all outstanding and accrued Interest on the Maturity Date. The Note further provides in § 6 that, when an Event of Default occurs, Deutsche Bank has "the option to declare this Note due and payable in full without notice, notice of intent to accelerate, notice of acceleration, demand or presentment, all of which are expressly waived by [RBH]." Where the Event of Default is a breach of a financial covenant or failure to pay on the Maturity Date, Interest of 9.5% per year begins to run from the Maturity Date on any unpaid Principal. See § 2.1(b). Additionally, § 8 obligates RBH to pay the reasonable amount of attorney's fees and expenses of collection incurred by Deutsche Bank.

According to the Gladstone Affidavit, RBH made the quarterly Interest payments due through September 30, 2021, but failed to pay the Principal due on the September 30, 2021 Maturity Date. RBH continued to make Interest payments at the rate of 5.5% annually through July 15, 2022, but did not pay the higher default rate of 9.5% due starting October 1, 2021. The last payment of Interest was made on July 15, 2022. Therefore, Deutsche Bank has asserted both a maturity default related to the Principal in the sum of \$9,760,000.00 and an Interest default through August 31, 2023 in the amount of \$1,419,673.33. Gladstone has confirmed the amounts due, as well as the various demands sent to RBH. NYSCEF Doc. Nos. 7-9.

The law is well established that a Note such as the one at issue here that contains an unconditional promise to pay a sum certain by a definite time qualifies as “an instrument for the payment of money only” within the meaning of CPLR 3213. *See Weissman v Sinorm Deli*, 88 N.Y.2d 437, 443-444 (1996). The authentication of the documents by Gladstone, along with proof of the failure of RBH to pay the requisite sums when due, establishes a *prima facie* case for summary judgment in lieu of complaint. *DDS Partners v Celenza*, 6 A.D.3d 347, 348 (1st Dep’t 2004).

Deutsche Bank’s right to attorney’s fees has also been established, but no invoices or other proof of an amount due has been submitted, with plaintiff instead requesting that the case be remanded for a determination of the amount due. In the interest of judicial economy, and in light of the fact that RBH chose not to oppose the motion and engage in unnecessarily protracted or expensive litigation, the Court awards Deutsch Bank \$20,000.00 as a reasonable sum for attorneys’ fees, without prejudice to plaintiff’s right to move in 2024 for an evidentiary hearing for additional sums allegedly due should the parties be unable to agree upon an amount beyond the \$20,000.00 being awarded today following a good faith meet and confer process.

Accordingly, it is hereby

ORDERED that plaintiff’s motion for summary judgment in lieu of complaint is granted, and the Clerk is directed to enter judgment in favor of plaintiff Deutsche Bank AG, New York Branch against defendant RBH Investor II, LLC, consisting of \$9,760,000.00 in Principal plus \$1,419,673.33 in Interest through August 31, 2023, with Default Interest continuing to accrue thereafter at the rate of 9.5% per annum through the entry of judgment in an amount calculated by the Clerk of the Court, plus attorneys’ fees in the sum of \$20,000.00, plus reasonable costs

and disbursements as taxed by the Clerk of the Court unless waived by plaintiff, upon plaintiff's e-filing of a Proposed Judgment and Bill of Costs directed to the County Clerk.

Dated: November 20, 2023


BARRY R. OSTRAGER, J.S.C.

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