

**Canara Bank, London Branch v MVP Group Intl.,
Inc.**

2025 NY Slip Op 30410(U)

January 30, 2025

Supreme Court, New York County

Docket Number: Index No. 654602/2023

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

-----X

CANARA BANK, LONDON BRANCH,

Plaintiff,

- v -

MVP GROUP INTERNATIONAL, INC.,

Defendant.

INDEX NO. 654602/2023

MOTION DATE _____

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

-----X

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 120, 121

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

Defendant MVP Group International, Inc. (MVP) moves (1) pursuant to CPLR 3212(e) for summary judgment in its favor declaring that plaintiff Canara Bank, London Branch (Canara) is not entitled to pursue its claim for \$10,392,553.74, as principal and interest due under Canara’s credit facilities with MVP, because Canara successfully credit bid \$10,803,536.21 for MVP’s Tennessee property, as calculated by the foreclosure trustee, which exceeds the amount owed to Canara, and (2) pursuant to CPLR 3212(g), for summary judgment that the amount MVP owes to Canara has been paid in full as of February 21, 2024, the date of the Tennessee auction, and that Canara’s successful credit bid for MVP’s Tennessee property reduced its claim in this action by \$10,814,393.35 (principal, interest and costs).

Canara cross-moves (1) pursuant to CPLR 3217(b), to discontinue its claims in this action, without prejudice, so Canara may pursue its claims in a different court, (2)

pursuant to CPLR 407, severing MVP's counterclaims, so that the MVP may proceed with them separately; and (3) in the alternative, pursuant to CPLR 3025(b), granting Canara leave to amend its pleading.

In this action against MVP, Canara asserts that, on November 30, 2022, MVP defaulted on a \$30 million credit facility. (NYSCEF 1, Complaint ¶¶13.)¹ Canara seeks \$10,392,553.74, which includes interest up to September 11, 2023, as well as interest thereafter at 9.081% per annum, plus attorneys' fees and other costs of collection. (*Id.* at 6 [prayer for relief].)

Canara's Tennessee counsel notified MVP of the foreclosure sale of MVP's Union City, Tennessee property. (NYSCEF 53, January 23, 2024 Notice.) The auction proceeded on February 21, 2024. (NYSCEF 54, Substitute Trustees' Deed [Deed] at 1.) Canara purchased the property for \$10,814,393.35. (*Id.*) The Trustee applied the proceeds as follows: principal \$9,797,885.64; interest through February 21, 2024 \$1,005,650.57;² subtotal \$10,803,536.21; title search \$575; recording \$24; attorneys' fee \$7,500; advertising \$2,758.14; subtotal \$10,857.14. (*Id.* at 2).

On October 29, 2024, Canara's North Carolina counsel issued a default notice to MVP, stating that the outstanding principal balance under the Credit Facilities was \$3,355,730 (principal \$9,797,886 less sale of Tennessee property: \$8,491,164 making

¹ Parties are reminded to use NYSCEF numbers and shall read the Part 48 Procedures. "Individual Commercial Division Rule 19-a Statements of Facts may not be cited as authority in a party's memorandum of law or other motion papers; citations in all legal memoranda and motion papers (i.e., affidavits, attorney's affirmations) must use pinpoint citation(s) to the appropriate NYSCEF Document Numbers." (Part 48 Procedure 6[B].)

² The interest calculation is not explained.

the remaining balance: \$1,306,722 plus interest and expenses) plus per diem interest of \$752 and threatened to foreclose on another of MVP's manufacturing facilities in Surry County, North Carolina. (NYSCEF 55, Notice of Default at 5 [Exhibit A].) Canara fails to explain how it arrives at \$8,491,164 million instead of \$10,803,536.21 or \$9,797,885.64 other than to assert undocumented expenses of \$1,078,931, including \$276,550 in legal fees, \$17,550 in landscaping and \$150,000 in mold remediation. (*Id.* at 5.) Canara lists an additional interest expense of \$1,632,058 and default interest at \$103,810³ without explaining the rate applied or identifying the periods of time. (*Id.*)

MVP argues that Canara's \$10,814,393.35 credit bid constituted acceptance of the property in exchange for full payment of all amounts due and owed under the Credit Facilities—MVP owes Canara nothing more. Rather, MVP calculates the total amount it owed including interest through February 21, 2024 at \$10,795,410.97 which is exceeded by \$10,814,393.35;⁴ Canara would owe the difference to MVP \$18,983. (NYSCEF 48, Gross aff ¶12.)

Under CPLR 3212, "the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact." (*Alvarez v*

³ "Default Rate" means a rate of interest equal to 0.5% above the Applicable Interest Rate as in effect from time to time. (NYSCEF 2, Restructured Credit Agreement at 10/83.)

⁴ "Adding interest of from and including September 12, 2023 to and including February 21, 2024 to the \$10,392,553.74 alleged to be due [in the Complaint] and outstanding under the Credit Facilities as of September 11, 2023 totals \$10,795,410.97 (Gross aff ¶ 12). This is \$18,982.38 less than the \$10,814,393.35 total credit bid (Gross aff ¶ 13) and \$8,125.24 less than the \$10,803,536.21 applied to principal and interest per the Substitute Trustee's Deed. (Gross Aff. at ¶ 14; SMF at ¶ 12; Gross Aff., Ex. F at 2)." (NYSCEF 46, MVP memorandum of law in support of summary judgment at 8.)

Prospect Hosp., 68 NY2d 320, 324 [1986] [citations omitted].) Once the movant has made such a showing, the burden shifts to the opposing party to demonstrate, with admissible evidence, facts sufficient to require a trial, or summary judgment will be granted. (See *Winegrad v NY Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985].) “[S]ummary judgment may be granted as to one or more causes of action, or part thereof, in favor of any one or more parties, to the extent warranted, on such terms as may be just.” (CPLR 3212 [e].)

The elements required to establish a breach of contract claim are: (1) “the existence of a contract”; (2) “the plaintiff’s performance thereunder”; (3) “the defendant’s breach thereof”; and (4) “resulting damages.” (*Harris v Seward Park Hous. Corp.*, 79 AD3d 425, 426 [1st Dept 2010] [citation omitted].) Effectively, MVP asserts that Canara can no longer prove any damages.

In the Restructured Credit Agreement (Restructured Agreement), the parties agreed to New York as a forum and that New York law applies. (NYSCEF 2, Restructured Agreement § 9.16.) However, both parties rely on the law of Tennessee on this motion as the first property on which Canara foreclosed was in Tennessee. MVP insists that under Tennessee law, the Trustee’s Deed is conclusive as to the amount to be applied to principal and interest. Canara challenges the Tennessee law that MVP relies upon as dated. Nevertheless, Canara adopts the Trustee’s Deed amount of \$9,797,886 as the amount due in its October 29, 2024 default notice. (NYSCEF 55, Notice of Default at 5 [Exhibit A].) Accordingly, the court adopts the Trustee’s Deed as the amount of principal and interest received from the Tennessee foreclosure.

Canara also attacks MVP's interest calculation, but fails to offer an alternative, which is woefully inadequate on a motion for summary judgment. (See *Winegrad* at 853.) Sections 2.06(a)⁵ and 2.07⁶ of the Restructured Agreement provide for a variable interest rate. MVP used 9.081% for its calculation, the rate Canara stated in the complaint which Canara used as it was the interest rate on September 11, 2023, nine days prior to Canara filing this action. Instead, the court adopts the daily interest rate of \$752, which is the rate applied by Canara in its October 29, 2024 default notice, which sums to \$122,576 (163 days x \$752) instead of MVP's \$402,857.23. Under any law, and any calculation, mathematically the amount MVP owed to Canara following the Tennessee foreclosure, if any, is nominal, at best. Using only Canara's numbers, the court finds Canara's credit bid of \$10,803,536 exceeds the amount MVP owed Canara of \$10,618,939 (\$10,392,553 [Complaint] + \$122,576 interest + \$103,810 default interest [according to Canara without explanation].) Accordingly, not only is MVP's debt to Canara satisfied, Canara owes MVP the difference.

Canara's motion to discontinue its action so that it may pursue the same relief in a different forum is denied because the parties have selected New York as a forum for their disputes applying New York law. (See NYSCEF 2, Restructured Agreement § 9.16.) Further, the action is concluded for the reasons stated above. Therefore, Canara's request to sever MVP's counterclaims is denied as moot.

⁵ Section 2.06(a) provides that "[i]nterest shall be payable on the Notes at a variable rate per annum equal to the Applicable Interest Rate; such interest shall on the Term Loans accrue for the period from and including the Cut-off Date; and such interest on the Funded Interest Term, Loans shall accrue for the period from and including July 1, 2021." (NYSCEF 2, Agreement at 27/83.)

⁶ Specifically, Section 2.07 allows Canara to select an alternative interest rate. (*Id.*)
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Alternatively, Canara moves to amend its complaint to add fraud in the inducement of the loan because MVP allegedly inflated the value of its collateral. Canara asserts damages of \$3,355,730, comprised of the principal and interest due and owing under the Restructured Agreement after the Tennessee foreclosure, as well as all of the expenses that Canara has incurred, to date, in executing upon the Restructured Agreement. (NYSCEF 94, Proposed Amended Complaint ¶45.) Canara seeks its contract damages, not rescission or damages related to the alleged fraud.

“[L]eave to amend a pleading should be freely granted in the absence of prejudice to the nonmoving party where the amendment is not patently lacking in merit ... and the decision whether to grant leave to amend a complaint is committed to the sound discretion of the court.” (*Davis v S. Nassau Communities Hosp.*, 26 NY3d 563, 580 [2015] [internal quotation marks and citations omitted]; see also CPLR 3025 [b].) “[L]eave to amend a complaint should be denied if the proposed complaint could not survive a motion to dismiss. A proposed amended complaint that would be subject to dismissal as a *matter of law* is, by definition, ‘palpably insufficient or clearly devoid of merit’ and thus should not be permitted under CPLR 3025.” (*Olam Corp. v Thayer*, 2021 NY Slip Op 30345[U], *3-4 [Sup Ct, NY County 2021].) “When the non-moving party opposes amendment on the ground of futility, the moving party should be prepared in its reply brief to defend the proposed pleading as if it were opposing a motion to dismiss.” (*Id.* at 4.)

“[P]rejudice occurs when the party opposing amendment has been hindered in the preparation of [its] case or prevented from taking some measure in support of [its] position.” (*Jacobson v McNeil Consumer & Specialty Pharms.*, 68 AD3d 652, 654-55

[1st Dept 2009] [internal quotation marks and citation omitted].) “[M]ere lateness ... is not a barrier to amendment. Lateness must be coupled with significant prejudice to [a non-moving party].” (*Seda v New York City Housing Authority*, 181 AD2d 469, 470 [1st Dept 1992] [citation omitted], *lv denied* 80 NY2d 759 [1992].)

“The kind of prejudice required to defeat an amendment ... must ... be a showing of prejudice traceable not simply to the new matter sought to be added, but also to the fact that it is only now being added. There must be some special right lost in the interim, some change of position or some significant trouble or expense that could have been avoided had the original pleading contained what the amended one wants to add.” (*Jacobson v Croman*, 107 AD3d 644, 645 [1st Dept 2013] [internal quotation marks and citations omitted].)

Here, MVP does not argue prejudice but that the alleged fraud would not change the outcome above. When such a motion to amend is made to counter defendant’s motion for summary judgment, the motion to amend will be denied if it would not change the outcome of the case. (*Coyle v Dos-Santos*, 231 AD3d 573 [1st Dept 2024] [plaintiff’s cross motion to amend the complaint was moot because the proposed amendment would not change the outcome of the case and granted summary judgment motion]; *Mortgagee Corp. v Yatrakis*, 154 AD2d 433 [2d Dept 1989] [“[w]hen a motion for summary judgment is granted in its entirety, a cross motion to amend the answer is moot when the cross motion seeks a determination that could not have any practical effect on the existing controversy.”].)

Canara’s motion to amend the complaint to add fraud claims is denied. First, Canara fails to set forth any injury, and thus, the amendment would not change the outcome of this motion. “The elements of a fraud cause of action consist of a misrepresentation or a material omission of fact which was false and known to be false by the defendant, made for the purpose of inducing the other party to rely upon it,

justifiable reliance of the other party on the misrepresentation or material omission, and injury.” (*Pasternack v Lab. Corp. of Am. Holdings*, 27 NY3d 817, 827 [2016] [internal citation and quotation marks omitted].)

Canara alleges that MVP misrepresented the value of its Union City, Tennessee property and Surry County, North Carolina property in their 2021 appraisals, respectively. (NYSCEF 94, Proposed Amended Complaint ¶¶3, 27, 28, 39-45.) The Restructured Agreement was secured by the deeds for the Tennessee and North Carolina properties. (NYSCEF 95, Rajappan aff ¶ 4.) “Prior to the execution of the credit facility documents, MVP provided Canara with an appraisal for the TNProperty which indicated that the TN Property had a fair market value of \$34,709,000 ..., and an appraisal for the NCProperty which indicated that the NCProperty had a fair market value of \$25,977,000.” (*Id.*) In reliance on those appraisals, Canara alleges that it made the loan to MVP. (NYSCEF 94, Proposed Amended Complaint ¶ 42.)

MVP responds that it provided Canara with an updated appraisal evaluating the Union City, Tennessee property to be \$8.6 million on January 4, 2024 (see NYSCEF 113, June 2023 Appraisal), before Canara’s February 21, 2024 auction, thus precluding Canara from relying on the 2021 appraisal. Rather, the new appraisals support Canara’s contention. However, the calculation of what is owed and how much Canara bid would not change.

Second, Canara’s fraud claim is duplicative of its contract claims. (*Havell Capital Enhanced Mun. Income Fund, L.P. v Citibank, N.A.*, 84 AD3d 588 [1st Dept 2011] [“[T]he fraud claim, which arose from the same facts, sought identical damages and did not allege a breach of any duty collateral to or independent of the parties’ agreements,

was redundant of the contract claim”].) Canara’s damages are contract damages not fraud damages and thus the fraud claim is not sustainable.

The court has considered the parties’ remaining arguments and finds them unavailing without merit or otherwise not requiring an alternate result.

Accordingly, it is

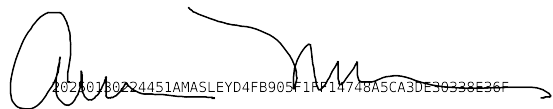
ORDERED that MVP’s motion is granted and the complaint is dismissed with costs and disbursements to defendant as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that Canara’s cross motion is denied; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

ORDERED that the defendant’s counterclaims are severed and shall proceed; and it is further

ORDERED that such service upon the Special Referee Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website)].



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1/30/2025

DATE

ANDREA MASLEY, 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