

JPMorgan Chase, Bank, N.A. v M S C Chem. Corp.
2024 NY Slip Op 35631(U)
April 8, 2024
Supreme Court, Nassau County
Docket Number: Index No. 613675/23
Judge: Randy Sue Marber
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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAUPresent: **HON. RANDY SUE MARBER****JUSTICE**

TRIAL/IAS PART 2

X

JPMORGAN CHASE, BANK, N.A.,

Plaintiff,

Index No.: 613675/23

Motion Sequence...01

-against-

Motion Date...01/10/24

M S C CHEMICAL CORP. d/b/a ACADEMY and
MARTIN NEWMAN,

Defendants.

X

Papers Submitted:

Notice of Motion.....X

Affirmation in Opposition.....X

Reply Affirmation.....X

Upon the foregoing papers, the motion by the Plaintiff, JPMORGAN CHASE BANK, N.A., seeking an Order: (i) pursuant to CPLR § 3212, granting it summary judgment as against the Defendants, M S C CHEMICAL CORP. d/b/a ACADEMY and MARTIN NEWMAN, jointly and severally, for the relief sought in the first and second causes of action of the Plaintiff's Complaint, on the Contract and Guaranty, in the principal amount of \$117,454.49, plus accrued interest of \$6,061.07, plus late fees and costs of \$1,200.27, for a total due in the amount of \$124,715.83; (ii) striking the Defendants' Answer and affirmative defenses; and (iii) severing Plaintiff's third cause of action for attorney's fees for other determination and/or for inquest upon the filing of a note of issue, is determined as provided herein.

The instant collection action was commenced to recover the sum of \$124,715.83, pursuant to two separate loan agreements executed on July 5, 2001 (for \$50,000) and June 7, 2004 (for \$115,000) (*See* Exhibits “A” and “B”, Loan Documents which collectively are referred to as the “Contract”). On or about July 5, 2001, in connection with the execution and delivery of the Contract, the Defendant, MARTIN NEWMAN, executed and delivered to the Plaintiff an absolute, unconditional and continuing Personal Guarantee of payment for the debts and obligations of the corporate Defendant.

In support of its motion, the Plaintiff submits the sworn affidavit of Barbra Lopez, an Associate of Plaintiff (*See* Lopez Affidavit). Ms. Lopez attests that the Defendants have breached the terms of the Contract and have defaulted thereunder by failing to make the required payments of principal and interest. Per the transaction history, the Plaintiff asserts that the last payment received on the Contract was on February 10, 2023 (*See* Transaction History, annexed to Motion as Exhibit “C”).

The Court has the ability to grant summary judgment where there are no triable issues of fact. Summary judgment is a drastic remedy and should only be granted where there are no triable issues of fact (*Andre v. Pomeroy*, 35 N.Y.2d 361 [1974]).

“The elements of a cause of action to recover damages for breach of contract are (1) the existence of a contract, (2) the plaintiff’s performance under the contract, (3) the defendant’s breach of the contract, and (4) resulting damages.” (*Kausal v. Educational Prods. Info.*, 105 A.D.3d 909 [2d Dept. 2013]; *Palmetto Partners, LP. v. AJW Qualified Partners, LLC*, 83 A.D.3d 804 [2d Dept. 2011]; *JP Morgan Chase v. 1H. Elec. of N.Y.*,

Inc., 69 A.D.3d 802 [2d Dept. 2010]). The principles of contract interpretation are well settled. The best evidence of what parties to a written agreement intend is what they say in their writing. A written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms. As such, when parties set down their agreement in a clear, complete document, their writing should as a rule be enforced according to its terms (*See Dysal, Inc. v. Hub Props. Trust*, 92 A.D.3d 826 [2d Dept. 2012]).

Here, the Plaintiff has established its prima facie entitlement to summary judgment by demonstrating, through admissible evidence, the amount that remains due and owing to the Plaintiff and the Defendants' default in making the requirement payments. In opposition, the Defendants only submit an attorney affirmation. There is no sworn affidavit by the individual Defendant or other admissible evidence proffered by the Defendants. Notably, the Defendants do not dispute having received the subject loans. There has been no allegation of forgery by the Defendants and the Defendants do not contest the authenticity of the signatures of the loan documents. Nor do the Defendants provide any proof that they have made payments and/or are entitled to other credits. As such, the Defendants have failed to raise an issue of fact.

It appears from a review of the documentation presented that all necessary parties have been served with notice of this application, and further, that the relief requested is appropriate.

Accordingly, it is hereby

ORDERED, that the motion by the Plaintiff, JPMORGAN CHASE BANK, N.A., seeking an Order: (i) pursuant to CPLR § 3212, granting it summary judgment as against the Defendants, M S C CHEMICAL CORP. d/b/a ACADEMY and MARTIN NEWMAN, jointly and severally, for the relief sought in the first and second causes of action of the Plaintiff's Complaint, on the Contract and Guaranty, in the principal amount of \$117,454.49, plus accrued interest of \$6,061.07, plus late fees and costs of \$1,200.27, for a total due in the amount of \$124,715.83, together with the statutory costs and disbursements of this action, is **GRANTED**, and the Plaintiff is directed to submit a proposed money judgment on the first and second causes of action consistent with the terms of this Order; and it is further

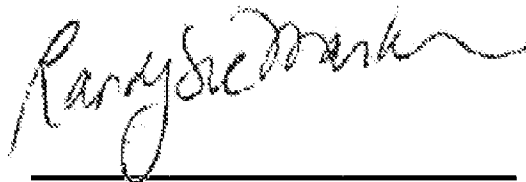
ORDERED, that the Plaintiff's third cause of action for reasonable attorney's fees is hereby severed, and this matter shall be set down for an **Inquest on the third cause of action for an assessment of reasonable attorney's fees, to be held in Part 2 of this Court, on Tuesday, July 16, 2024 at 2:00 p.m., provided that the Plaintiff files a Note of Issue at least ten (10) days prior thereto**; and it is further

ORDERED, that the Plaintiff's counsel shall serve a copy of this Order with Notice of Entry upon counsel for the Defendants pursuant to CPLR 2103 (b) 1, 2, 3 or 6 **within ten (10) days** of the date of entry of this Order. **PROOF OF SERVICE MUST BE FILED WITH THE COURT PRIOR to July 16, 2024**; and it is further

ORDERED, that a copy of this Order shall be served on the Calendar Control Part along with the Note of Issue. The failure to file a Note of Issue as directed or appear as directed may be deemed an abandonment of the claims giving rise to the Inquest.

This constitutes the decision and Order of this Court.

DATED: Mineola, New York
April 8, 2024



Hon. Randy Sue Marber, J.S.C.

ENTERED

Apr 12 2024

NASSAU COUNTY
COUNTY CLERK'S OFFICE