

Milberg Factors, Inc. v Ison

2025 NY Slip Op 31378(U)

April 9, 2025

Supreme Court, New York County

Docket Number: Index No. 656309/2023

Judge: Lyle E. Frank

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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. LYLE E. FRANK **PART** **11M**

Justice

-----X

MILBERG FACTORS, INC.,

Plaintiff,

- v -

PHILIP ISON,

Defendant.

-----X

INDEX NO. 656309/2023

MOTION DATE 10/07/2024

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, plaintiff’s motion is granted.

Background

In April of 2023, Ison Furniture Manufacturing, Inc. (“Ison Furniture”) signed an asset purchase agreement (the “APA”) with Wood House Upholstery, LLC (“Wood House”). Shortly thereafter, the parties also signed a royalty agreement (the “Tri-Party Agreement”) with Milberg Factors, Inc. (“Plaintiff”). Plaintiff had a lien on Wood House’s listed assets and equipment, and as part of the overall agreements between the parties, Ison Furniture agreed to take on \$400,000 of Wood House’s debt in the form of a promissory note (the “Promissory Note”). There were two more amended and restated versions of the Promissory Note, and Ison Furniture’s chief officer Philip Ison (“Defendant”) alleges that these versions were signed under duress. Then, Plaintiff entered into a factoring agreement with Ison Furniture (the “Factoring Agreement”). Defendant also at this time entered into an unconditional guaranty agreement with Plaintiff (the “Guaranty Agreement”), in which Defendant guaranteed the due performance of all of Plaintiff

and Ison Furniture's agreements, and the payment of any sums owed to Plaintiff by Ison Furniture. The Guaranty Agreement also waived all defenses.

Defendant alleges that he never received a finalized Factoring Agreement. He also alleges that following this set of related agreements, problems began to arise. The assets and equipment that Ison Furniture acquired turned out to be substantially overvalued, and Defendant alleges that an agent of Plaintiff knowingly adopted misrepresentations by Wood House with intent to deceive Ison Furniture and induce them into entering into the set of agreements. In December of 2023, Plaintiff filed the underlying proceeding, alleging that the Promissory Note has matured and has not been paid, consisting of a breach under the terms of the Promissory Note and the Factoring Agreement. They seek to enforce the Guaranty Agreement against Defendant. In the present motion, Plaintiff seeks summary judgment. Defendant opposes pro se, although he has since retained counsel.

Standard of Review

Under CPLR § 3212, a party may move for summary judgment and the motion "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." CPLR § 3212(b). Once the movant makes a showing of a prima facie entitlement to judgment as a matter of law, the burden then shifts to the opponent to "produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action." *Stonehill Capital Mgt. LLC v. Bank of the W.*, 28 N.Y.3d 439, 448 (2016). The facts must be viewed in the light most favorable to the non-moving party, but conclusory statements are insufficient to defeat summary judgment. *Id.*

Discussion

Plaintiff is seeking summary judgment as to liability and damages on the first cause of action for payment on the Promissory Note and liability on the second cause of action for attorneys' fees. The Promissory Note matured on September 30, 2023, and Ison Furniture did not repay the note at that time. The Guaranty Agreement contained a provision stating that Defendant would guaranty the due performance of all of Ison Furniture's agreements with Plaintiff. Plaintiff therefore seeks to enforce the Promissory Note obligations against Defendant through the Guaranty Agreement. Defendant opposes on the grounds that there are issues of material fact relating to whether the APA with Wood House was breached and obligations unfulfilled. He argues that the Promissory Note was predicated on the APA and other agreements between Wood House, Plaintiff, and Defendant, and therefore a breach of the APA voids the Promissory Note.

To succeed on a summary judgment motion seeking to enforce a guaranty, the creditor "need prove no more than an absolute and unconditional guaranty, the underlying debt, and the guarantor's failure to perform under the guarantee." *Kensington House Co. v. Oram*, 293 A.D.3d 304, 304 – 05 (1st Dept. 2002). At that point, the "burden shifts to the defendant to establish, by admissible evidence, the existence of a triable issue with respect to a bona fide defense." *Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A., "Rabobank Intl.", N.Y. Branch v. Navarro*, 25 N.Y.3d 485, 492 (2015). The 'bona fide' qualifier is key for this case, since here the Guaranty Agreement is an absolute and unconditional guaranty that waives all defenses. Such waivers have been consistently upheld in New York courts, even for claims of fraudulent inducement. *Id.*, at 493; *see also Red Tulip, LLC v. Neiva*, 44 A.D.3d 204, 209 (1st Dept. 2007).

While Defendant may be right that there are disputed issues of fact relating to performance under the APA, these would not be *material* facts. Defendant argues that the Promissory Note is void because of the issues with the assets and equipment they received from Wood House. But while the Promissory Note references other agreements, such as the Factoring Agreement, it does not claim to be predicated on any fulfillment of the other agreements. While Defendant's breach of his obligations under the Factoring Agreement (but not Plaintiff's breach) is one way of defaulting under the Promissory Note, that is not the only way of causing the Note to come due. It specifically states that the entire unpaid balance (principal and interest) is payable on the Maturity Date. It is undisputed that this date has passed and the balance due has not been paid.

Ison Furniture has incurred an obligation to repay the amount due under the Promissory Note, and Defendant has signed an unconditional guaranty of Ison Furniture's performance of all obligations to Plaintiff. Defendant may have believed the Promissory Note to be contingent on Wood House's performance under the APA, but that is not what the language of the agreement states and therefore this argument is insufficient to defeat a summary judgment motion. *See National Union Fire Ins. Co. v. Robert Christopher Assocs.*, 257 A.D.2d 1, 6 – 7 (1st Dept. 1999). Regardless of whether other, related agreements were breached or what claims that Defendant might have against Plaintiff or Wood House regarding said alleged breaches, here Defendant has not met his burden in opposing the summary judgment motion. Accordingly, it is hereby

ORDERED that the plaintiff's motion for summary judgment is granted to the extent of granting partial summary judgment in favor of plaintiff and against defendant on the first and second causes of action as follows; and it is further

ORDERED that the Clerk shall enter judgment in favor of plaintiff and against defendant in the amount of \$441,338.25, together with interest at the rate of 13.5% per annum from the date of December 15, 2023, until the date of the decision on this motion, and thereafter at the statutory rate, as calculated by the Clerk; and it is further

ORDERED that the first cause of action is severed, and the balance of the claims are continued; and it is further

ORDERED that the defendant is found liable to plaintiff on the second cause of action and the issue of the amount of damages to be entered thereon shall be determined at the hearing herein; and it is further

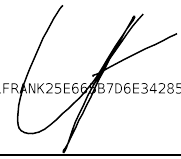
ORDERED that the action shall continue as to the second cause of action; and it is further

ORDERED that an assessment of damages against defendant Philip Ison for attorneys' fees is directed, and it is further

ORDERED that a copy of this order with notice of entry be served by the movant upon the Clerk of the General Clerk's Office, who is directed, upon the filing of a note of issue and a certificate of readiness and the payment of proper fees, if any, to place this action on the appropriate trial calendar for the assessment hereinabove directed; and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office 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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4/9/2025

DATE

LYLE E. FRANK, 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