

**Bank of Am. N.A. v Discobtah Prods. Inc.**

2024 NY Slip Op 32490(U)

July 10, 2024

Supreme Court, Kings County

Docket Number: Index No. 531722/2023

Judge: Leon Ruchelsman

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

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BANK OF AMERICA N.A.,

Plaintiff, Decision and order

- against -

Index No. 531722/2023

DISCOBTAH PRODUCTS INC., & AIDAS KALVAITIS,  
Defendants,

July 10, 2024

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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #1

The plaintiff moves pursuant to CPLR §3212 seeking summary judgement regarding money owed based upon lines of credit and related guarantees. The defendant opposes the motion arguing that the plaintiff has failed to satisfy its burden that there are no questions of fact. Papers were submitted by all parties and after reviewing the arguments of all parties this court now makes the following determination.

On August 13, 2021 the plaintiff extended a line of credit in the amount of \$900,000. The agreement that was executed in connection with the line of credit required monthly payments beginning of interest thereafter and a complete repayment of the loan by August 2022. The defendant Aidas Kalvaitis executed a guaranty on the same date. The defendant failed to make full payment as of August 18, 2022 and was informed that he was now in default and notified him of the default amount. Thereafter this lawsuit was commenced. The plaintiff has now moved seeking summary judgement arguing there are no questions of fact those amounts remain unpaid. The defendant has opposed the motion

arguing the plaintiff has failed to satisfy its burden that no issues of fact exist.

#### Conclusions of Law

Where the material facts at issue in a case are in dispute summary judgment cannot be granted (Zuckerman v. City of New York, 49 NYS2d 557, 427 NYS2d 595 [1980]). Generally, it is for the jury, the trier of fact to determine the legal cause of any injury, however, where only one conclusion may be drawn from the facts then the question of legal cause may be decided by the trial court as a matter of law (Marino v. Jamison, 189 AD3d 1021, 136 NYS3d 324 [2d Dept., 2021]).

It is well settled that where a party introduces evidence of the existence of a loan, personal guarantees and the defendant's failure to make payments according to the terms of the instruments then summary judgement is proper (see, JPMorgan Chase Bank N.A., v. Bauer, 92 AD3d 641, 938 NYS2d 190 [2d Dept., 2012]). In this case, the plaintiff submitted the affidavit of Paul Ervin a special assets group analyst employed by the plaintiff who stated that he reviewed the plaintiff's records in connection with the loans extended. He further stated that all the documents he reviewed were maintained in the regular course of business and all such records were made near their occurrence with someone who had knowledge at that time and that the

plaintiff's standard practice is to keep such records in the ordinary course of business (see, Affidavit of Paul Ervin [NYSCEF Doc. No. 6]). Thus, the plaintiff has established the admissibility of the records relied upon since Mr. Ervin had knowledge of the plaintiff's practices and procedures (see, Cadlerock Joint Venture L.P. v. Trombley, 150 AD3d 957, 54 NYS3d 127 [2d Dept., 2017]). Indeed, in this case the plaintiff has surely presented prima facie evidence it is entitled to summary judgement since it has presented uncontroverted evidence of the note, an obligation to pay and evidence of non-payment (Loewenberg v. Basnight, 172 AD3d 1356, 99 NYS3d 661 [2d Dept., 2019]).

The defendant has not presented any evidence raising questions of fact whether the debt has been paid. Rather, the defendant merely questions the actual amount owed.

Therefore, based on the foregoing, the motion seeking summary judgement is granted without any real opposition. The motion seeking to dismiss the counterclaim is granted. Concerning the precise amount owed, the defendant has not raised any question challenging the correct amount. The defendant argues the account is closed and is unaware of the amount it contains. Even if that is true that does not raise any question of fact regarding the amount owed. Thus, there is no basis for a hearing to determine the precise amount owed. The plaintiff has demonstrated sufficient evidence, which has not been challenged

with any questions of fact. Consequently, the motion seeking summary judgement is granted in full.

So ordered.

ENTER:

DATED: July 10, 2024  
Brooklyn N.Y.



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Hon. Leon Ruchelsman  
JSC