JPMorgan Chase Bank, N.A. v Qin Med. P.C.
2024 NY Slip Op 35581(U)
April 15, 2024
Supreme Court, Westchester County
Docket Number: Index No. 56357/2023
Judge: Paul I. Marx
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

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
HON. PAUL I. MARX, J.S.C.

---x

JPMORGAN CHASE BANK, N.A.,

Plaintiff,

-against-

QIN MEDICAL P.C. and FENG QIN,

Defendants.

---x

Index No.: 56357/2023

DECISION AND ORDER

Motion Sequence ## 3-4

The papers filed electronically via NYSCEF, numbered 19-25, 31-37, and 40-57, were read on: (1) the motion for summary judgment of Plaintiff JPMorgan Chase Bank, N.A. ("Chase"); and (2) the cross-motion for summary judgment of Defendant Qin Medical P.C. ("Qin Medical").

Upon reading the foregoing papers, it is ORDERED that the motions are disposed as follows.

BACKGROUND

On February 3, 2023, Plaintiff commenced this action against Defendants Qin Medical and Feng Qin,[1] seeking to recover damages resulting from Qin Medical's default on two revolving credit agreements it entered into with Chase, for which Feng Qin provided an unconditional guaranty. Qin Medical obtained the first loan when it entered into a Term Note and Credit Agreement with Chase for the sum of $450,125.00 on October 19, 2016 ("Note" or "Contract #1"). Thereafter, Qin Medical entered into a Line of Credit Note and Credit Agreement with Chase for the sum of $1,000,000.00 on December 6, 2017 ("Note 2" or "Contract #2"). Plaintiff alleges that

---

[1] The Court dismissed the Complaint against Feng Qin for lack of personal jurisdiction due to improper service of process. NYSCEF Doc # 38. Plaintiff commenced a separate action against Feng Qin, *JPMorgan Chase Bank, N.A. v Feng Qin*, Index No. 69787/2023, which awaits service of process being effectuated upon him.

it funded both Contracts, and that Qin Medical received the loan proceeds. Plaintiff alleges that Qin Medical defaulted in making payments on Contract #1 as of the loan maturity date of October 17, 2021. Plaintiff further alleges that Defendant defaulted in making payments on Contract #2 as of the loan maturity date of December 6, 2019. Contract #2 provides that the principal sum and interest shall become immediately due and payable after a default, without further notice to Defendant.

Plaintiff alleges that Qin Medical currently owes Chase the following amounts in connection with Contract # 1: principal in the amount of $154,350.66, interest at the rate of 4.65% per annum in the amount of $857.29, and late fees in the amount of $500.00; making a total sum of $155,707.95 which is due. In connection with Contract #2, Plaintiff alleges that Qin Medical currently owes Chase the following: principal in the amount of $657,172.27, interest on the unpaid principal amount at the rate of LIBOR plus 3.982% per annum in the amount of $9,902.96, and late fees in the amount of $275.00; making a total sum of $667,350.23. Plaintiff seeks a judgment against Qin Medical in the total sum of $823,058.18, plus attorney's fees, costs and disbursements for damages for breach of Contract # 1 and Contract #2.

DISCUSSION

CPLR §3212 provides that a motion for summary judgment "shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party" such that there are no triable issues of fact. CPLR §3212(b); *Roos v King Construction*, 179 AD3d 857, 859 [2nd Dept 2020]; *Zuckerman v City of New York, et al.*, 49 NY2d 557 [1980]. Generally, in moving for summary judgment in an action for breach of revolving credit agreements, a plaintiff establishes its prima facie case through the production of the underlying credit agreement, a personal guaranty of the company's obligations under that agreement, and the company's failure to make payment in accordance with the terms of the credit agreement." *HSBC Bank USA, Nat. Ass'n v Laniado*, 72 AD3d 645, 645 [2nd Dept 2010] (citing *North Fork Bank Corp. v Graphic Forms Assoc., Inc.*, 36 AD3d 676; *JPMorgan Chase Bank v Gamut–Mitchell, Inc.*, 27 AD3d 622, 623; *Ceglia v Marine Midland Bank*, 296 AD2d 473, 474; *see also North Fork Bank v ABC Merchant Servs., Inc.*, 49 AD3d 701). The Court is required to view the evidence "in the light most favorable to the nonmoving party, and all reasonable inferences must be resolved in favor of the nonmoving party." *Santiago v Joyce*, 127 AD3d 954 [2nd Dept 2015] (citing *Green v Quincy Amusements, Inc.*, 108 AD3d 591, 592; *Pearson v Dix McBride, LLC*, 63 AD3d 895).

Plaintiff moves for summary judgment against Qin Medical, contending that it has established its prima facie entitlement to judgment as a matter of law by submitting the Notes and underlying Credit Agreements and proof of Defendant's failure to make payment in accordance with the terms of the Credit Agreements. In support of its motion, Plaintiff submits the pleadings; the Term Note for $450,125.00 and related Credit Agreement; the Line of Credit Note for $1,000,000.00 and related Credit Agreement; and evidence of Defendant's default through the Affidavit of Shirley White, Special Credits Analyst II with a corporate title of Associate and the Transaction History of each loan. Plaintiff also submits a Financial Statement of Corporate Debtor provided by Defendant in the criminal action brought against it and Feng Qin by the U.S. Department of Justice in federal court, which lists the amounts owed to Chase under Contract ##1 and 2; and the Stipulation and Order of Settlement and Dismissal of the federal criminal action.

Shirley White states that she is one of Plaintiff's employees who is responsible for managing Defendant's loans. She attests that "[t]he records for the Loans, including computerized records indicating the sums advanced, and payments made on account of the Loans, are created and maintained by Chase in the course of its regularly conducted business activities and were made at or near the time of the occurrence of the events they reflect, by or from information transmitted by a person with knowledge." White Affidavit at ¶ 2, Doc # 44. Ms. White further states that "[i]t is the regular practice of Chase to keep such records in the ordinary course of a regularly conducted business activity." *Id.* Ms. White attests that the Transaction History for each loan, which are attached as exhibits, reflect the advances that were made to Defendant by Plaintiff, the payments made by Defendant on each loan, the fees that were assessed, and the amounts that were owed at the time Defendant defaulted. Ms. White explains Plaintiff's procedure for moving the servicing of the loans to a different computer system it uses to service severely delinquent loans. *Id.* at ¶ 8 (referencing a screen print from the second system submitted as Exhibit 5).

Plaintiff also relies upon Defendant's admission in a federal criminal action brought against it and Feng Qin in the United States District Court, Southern District of New York. In the criminal action, Defendant filed a Financial Statement of Corporate Debtor which listed among its debts, its indebtedness to Chase in the amount of $155,707.95 in connection with Contract #1, and $670,805.04 in connection with Contract #2. Plaintiff asserts that Defendant admitted through the filing in the federal criminal action that it owes Chase the amounts its seeks in this action. Plaintiff asserts that the United States Department of Justice considered Defendant's admission of these debts to Chase when it was formulating the amount of restitution that was due as part of a settlement of the criminal action. Plaintiff contends that the federal court filing constitutes a judicial admission by Defendant and an acknowledgment of its debts to Chase.

Plaintiff met its prima facie burden on its claims against Defendant by submitting the Credit Agreements and Ms. White's affidavit, accompanied by Plaintiff's business records of Defendant's loans. The federal court filing submitted by Defendant merely bolsters Plaintiff's claims.

The burden then shifts to Defendant "to produce evidentiary proof in admissible form sufficient to establish the existence of material triable issues of fact." *Moscatiello v Wyde True Value Lumber & Supply Corp.*, 168 AD3d 833, 834 [2nd Dept 2019] (citing *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324).

Defendant contends that summary judgment is premature because discovery is not complete, as not "a single deposition has even been held ...". Affirmation in Opposition at 1, Doc # 66. Defendant contends that:

> Plaintiff has submitted no back-up or supporting documentation (e.g., canceled checks, wire transfer records, etc.) reflecting the actual advance of these amounts. Plaintiff, of course, should be required to substantiate these amounts with supporting documents, which it has not done, or otherwise at a deposition at which an authorized representative of Plaintiff testifies as to these purported advances, for which no representative of Plaintiff has sat to date. (*Id.*)

Defendant argues in opposition to Plaintiff's motion and in support of its cross-motion for summary judgment that the documentation submitted by Plaintiff establishes that Defendant has a zero balance on both loans. Defendant asserts that the Account Transaction History for both Contract #1 and Contract #2 show that the principal balance is "0.00 as a result of what is described as a 'PAYOFF' ". *Id.* at ¶ 36, Doc # 66.

In its Reply, Plaintiff explains that the Transaction History shows that the loans were "charged off", and offers the results of a Google search of the term. Investopedia.com and Wikipedia, the results offered, state that it is a debt that a creditor deems to be uncollectible and then writes off as a bad debt which is still legally valid. Plaintiff cites *American Express Natl. Bank v Altayev*, 80 Misc 3d 1201(A) [Sup Ct, Kings County 2023], as further support for the definition of charge off. The court in *Altayev* relied upon a definition of the term provided online at https://www.equifax.com/personal/education/credit/report/charge-offs-faq/: "A charge-off refers to the [sic] when the lender or creditor has written the account off as a loss, and the account is closed to future charges." The creditor may still seek to collect the amounts owed through litigation, or assignment or sale of the debt to another with the transfer of its right to collect.

Defendant offers no proof to refute Plaintiff's contention that it is owed the amounts it claims. Notably, Defendant offers no proof that it paid the loan amounts in full. Defendant does not dispute that it entered into Contract #1 and Contract #2. Defendant offers nothing more than its own interpretation of Plaintiff's accounting methodology. In short, Defendant offers no evidence which raises a material issue of fact. Defendant acknowledged the debts in a filing in federal court which is dated August 3, 2020, signed by Feng Qin. In his affidavit in support of Defendant's cross-motion, Feng Qin attests that "[a]t the time I swore to the truth of the documents filed in connection with the Federal Action which Plaintiff now relies upon in this case, I believed them to be true." Affirmation of Dr. Feng Qin at ¶ 8, Doc # 63. While he attests in his affirmation that he was unaware that Plaintiff's records "clearly demonstrate[] that Defendant did not owe any sums under either Contract #1 and/or Contract #2", *id.* at ¶ 13, he does not assert that the loan amounts were paid in full. Instead, Defendant advances a frivolous argument that an accounting convention which merely indicates the status of the loans as delinquent and uncollectible somehow means that Defendant owes nothing to Plaintiff. Defendant has not submitted any documentation to support its contention that the amounts claimed to be due are not owed to Plaintiff. Defendant offers nothing to show that it paid off the loans, or that Plaintiff gave up, assigned, or sold its right to collect the debts.

Defendant's contention that discovery is needed is without merit, as its own records would establish the payment status of its loans. Defendant admits that it served discovery Demands on

Plaintiff, which Plaintiff responded to just before filing its motion. Defendant does not contend that Plaintiff's responses were insufficient. Instead, Defendant asserts that it should be allowed to conduct depositions of Plaintiff's representatives, but it does not state how that will lead to relevant evidence which would refute Plaintiff's claims.

"Pursuant to CPLR 3212 (f), the court has discretion to deny a motion for summary judgment, or to order a continuance to permit affidavits to be obtained or disclosure to be had, if facts essential to justify opposition to the motion may exist but cannot then be stated. For the court to delay action on the motion, there must be a likelihood of discovery leading to such evidence. The mere hope that evidence sufficient to defeat the motion may be uncovered during the discovery process is insufficient." *Spatola v Gelco Corp.*, 5 AD3d 469, 470 [2nd Dept 2004] (citing *Frouws v Campbell Foundry Co.*, 275 AD2d 761 [2000]; *Mazzaferro v Barterama Corp.*, 218 AD2d 643 [1995]).

Defendant failed to demonstrate a need for additional discovery. Defendant is in the awkward position of arguing that Plaintiff's motion is premature, while making its own cross-motion for summary judgment. Defendant did not raise any of its affirmative defenses as grounds for its cross-motion, or offer any evidence in support of its affirmative defenses. Defendant's failure to raise his affirmative defenses constitutes waiver or abandonment of those defenses. Therefore, those affirmative defenses must be stricken. *New York Com. Bank v J. Realty F Rockaway, Ltd.*, 108 AD3d 756, 757 [2nd Dept 2013] (citing *HSBC Bank USA, N.A. v Taher*, 104 AD3d 815; *Wells Fargo Bank Minn., N.A. v Mastropaolo*, 42 AD3d 239, 242; *First Nationwide Bank v Brookhaven Realty Assoc.*, 223 AD2d 618, 621; *Starkman v City of Long Beach*, 106 AD3d 1076, 1078 [2nd Dept 2013].

Accordingly, Plaintiff's motion for summary judgment should be granted and Defendant's cross-motion for summary judgment should be denied.

SUMMARY

It is ORDERED that Plaintiff's motion for summary judgment is granted. Plaintiff shall have judgment against Qin Medical in the total sum of $823,058.18, plus attorney's fees, costs and disbursements for damages for breach of Contract # 1 and Contract #2. Plaintiff shall submit documentation in support of its request for attorney's fees within 30 days of the Decision and Order herein; and it is further

ORDERED that Defendant Qin Medical's cross-motion for summary judgment is denied.

The foregoing constitutes the Decision and Order of this Court.

Dated: April 15, 2024
White Plains, NY

E N T E R

HON. PAUL I. MARX, J.S.C.