Webster Bank, N.A. v DeFeo
2024 NY Slip Op 35345(U)
June 3, 2024
Supreme Court, Westchester County
Docket Number: Index No. 58378/2022
Judge: Charles D. Wood
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To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a Copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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WEBSTER BANK, N.A.,

Plaintiff,

-against-

MARGARET DEFEO, MICHAEL CARPENTIERI, and MICHAEL FALZARANO,

Defendants.

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DECISION AND ORDER
Index No. 58378/2022
Seq. No. 1

WOOD, J.

New York State Courts Electronic Filing ("NYSCEF") Document Numbers 10-22 and 29-40 were read in connection with plaintiff's motion for an order granting summary judgment and dismissing defendants' answer and four affirmative defenses, pursuant to CPLR 3212.

Plaintiff Webster Bank, N.A. commenced this action on March 30, 2022 alleging breach of guarantees. The complaint alleges that defendants, as guarantors of a certain commercial term note, are jointly and severally liable to plaintiff in the principal amount of $280,605.61, plus accrued interest, late charges, and legal fees and costs.

In support of the motion, plaintiff submits the affidavit of Ann MacArthur, Vice President of plaintiff, and the business records upon which the affidavit relies (NYSCEF Doc. # 11-14). In her affidavit, MacArthur attests that on March 24, 2016, East Hudson Level Flooring Systems, Inc. executed a commercial term note in favor of plaintiff whereby plaintiff agreed to extend East Hudson a loan in the principal sum of $443,077 to be repaid at a fixed rate of 4.5% per annum (NYSCEF Doc. # 12). Upon the occurrence of a default event, the interest rate would increase to a default interest rate to be calculated as set forth in the note. The note also provided that if payment under the note was more than ten days late, plaintiff may charge a late fee equal to 5% of each delinquent installment or other payment. To secure the note, the individual defendants, jointly and severally, signed a guaranty and endorsement in which defendants unconditionally guaranteed payment of the obligations under the note when due, at maturity, or by acceleration or otherwise (NYSCEF Doc. # 12). MacArthur further attests that East Hudson breached the terms of the note by failing to remit the payment due on February 24, 2019. On April 16, 2019, plaintiff accelerated the loan and demanded East Hudson and defendants remit all outstanding sums due under the note (NYSCEF Doc. # 19) in the principal amount of $280,605.61, as reflected in East Hudson's payment history (NYSCEF Doc. # 14), plus interest, late charges, and attorneys' fees and costs as provided for under the terms of the note.

In further support of the motion, plaintiff argues that the absolute and unconditional nature of defendants' guaranty mandates dismissal of their affirmative defenses, and, in any event, the defenses are vague and conclusory and without any merit. First, the payment history makes clear that the defense of payment is baseless. Second, there has been no good faith dispute over the existence of the debt or amount owed, and the parties have not negotiated a contract of accord to settle the claim, so as to support the defense of accord and satisfaction. Lastly, there are no conditions precedent to the filing of this action for breach of the guaranty.

In opposition, defendants Margaret DeFeo and Michael Carpentieri[1] argue that there is an issue of fact as to the amount due under the note and the motion is premature because discovery is necessary to determine how much the borrower and/or others have paid under the note and to reconcile the interest, late fees, and other assessed charges. Defendants explain that on April 16,

[1] Defendant Michael Falzarano has not opposed the motion.

2019, East Hudson filed for Chapter 11 bankruptcy. Plaintiff asserted a claim against East Hudson in the bankruptcy proceeding which resulted in an order approving a settlement requiring East Hudson to make certain payments towards the note. To support this contention, defendants submit the affidavit of Margaret DeFeo, copies of the bankruptcy proceeding docket, East Hudson's bankruptcy claim, and the settlement agreement between plaintiff and East Hudson. In her affidavit, DeFeo attests that the amount plaintiff claims to be due and owing in this action fails to account for a $41,250 payment East Hudson made to plaintiff under the terms of the bankruptcy settlement agreement. In addition, DeFeo attests that the amount plaintiff claimed was due and owing in its bankruptcy proceeding claim differs from the amount plaintiff claims is due and owing as reflected in the payment history submitted in support of this motion. Finally, DeFeo attests that the interest charge for the month of April 2023 inexplicably increases from $308.64 to $1,573.02.

In reply, plaintiff argues that the proof of claim filed in the bankruptcy proceeding reflected the amounts due and owing as of the April 16, 2019 (NYSCEF Doc. # 38), whereas the MacArthur affidavit and the evidence upon which it relies reflects the amounts due and owing as of April 18, 2023. In addition, plaintiff did not receive the funds under the parties' settlement agreement in the bankruptcy proceeding until after the filing of this motion. As such, plaintiff submits an updated payment history reflecting that a payment of $58,750 was applied against the principal balance of the loan on December 21, 2023 (NYSCEF Doc. Nos. 37 and 39). In addition, MacArthur attests that upon further review of plaintiff's books and records, plaintiff discovered that the $1,573.02 charge assessed on April 3, 2023 was inadvertently identified as a late charge, when it is in actuality, a maturity fee, and the records have been updated accordingly (NYSCEF Doc. # 40).

A party moving for summary judgment pursuant to CPLR 3212 must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate that there is no genuine dispute as to any material fact (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]). Once such a showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

Here, plaintiff has established its prima facie entitlement to summary judgment striking defendants' answer and affirmative defenses. In opposition, defendants have failed to raise an issue of fact as to their liability under the note and guaranty. Defendants executed the guaranty and endorsement in which they jointly and severally unconditionally guaranteed payment of the obligations under the note, and the borrower, East Hudson, is in default for failing to remit the payment due on February 24, 2019. While defendants take issue with the amount due and owing as set forth in the motion, plaintiff has corrected the erroneous description of the April 2023 maturity fee charge and updated the payoff amount to reflect East Hudson's most recent payment, which occurred after the filing of the motion. In addition, plaintiff has agreed to waive its right to recover the late charges in the sum of $15,123.36, the maturity fee in the sum of $1,573.02, and its reasonable attorneys' fees, provided there is no inquest or hearing on damages.

The court has considered the parties' remaining contentions and finds them to be without merit. In addition, based on the submissions, the court finds that an inquest on damages is unnecessary.

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment is **granted** with respect to the note and corresponding guaranty executed by Margaret DeFeo, Michael Carpentieri and Michael Falzarano; and it is further

ORDERED and ADJUDGED that the Clerk of the Court is directed to enter judgment in favor of plaintiff Webster Bank, N.A. and against defendants Margaret DeFeo, Michael Carpentieri and Michael Falzarano in the amount of $221,855.61, plus accrued interest to January 12, 2024 in the amount of $63,391.43, plus interest continuing to accrue from January 12, 2024 to the date of entry of judgment at the interest rate of 4.50% per annum, as calculated by the Clerk, together with costs of this action to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that **within 60 days** plaintiff shall submit a proposed judgment to the Clerk of the Court for entry thereon, upon notice to defendants; and it is further

ORDERED that **within 20 days** after this decision and order is uploaded to NYSCEF, counsel for plaintiff shall serve a copy of this decision and order, with notice of entry, upon all parties, and file proof of service on NYSCEF; and it is further

This constitutes the decision and order of the court.

Dated: White Plains, New York
June 3, 2024

HON. CHARLES D. WOOD
Justice of the Supreme Court

To: All Parties by NYSCEF