

Arena Vantage SPV, LLC v Actionable Process LLC

2025 NY Slip Op 32533(U)

June 23, 2025

Supreme Court, New York County

Docket Number: Index No. 654396/2024

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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ARENA VANTAGE SPV, LLC,

Plaintiff,

- v -

ACTIONABLE PROCESS LLC,ACTIVATION NATION
LLC,ACTIVE CREATIONS LLC,ACTIVE GOODS
LLC,ACTIVE HARDWARE LLC,ACTIVE INK REFILL
LLC,ACTIVE ITEMS LLC,ACTIVE PAPER LLC,ACTIVE
PRODUCTION LLC,ACTIVE SUBLIMATION LLC,AGILE
CREATIONS LLC,BAMBOO HIGHWAY LLC,BOAT
OCEAN LLC,BOLD ADVENTURE LLC,BOX
TECHNOLOGIES LLC,BOXED GOODS LLC,BUILDING
PREMIUM LLC,COVENTURE VANTAGE CREDIT
OPPORTUNITIES GP, LLC,CREATIVE CABLES
LLC,CREATIVE ELECTRONICS LLC,CREATIVE HOME
PRODUCTS LLC,CUBE ENTITY LLC,FLOATING ROOF
LLC,FREEWAY TECHNOLOGIES LLC,FRONT MISSION
LLC,GENERAL TRADITION LLC,HIGHWAY TRIANGLE
LLC,ITEM BUILD LLC,KITE TECHNOLOGIES
LLC,LIFELONG INC.,MOUNTAIN ORG LLC,NATIONWIDE
MOUNTAIN LLC,PAPER AMBITION LLC,PATIO HILL
LLC,PREMIUM ITEMS LLC,PRODUCT SELECT
LLC,PRODUCTION GOODS LLC,PROJECT QUANTICO
LLC,PROPELIO LLC,RECTANGLE ORG LLC,ROOFTOP
ORG LLC,SPORTS FANATICS LLC,SQUARE
TECHNOLOGIES LLC,SQUARED ENTITY LLC,VANTAGE
BORROWER SPV I LLC,

Defendant.

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 86, 89, 90, 118, 119, 120

were read on this motion to/for REARGUMENT/RECONSIDERATION.

Upon the foregoing documents, the Guarantors' motion to reargue the Decision and Order of this Court dated January 21, 2025 (NYSCEF Doc. No. 65; the **Prior Decision**) is DENIED.

A motion for leave to reargue should be “based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion” (CPLR §2221[d]). Reargument is not intended “to afford the unsuccessful party successive opportunities to reargue issues previously decided or to present arguments different from those originally asserted” (*Haque v Daddazio*, 84 AD3d 940, 242 [2d Dept 2011]; *Foley v Roche*, 68 AD2d 558 [1st Dept 1979]). Reargument “is granted sparingly and should not be used as a second chance freely given to parties who have failed to exercise due diligence in making their first factual presentation” (*Wade v Giacobbe*, 176 A.D.3d 641 [1st Dept. 2019], *lv dismissed* 35 N.Y.3d 937 [2020]; *Priant v New York City Tr. Auth.*, 142 A.D.3d 491, 492 [1st Dept. 2016], *lv denied* 31 N.Y.3d 1134 [2018]; *Perretta v New York City Tr. Auth.*, 230 AD3d 428, 431-32 [1st Dept 2024]).

Simply put, and as the Court previously explained in the Prior Decision, the Guarantors are not correct that the Loan Agreement at issue includes a collective enforcement scheme which **includes** enforcement of the Guarantors’ obligations exclusively by the Deal Agent. The Loan Agreement in this case is different from the agreements at issue in *Beal Savings Bank v. Sommer* (8 NY3d 318 [2007]) such that, as to the Guarantors’ obligations, *Beal* is inapposite:

This is different than the language in the Keep-Well agreement in *Beal Sav. Bank v Sommer* (8 NY3d 318, 328 [2007]) that the Court of Appeals found significant in holding that there was a collective enforcement scheme. The Court of Appeals noted that the language in that agreement provided:

“In the event that the Obligations of the Borrower under the Credit Agreement shall be accelerated pursuant to the provisions of Section 8.2 or 8.3 thereof, the Sponsors guarantee and agree to pay the Accelerated Payment Amount to the Administrative Agent for the benefit of the Lenders not later than forty (40) days following the date of such acceleration.”

The only entity section 4 mentions as having the right to pursue default remedies is the Administrative Agent. Thus, this section actually underscores the collective enforcement scheme envisioned by the signatories of the Loan Documents.

The guaranty section (Section 10) in the Loan Agreement makes no mention of the Deal Agent with respect to the payment obligation (*i.e.*, other than the circumstances pursuant to which the Guarantor's obligation would be discharged or the Guarantor would be entitled to a credit).

(Prior Decision, n 3). Thus, and as previously explained, as to the Guarantors' obligations, dismissal is not appropriate.

Pursuant to Section 10 of the Loan Agreement, the Guarantors agreed to pay all outstanding principal and interest at maturity to the Lenders directly (not to the Deal Agent on behalf of the Lenders), and further provided that their absolute and unconditional obligations were not affected by (i) any failure to assert a demand as against the Borrower, (ii) delay of any kind by the Lenders or any other Person or (iii) any other circumstance whatsoever that might (other than payment in full in cash of the Aggregate Unpays) constitute a discharge (NYSCEF Doc. No. 31 §§ 10.1-10.2). The parties could have drafted the Loan Agreement to provide, for example, that the Guarantors would pay the Deal Agent on behalf of the Lenders, or otherwise delegated the exclusive right to enforce the Guarantors' obligations to the Deal Agent, but as this Court discussed more completely in the Prior Decision, they did not.

Pursuant to Section 9 of the Loan Agreement, the rights delegated to the Deal Agent include rights with respect to securing and enforcing the Lenders' rights with respect to the collateral and "powers reasonably incidental thereto" (NYSCEF Doc. No. 31 § 9.1 [a]). This simply does not delegate the exclusive right to seek collection as against the Guarantors to the Deal Agent for

monies due. The Court further notes that Section 9 expressly disavows responsibilities and obligations not otherwise expressly set forth in the Loan Agreement.

The Remedies Section, Section 7.2, does not mention the Guaranty:¹

Section 7.2 Remedies.

(a) Upon the occurrence of any Event of Default, the Deal Agent may with the consent of the Required Lenders, or at the direction of the Required Lenders shall, by notice to the Borrower and the Servicer, declare the Termination Date to have occurred; provided that in the case of the event described in Section 7.1(a) the Termination Date shall be deemed to have occurred automatically upon the occurrence of such event. At all times after the declaration or automatic occurrence of the Termination Date pursuant to this Section 7.2(a), the Deal Agent may, with the consent of the Required Lenders, and shall, at the direction of the Required Lenders, (i) declare the Notes (if any) to be immediately due and payable in full (without presentment, demand, protest or notice of any kind all of which are hereby waived by the Borrower) and any other Aggregate Unpaid to be immediately due and payable and (ii) foreclose upon and/or exercise any and all remedies in respect of all or any part of the Collateral.

(b) Upon the occurrence of an Event of Default, the Term shall automatically cease, and no further Advances shall be made hereunder. In addition, on and after the occurrence of any Event of Default hereunder and the declaration or automatic occurrence of the Termination Date pursuant to Section 7.2(a), the Deal Agent, as agent for the Secured Parties, shall have, in addition to all other rights and remedies under this Agreement or otherwise, all of the rights and remedies provided to a secured creditor under the Relevant UCC of each applicable jurisdiction and other Applicable Laws, which rights shall be cumulative. The Deal Agent may, with the consent of the Required Lenders, and shall, at the request of the Required Lenders, require the Borrower and Servicer to, and the Borrower and Servicer hereby agree that they will, at the Servicer's expense and upon request of the Deal Agent forthwith, (i) assemble all or any part of the Collateral as directed by the Deal Agent and make the same available to the Deal Agent at a place to be designated by the Deal Agent, (ii) bring suit, in the name of the Borrower Parties (or any of them), the Lenders or the Deal Agent on behalf of the Lenders, and generally shall have all other rights respecting the Accounts, including the right to (A) accelerate or extend the time of payment, (B) settle, compromise, release in whole or in part any amounts owing on any Accounts and (C) issue credits in the name of the Borrower Parties (or any of them) or the Deal Agent, and (iii) without

¹ As discussed below, this is different than the Credit Agreement in *Beal*.
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notice except as specified below, sell the Collateral or any part thereof in one or more parcels at a public or private sale, at any of the Deal Agent's offices or elsewhere, for cash, on credit or for future delivery, and otherwise upon such terms as are commercially reasonable. The Borrower agrees that, to the extent notice of sale shall be required by law, at least ten days' notice to the Borrower of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Deal Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Deal Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. All cash Proceeds received by the Deal Agent in respect of any sale of, collection from, or other realization upon, all or any part of the Collateral (after payment of any amounts incurred in connection with such sale) shall be deposited into the Collection Account to be applied pursuant to Section 2.5.

(c) Upon the occurrence of an Event of Default, the Borrower Parties hereby authorize the Deal Agent, or any person or agent which the Deal Agent may designate, at the Borrower's cost and expense, to exercise all of the following powers, which authority shall be irrevocable until the termination of this Agreement and the full and final payment and satisfaction of the Aggregate Unpaid: (a) to receive, take, endorse, sign, assign and deliver, all in the name of the Deal Agent or the Borrower Parties (or any of them), any and all checks, notes, drafts, and other documents or instruments relating to the Collateral; (b) to receive, open and dispose of all mail addressed to the Borrower Parties (or any of them), and to notify postal authorities to change the address for delivery thereof to such address as the Deal Agent may designate; (c) to request from Obligor indebted on Accounts at any time, in the name of the Deal Agent, information concerning the amounts owing on the Accounts; (d) to request from Obligor indebted on Accounts at any time, in the name of the Borrower Parties (or any of them), any certified public accountant designated by the Deal Agent or any other designee of the Deal Agent, information concerning the amounts owing on the Accounts; (e) to transmit to Obligor indebted on Accounts notice of the Deal Agent's interest therein and to notify Obligor indebted on Accounts to make payment directly to the Deal Agent for the Borrower Parties' account; and/or (f) to take or bring, in the name of the Deal Agent, the Lenders, or the Borrower Parties (or any of them), all steps, actions, suits or proceedings deemed by the Deal Agent necessary or desirable to enforce or effect collection of the Accounts.

(NYSCEF Doc. No. 31 § 7.2).

Additionally, as the Court previously explained, pursuant to Section 11.2 of the Loan

Agreement, the parties agreed that "[t]he rights and remedies herein provided shall be cumulative

and nonexclusive of any rights or remedies provided by Applicable Law” (NYSCEF Doc. No. 31 § 11.2). Thus, it is simply is not so that because the Loan Agreement delegates to the Deal Agent certain rights as against the collateral and certain other rights incidental to those rights that it also implicitly delegates the exclusive right to enforce the Guarantors’ payment obligations. The Loan Agreement simply does not contain that delegation (let alone an exclusive one).

Thus, the motion is DENIED.

Finally, the Court notes that, although not previously adduced by the Guarantors (although it could have been), comparison of the remedies section of the Credit Agreement in *Beal* further establishes that the Guarantors are not entitled to dismissal of the lawsuit as against them in this case because the Remedies Section 7.2 of the Loan Agreement does not mention the Guaranty whereas, in comparison, Section 8.3 of the Credit Agreement in *Beal* (NYSCEF Doc. No. 134) explicitly permits recovery on the related Completion Guaranty:

SECTION 8.3. *Action if Other event of Default.* If any Event of Default . . . shall occur for any reason, whether voluntary or involuntary, and be continuing, the Administrative Agent, upon the direction of the Required Lenders, shall by notice to the Borrower declare all or any portion of the outstanding principal amount of the Loans and other Obligations . . . to be due and payable or the Commitments . . . to be terminated, whereupon . . . the Borrower shall automatically and immediately be obligated to deposit with the Administrative Agent cash collateral in an amount equal to all Letter of Credit Outstandings In addition to the foregoing, **the Administrative Agent upon direction of the Required Lenders may, without further notice of default, presentment or demand for payment, protest or notice of non-payment or dishonor, or other notices or demands of any kind . . . , exercise any or all rights and remedies at law or in equity (in any combination or order that the Lenders may elect, subject to the foregoing), including, without prejudice to the Lenders' other rights and remedies, the following: . . .**

“(h) recover judgment on the Completion Guaranty or the Keep-Well Agreement either before, during or after any proceedings for the enforcement of the Lenders' rights and remedies hereunder or under the other Loan Documents.

(NYSCEF Doc. No. 134 § 8.3 [emphasis added]).

Lastly, and for completeness, the Court notes that there is no indication that Arena is a “rogue lender” attempting “to step to the front of the line or extort a greater recovery for itself” as described in the original motion (NYSCEF Doc. No. 42 at 5) because it is seeking enforcement on behalf of, and for the benefit of, all Lenders.

The Court has considered the movants’ remaining arguments and found them unavailing.

Accordingly, it is hereby ORDERED that the Guarantors’ motion to reargue is DENIED.

6/23/2025
DATE


ANDREW BORROK, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE