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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INDEX NO. 654396/2024

MOTION DATE 07/24/2025

MOTION SEQ. NO. 008

DECISION + ORDER ON MOTION

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 008) 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 166, 167, 168

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

Upon the foregoing documents, Arena Vantage SPV, LLC (**Arena**)'s motion (Mtn. Seq. No. 008) for summary judgment on their breach of contract claim against the Guarantors (as defined in NYSCEF Doc. No. 92) is GRANTED.

Reference is made to a certain (i) prior Decision and Order of this Court (NYSCEF Doc. No. 66; the **January 2025 Decision**), and (ii) prior Decision and Order of this Court (NYSCEF Doc. No 138; the **June 2025 Decision**; the January 2025 Decision, together with the June 2025 Decision, are hereinafter collectively the **Prior Decisions**). The relevant facts are set forth in the January 2025 Decision. Familiarity is presumed. Terms used but not defined herein shall have the meaning ascribed thereto in the Prior Decisions.

As relevant, in the January 2025 Decision, this Court denied the Guarantors' motion to dismiss the breach of contract claims against them, and held that (i) the Guarantors' obligation to pay under the Loan Agreement was absolute and unconditional, (ii) that the parties did not delegate the exclusive right to enforce the loan as against the Guarantors to the Deal Agent, and (iii) that Arena has standing to assert the breach of contract claims against the Guarantors:

> As relevant, pursuant to Section 10 of the Loan Agreement, the Guarantor agreed to pay all outstanding principal and interest at maturity to the Lenders and otherwise agreed 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 Unpaids) constitute a discharge…
>
> […]
>
> The Lenders' delegation itself is set forth in Section 9 of the Loan Agreement. The rights delegated in that Section are rights with respect to securing and enforcing the Lenders' rights with respect to the collateral and "powers reasonably incidental thereto." Indeed, the closest the language comes in that section to delegating the right to enforce the payment obligation of the Borrower or the Guarantor or collecting monies due from the Borrower or Guarantor at maturity is in the language "each Secured Party hereby appoints the Deal Agent as its agent to… take all further action, a Secured Party may reasonably request…to exercise or enforce any of their respective rights hereunder" (id. § 9.1 [a]). But that language too does not delegate the Deal Agent exclusive rights of enforcement or otherwise provide for a forfeiture of rights by the Lenders to enforce their sacred right to be repaid the monies that they loaned at maturity…

> […]
>
> The claims against the Guarantor however are not ripe for dismissal. Nothing in any of the provisions relied on by the Guarantor reflects a collective design as to enforcement as against the Guarantor. Indeed, and as discussed above, in Section 10.1 of the Loan Agreement, the Guarantor guaranteed payment to the Lenders directly (and not to the Deal Agent on behalf of the Lenders), the Guaranty itself provides that the failure to assert claims as against the Borrower does not affect the Guarantor's obligations and the Remedies section of the Loan Agreement which provide for the Deal Agent to act upon consent of the Required Lenders or at their direction allows for them to declare the Notes due and payable and to otherwise realize on the collateral. The Remedies section does not however mention the Guaranty.
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> Thus, inasmuch as the well-pled complaint alleges that: (i) a contract exists; (ii) the plaintiff performed in accordance with the contract; (iii) the defendant breached its contractual obligations; and (iv) the defendant's breach resulted in damages (34-06 73, *LLC v Seneca Ins. Co.*, 39 NY3d 44, 52 [2022]), the breach of contract claim as against the Guarantor is not dismissed and the plaintiff has standing to assert this separate claim.

(NYSCEF Doc. No. 66 at 5, 10, and 16).

In the June 2025 Decision, this Court denied the Guarantors' motion to reargue again rejecting the argument that any collective design expressed in the loan documents including the obligations to enforce the Guaranty and that as such this agreement was different than the agreement at issue in *Beal*:

> 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:
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> > 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).

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 Unpaids) 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 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:

> **Section 7.2 <u>Remedies</u>.**
>
> (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 Unpaids 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 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 Unpaids: (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 Obligors 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 Obligors 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 Obligors indebted on Accounts notice of the Deal Agent's interest therein and to notify Obligors 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. 138 at 2-7).

Subsequently, on February 6, 2025, Arena filed by order to show a motion for summary judgment on its breach of contract claims against the Guarantors. The Guarantors had however not yet filed an answer. They filed their answer on February 20, 2025 – 14 days later. In an abundance of caution and to address this technical foot fault, Arena withdrew its motion without prejudice (*tr.* 7.24.25; NYSCEF. Doc. No. 141; *City of Rochester v Chiarella*, 65 NY2d 92, 101 [1985]). With leave of Court, the Guarantors refiled the instant motion seeking summary judgment.

On a motion for summary judgment, the movant "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 Prospect Hosp.*, 68 NY2d 320, 324 [1986], *citing Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). The opposing party must then "produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact" that its claim rests upon (*Zuckerman v New York*, 49 NY2d 557, 562 [1980]). However, bald, conclusory assertions or speculation and "[a] shadowy semblance of an issue" are insufficient to defeat summary judgment, as are mere conclusory claims (*Stonehill Capital Mgt., LLC v Bank of the W.*, 28 NY3d 439, 448 [2016]).

Arena has met its burden of demonstrating its prima facie entitlement to judgment as a matter of law by adducing (i) the existence of the valid and binding Loan Agreement and the Guarantor's unconditional obligation to pay the amount due in the event of a maturity default (NYSCEF Doc. 110, ¶ 58), (ii) the existence of a maturity default (NYSCEF Doc. No. 66 at 2), (iii) the failure of the Guarantors to make payment in accordance with the guaranty's terms (*id.*, ¶ 61) (*E.D.S. Sec. Sys., Inc. v Allyn*, 262 AD2d 351, 351 [2d Dept 1999]) and (iv) that Arena was damaged in not receiving the principal and interest it is entitled to upon maturity (*34-06 73, LLC v Seneca Ins. Co.*, 39 NY3d 44, 52 [2022]).

In their opposition papers, the Guarantors fail to raise an issue of fact warranting further proceedings. As discussed previously, the Guaranty is "an absolute and unconditional guaranty of payment and not of collection" (NYSCEF Doc No. 57 § 10.10). Section 10.3 of the Loan Agreement also provides, in a section titled "Discharge Only upon Payment in Full;

Reinstatement in Certain Circumstances," that each Guarantors' obligations "shall remain in full force and effect until the Commitments are terminated and the principal of and interest on the Advances and all other amounts payable by the Borrower and the Guarantors under this Agreement and all other Transaction Documents (other than contingent obligations for which no claim has been asserted) shall have been paid in full in cash" (NYSCEF Doc No. 57 § 10.3).

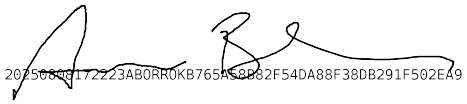
In addition, pursuant to Section 5.1(l) in relation to Sections 3.1(n) and 7.1(a) of the Loan Agreement, the Guarantors represented that they were solvent in that no "event of bankruptcy" had occurred at the time the Loan Agreement was entered into (NYSCEF Doc No. 57 § 5.1[l]), and there is no contrary factual assertion at this time. Although Section 10.6 of the Loan Agreement provides that "the right of recovery against the Guarantors under this Article X shall be limited to an aggregate amount equal to the largest amount that would not render the Guarantors' obligations under this Article X void or avoidable under applicable law, including fraudulent conveyance law," the Guarantors do not adduce any facts that would indicate that the guaranty is void or voidable. Thus, Arena is entitled to summary judgment and may submit judgment.

The Court has considered the parties' remaining arguments and finds them unavailing.

Accordingly, it is hereby

ORDERED that Arena's motion (Mtn. Seq. No. 008) for summary judgment is granted; and it is further

ORDERED that Arena shall submit judgment..



8/8/2025
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:		**CASE DISPOSED**		X	**NON-FINAL DISPOSITION**		
	X	**GRANTED**	**DENIED**		**GRANTED IN PART**		**OTHER**
APPLICATION:		**SETTLE ORDER**		X	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**			**FIDUCIARY APPOINTMENT**		**REFERENCE**