

Dark Forest Capital Mgt. LP v Selina Hospitality PLC

2024 NY Slip Op 33465(U)

September 30, 2024

Supreme Court, New York County

Docket Number: Index No. 651303/2024

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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DARK FOREST CAPITAL MANAGEMENT LP

Plaintiff,

- v -

SELINA HOSPITALITY PLC,

Defendant.

-----X

INDEX NO. 651303/2024

MOTION DATE 03/11/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1-8, 17, 18 were read on this motion to/for JUDGMENT - SUMMARY IN LIEU OF COMPLAINT.

Upon the foregoing documents, plaintiff’s motion for summary judgment in lieu of complaint is granted as set forth in this decision and order.

Plaintiff has established that service was proper. In addition, plaintiff has established *prima facie* entitlement to judgment as a matter of law.

CPLR 3213 provides for accelerated judgment where the instrument at issue is for the payment of money only and the right to payment is clear 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]).

The same standards that apply to motions for summary judgment under CPLR 3212 apply to CPLR 3213 motions. 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]).

Under the 2022 indenture, defendant “authorized the issuance of its 6.00% Convertible Senior Notes due 2026 . . . , initially in an aggregate principal amount at maturity not to exceed \$147,500,000” (*see* Doc 5 [Indenture], Doc 4 [Ireland aff.]). In 2024, defendant exchanged \$123.7 million of the Notes for new securities, reducing the face value of the remaining original Notes to \$23,780,000 (*see* Doc 4 [Ireland aff.], Doc 8 [Form 6-K]). Plaintiff has established that it owns 52% of the remaining original Notes in that it holds Notes amounting to \$12,530,000 in aggregate principal ([Doc 4, Doc 8]).

Under the indenture, the Notes mature on November 1, 2026. However, defendants are required to pay 6% interest on the Notes in semi-annual payments (Doc 5 at pg 109). Plaintiff alleges that defendant failed to make the scheduled interest payment due on November 1, 2023, and have not paid, thereby triggering the acceleration clause in the notes. That is, a portion of the outstanding principal (“Accreted Principal Amount”) and interest become “due and payable immediately” upon declaration by holders of at least “of at least 25% in aggregate principal amount at maturity of the Notes then outstanding” (*see* Doc 5 [Indenture] §§ 6.01(b), 6.02). On February 2, 2024, plaintiff triggered the Notes’ acceleration mechanism by written notice to Defendant (Doc 7 [acceleration notice]).

Plaintiff contends that defendant owes it \$11,4016,34.87 as of March 11, 2024 (Doc 4 [Ireland aff]). Plaintiff’s CFO, Kelly Ireland, calculated that sum and states that it includes the missed interest payment from 11/2023, the “accreted principal” amount as of the acceleration date, and contractual interest.

In opposition, Defendant does not dispute liability. Rather, defendant argues only that plaintiff did not make its *prima facie* case by failing to explain its damages calculations adequately. The Court disagrees.

Plaintiff has established its *prima facie* entitlement to relief under CPLR 3213. Plaintiff has provided an affidavit from its Chief Financial Officer, Kelly Ireland, detailing the amount of the Notes held by plaintiff and the circumstances of defendant's default. Additionally, plaintiff submits the Indenture, a Brokerage Statement, the Acceleration Notice to defendant, as well as defendant's SCC Form 6-K in which defendant admits failure to make the November 2023 interest payment. Plaintiff demonstrates that the amounts defendant owes are calculable pursuant to the terms of the Indenture, Brokerage Statement, and Ireland Affidavit.

Thus, plaintiff has established that defendant defaulted under the Indenture and owes plaintiff the Accelerated Amount of \$10,949,244.86 and the missed interest payment in the amount of \$375,000. In addition, plaintiff is entitled to default interest at the contractual rate of 6% per annum on both the missed interest payment from November 1, 2023 and on the "accrued principal" amounts from February 2, 2024 [the acceleration date].

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

Accordingly, it is

ORDERED that the motion for summary judgment in lieu of complaint is granted, and the Clerk is directed to enter judgment in favor of plaintiff and against defendant in the amount of \$11,4016,34.87, together with pre-judgment interest at the contractual rate of 6% per annum from March at the contractual rate of 6% from November 16, 2022 until the date of this decision and order, and thereafter at the statutory rate, as calculated by the Clerk, together with costs and

disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the motion for summary judgment in lieu of complaint is granted and the Clerk is directed to enter judgment in favor of plaintiff and against defendant in the amount of \$10,949,244.86 at the contractual rate of 6% from March 12, 2024 until entry of judgment, and thereafter at the statutory rate, as calculated by the Clerk, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to mark this case disposed.

9/30/2024
DATE


MELISSA A. CRANE, J.S.C.

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