

Itria Ventures LLC v Singh Oil Corp.

2024 NY Slip Op 32529(U)

July 12, 2024

Supreme Court, New York County

Docket Number: Index No. 654098/2022

Judge: Margaret A. Chan

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 49M

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ITRIA VENTURES LLC,

Plaintiff,

- v -

SINGH OIL CORPORATION, J&P SINGH MANAGEMENT
L.P, DEEP SERVICES INC., NARROWS ROAD, L.L.C.,
PETRO RUN MANAGEMENT LLC, BINGH OIL
TURNERSVILLE SOUTH INC., BINGH OIL CHERRY HILL
INC., GURPREET SINGH

Defendant.

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INDEX NO. 654098/2022

MOTION DATE 04/09/2024

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

HON. MARGARET A. CHAN:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59

were read on this motion to/for

JUDGMENT - DEFAULT

Plaintiff Itria Ventures LLC bring this action against defendants Singh Oil Corporation and J&P Singh Management L.P. (together "Borrowers") to recover amounts due and owing under a promissory note and loan agreement, guaranteed by defendants Deep Services Inc., Narrows Road, L.L.C., Bingham Oil Turnersville South Inc., Bingham Oil Cherry Hill Inc., and Gurpreet Singh (collectively "Guarantors"), which were executed in connection with commercial financing extended to Borrowers. On May 26, 2023, this court partially granted plaintiffs' motion for summary judgment in lieu of complaint against Borrowers on the promissory note (NYSCEF # 20). However, the portion of plaintiff's motion seeking judgment against Guarantors on their respective guarantees was denied because the guarantees at issue were not instruments for the payment of money only (*id.*). Plaintiff now moves pursuant to CPLR 3215(b) for a default judgment against Guarantors seeking the relief demanded in their complaint and attorneys' fees (NYSCEF # 43). The motion is unopposed.

Pursuant to CPLR 3215, plaintiff may move for default judgment "[w]hen a defendant has failed to appear, plead or proceed to trial of an action" (CPLR 3215 [a]). Generally, a movant seeking default judgment must submit the following materials: (1) proof of service of the summons and complaint or summons with notice; (2) an affidavit of facts constituting the claim and the amount due; and (3) an affidavit showing the default in answering or appearing (*id.* 3215 [f]; *see also Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 70-71 [2003]). As explained below,

plaintiff has established its entitlement to default judgment and attorneys' fees and costs.

To start, plaintiff submits proof of service of the summons and notice of motion, as well as an affidavit showing Guarantors' default in answering or otherwise. Plaintiff commenced this CPLR 3213 proceeding on October 28, 2022, by filing a summons and notice of motion. Plaintiff submits proof that a copy of the summons and the notice of motion for summary judgment in lieu of complaint were served on each of the Guarantors between November 3, 2022, and December 1, 2022 (*see* NYSCEF # 50 ¶ 6; NYSCEF # 52). Guarantors failed to appear or respond to either the summons or the motion (NYSCEF # 50 ¶ 7). Plaintiff adds that it submitted, pursuant to CPLR 3215(g), copies of the notice of service and summons to Guarantors following the court's denial of plaintiff's motion with respect to the Guarantors (*id.* ¶¶ 8-9). Specifically, plaintiff mailed notice of service and a copy of the summons to defendant Gurpreet Singh on June 13, 2023, pursuant to CPLR 3215(g)(3), and to defendants Deep Services Inc. Narrows Road, L.L.C., Bingham Oil Turnersville South Inc., and Bingham Oil Cherry Hill Inc. on July 5, 2023, at each entities' respective addresses (NYSCEF # 53).

Plaintiff also submits sufficient proof of facts constituting the claims against Guarantors. As detailed in the affidavit of Harrison Smalbach, plaintiff had entered into a loan and security agreement (the LSA) on or about November 19, 2018, pursuant to which plaintiff made a commercial loan, as evidenced by a promissory note (Note), in the amount of \$1,000,000 (the Loan), with an interest rate of 11.00% per annum (NYSCEF # 44 ¶¶ 15-16; NYSCEF #s 45-46). Among other governing terms, the Loan had a maturity date of November 1, 2020, and in the event of maturity or default, the interest rate would increase by 5.0% per annum above the applicable interest rate (in addition to other consequences of a default) (*see* NYSCEF # 44 ¶¶ 17-19; NYSCEF # 46). Smalbach explains that, as security of the Loan, Guarantors executed unconditional guaranties of the obligations of the Loan's obligations, including payment of any obligations in the event of a default and payment of costs or expenses incurred by plaintiff in enforcing its rights under the relevant agreements (*see* NYSCEF # 44 ¶¶ 23-25; NYSCEF # 47). Smalbach then explains that Guarantors defaulted on their obligation under the Guarantees Agreement by failing to make payments due under the LSA and Note (NYSCEF # 44 ¶¶ 28-29). Accordingly, on November 15, 2020, plaintiff sent Guarantors notices of default, which have not been cured or addressed (*see id.* ¶ 30-31; NYSCEF # 48). As the Smalbach affirmation establishes, as of March 13, 2024, the principal owed under the Note and Guarantees is \$1,000,000, and accrued interest of \$253,007.90, making the total amount due and owing \$1,253,007.90 (NYSCEF # 44 ¶ 35). Interest continues at 16% per annum (or \$444.44 per diem) plus attorneys' fees and collection costs (*id.*).

Plaintiff has also sufficiently established its entitlement to recover attorney's fees. According to the affirmation of Mitchell B. Seidman, managing partner of the

law firm Seidman & Pincus, LLC, attorneys for plaintiff, plaintiff seeks \$36,481.01 for its attorneys' fees and expenses through June 30, 2023 (NYSCEF # 55 ¶ 7). Seidman supports this calculation with a detailed statements, prepared in the regular course of business, reflecting attorney time rendered on this matter (*see id.* ¶¶ 8-9; NYSCEF # 56). Seidman explains the billing rates for the attorneys working on this matter and compares them with the customary billing rates for attorneys at his firm, and he then notes the total number of hours spent on this matter engaged in reviewing documents, analyzing litigation strategy, settlement negotiations, agreement drafting and motion practice (NYSCEF # 55 ¶¶ 10-11, 14, 16). According to the affirmation, the total amount of legal fees incurred in representing plaintiff in connection with this matter amounted to \$35,215.00 and the total costs and expenses incurred totaled \$1,266.01, which results in total fees and costs of \$36,481.01 (*id.* ¶¶ 11-13). These calculations, when considered in connection with the services render, indicate that the attorneys' fees and costs sought by plaintiff are reasonable, and, as noted above, such fees were contemplated by the relevant Loan agreements (*see Intl. Bus. Machs. Corp. v Murphy & O'Connell*, 183 AD2d 681, 681-682 [1st Dept 1992] [holding that it was not error to award plaintiff its "reasonable attorneys' fees" when an "express contractual provision in the parties' lease agreement specifically providing for defendant's payment of plaintiff's costs and expenses"]).

Based on the foregoing, plaintiff has sufficiently demonstrated its entitlement to default judgment due to Guarantors' default of its obligation under Guaranty Agreements and Notes against Guarantor defendants in the amount of \$1,217,924.10 with interest accrued at a rate of 16% per annum from October 29, 2022, through the date of judgment. Plaintiff is also entitled to attorneys' fees and costs in the amount of \$36,481.01.

Accordingly, it is hereby

ORDERED that plaintiff Itria Ventures LLC's motion for a default judgment as against defendants Deep Services Inc., Narrows Road, L.L.C., Bingham Oil Turnersville South Inc., Bingham Oil Cherry Hill Inc., and Gurpreet Singh is granted; and it is further

ORDERED that the Clerk is directed to entered judgment in the amount of \$ 1,217,924.10 against defendants Deep Services Inc., Narrows Road, L.L.C., Bingham Oil Turnersville South Inc., Bingham Oil Cherry Hill Inc., and Gurpreet Singh, plus interest at the at rate of 16% per annum from October 28, 2022, as well as attorneys' fees and costs in the amount of \$36,481.01, as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk upon an appropriate bill of costs; and it is further

ORDERED that plaintiff shall serve a copy of this Decision and Order, along with notice of entry, on defendants within ten days of entry.

This constitutes the Decision and Order of the court.

07/12/2024

DATE



MARGARET A. CHAN, 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