

**Medallion Bank v Chopper Taxi Inc.**

2023 NY Slip Op 34452(U)

December 15, 2023

Supreme Court, New York County

Docket Number: Index No. 653146/2021

Judge: Louis L. Nock

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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. LOUIS L. NOCK PART 38M**

*Justice*

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MEDALLION BANK,

Plaintiff,

- v -

CHOPPER TAXI INC. and MEIR YAKUEL,

Defendants.

-----X

INDEX NO. 653146/2021

MOTION DATE 08/31/2021

MOTION SEQ. NO. 001

**SUPPLEMENTAL DECISION +  
ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, and 56

were read on this motion for SUMMARY JUDGMENT.

LOUIS L. NOCK, J.

This decision supplements the prior order of the court on this motion, in which the court denied the motion without prejudice to renewal upon submission of a Statement of Material Facts pursuant to the Uniform Rules for Trial Courts (22 NYCRR) § 202.8-g (NYSCEF Doc. No. 47). Plaintiff now submits such a Statement. Thus, the court now turns its attention to the balance of the motion. Upon the foregoing documents, the motion is granted for the reasons set forth in the moving and reply papers (NYSCEF Doc. Nos. 16, 21, 23, 45) and the exhibits attached thereto, in which the court concurs, as summarized herein. The court assumes familiarity with the facts and circumstances of this matter as set forth in the prior order.

Summary judgment is appropriate where there are no disputed material facts (*Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). The moving party must tender sufficient evidentiary proof to warrant judgment as a matter of law (*Zuckerman v City of N.Y.*, 49 NY2d 557, 562 [1980]).

“Failure to make such prima facie showing requires denial of the motion, regardless of the

sufficiency of the opposing papers” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986] [internal citations omitted]). Once a movant has met this burden, “the burden shifts to the opposing party to submit proof in admissible form sufficient to create a question of fact requiring a trial” (*Kershaw v Hospital for Special Surgery*, 114 AD3d 75, 82 [1st Dept 2013]). “[I]t is insufficient to merely set forth averments of factual or legal conclusions” (*Genger v Genger*, 123 AD3d 445, 447 [1st Dept 2014] [internal citation omitted]). Moreover, the reviewing court should accept the opposing party's evidence as true (*Hotopp Assocs. v Victoria's Secret Stores*, 256 AD2d 285, 286-287 [1st Dept 1998]), and give the opposing party the benefit of all reasonable inferences (*Negri v Stop & Shop*, 65 NY2d 625, 626 [1985]). Therefore, if there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]).

Here, plaintiff has established prima facie entitlement to summary judgment on the promissory note and security agreement executed by defendants by submission of the note and defendants' failure to pay (*Nunez v Channel Grocery & Deli Corp.*, 124 AD3d 734, 734-35 [2d Dept 2015]), as well as the security agreement, evidence of plaintiff's performance thereunder and defendants' breach thereof, and plaintiff's damages (*Harris v Seward Park Housing Corp.*, 79 AD3d 425 [1st Dept 2010]). Pursuant to the terms of the security agreement, plaintiff may pursue a money judgment for failure to pay the note upon its maturity, as well as take possession of the collateral (Security Agreement, NYSCEF Doc. No. 25, ¶ 7). Further, plaintiff's remedies under the security agreement are cumulative, “and shall be in addition to all other remedies in favor of [plaintiff] existing at law or in equity” (*id.*, ¶ 11). Defendant Chopper Taxi, Inc., executed a UCC Financing Statement in favor of plaintiff, in which the collateral was defined as Medallions #4M24 and #4M25, the taxicabs associated with the Medallions, and various other

equipment and property related to the taxicabs and the use of the Medallions (UCC Financing Statement, NYSCEF Doc. No. 27).

In opposition, defendants fail to raise a triable issue of fact. Defendants' allegations of predatory lending and unclean hands are conclusory and unsupported by any admissible evidence, nor do defendants suggest that facts relevant to the note and security agreement "essential to justify opposition may exist but cannot [now] be stated" (CPLR 3212[f]; *Morales v Amar*, 145 AD3d 1000, 1003 [2d Dept 2016] [The "mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is an insufficient basis for denying the motion"]). Further, defendants cite no authority or provision of the note or security agreement requiring plaintiff to renegotiate the terms of the loan, nor do they provide sufficient evidence of which payments are not being appropriately credited to their account.

Defendants' invocation of impossibility of performance is similarly unavailing. "Impossibility excuses a party's performance only when the destruction of the subject matter of the contract or the means of performance makes performance objectively impossible. Moreover, the impossibility must be produced by an unanticipated event that could not have been foreseen or guarded against in the contract" (*Kel Kim Corp. v Central Mkts.*, 70 NY2d 900, 902 [1987]). "[W]here impossibility or difficulty of performance is occasioned only by financial difficulty or economic hardship, even to the extent of insolvency or bankruptcy, performance of a contract is not excused" (*407 E. 61st Garage, Inc. v Savoy Fifth Ave. Corp.*, 23 NY2d 275, 281 [1968]; see also *558 Seventh Ave. Corp. v Times Square Photo Inc.*, 194 A.D.3d 561, 561-62 [1st Dept 2021] [holding that reduced revenues due to the COVID-19 pandemic did not render performance impossible]). To the extent that defendant cites the ongoing COVID-19 pandemic (distinct of

“economic hardship” in general) and states she was unable to operate her taxicab, the court notes that Executive Order 202.6 deemed as essential all businesses under the category “transportation infrastructure,” and such businesses were allowed to continue to operate without restriction (9 NYCRR 8.202.6). “That defendant[s] may have counted on the continued viability of the taxicab market to repay the loan is not a viable affirmative defense nor is it an issue of fact” (*Medallion Bank v Makridis*, 2021 NY Slip Op 30033[U], 4-5 [Sup Ct, NY County 2021]).

Accordingly, it is hereby

ORDERED that the motion for summary judgment is granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendants, jointly and severally in the principal amount of \$994,474.17, plus accrued interest in the amount of \$47,223.71 as of August 19, 2021, with additional interest on the principal amount at the rate of \$89.78 per day from August 20, 2021, through entry of judgment, as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs, plus attorneys’ fees of \$6,871.00 as provided by the terms of the security agreement (NYSCEF Doc. No. 26, ¶ 12); and it is further

ADJUDGED and DECLARED that plaintiff is entitled to possession of the Medallions described in the UCC Financing Statement; and it is further

ORDERED that defendants are directed to turn over the Medallions to plaintiff within 30 days of the date of entry of this order and judgment; and it is further

ORDERED that the Sheriff of any County of the State of New York in which the Medallions are located, including but not limited to the County of Queens at 42-05 12th Street, Long Island City, New York 11101, upon receipt of a certified copy of this Order and Judgment

and payment of proper fees, is directed to break open, enter, search for, and seize the Medallions and deliver same to plaintiff.

This constitutes the supplemental decision and order of the court.

ENTER:

*Louis L. Nock*  
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LOUIS L. NOCK, J.S.C.

12/15/2023  
DATE

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