SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 45

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NEWMARK PARTNERS, L.P.,

Plaintiff,

- v -

SIMON SINGER and THE SIMON SINGER FAMILY TRUST,

Defendants.

INDEX NO. 659471/2024

MOTION DATE 12/05/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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HON. ANAR RATHOD PATEL:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2–10, 15–42 were read on this motion for SUMMARY JUDGMENT IN LIEU OF COMPLAINT.

Plaintiff Newmark Partners, L.P., ("Plaintiff" or "Newmark") moves, pursuant to CPLR § 3213, for summary judgment in lieu of complaint against Defendants Simon Singer and The Simon Singer Family Trust, (together, "Defendants" or "Singer") in the amount of $3,000,000, plus applicable interest.

Plaintiff commenced the action with the filing of the Summons and instant motion on December 5, 2024. On March 17, 2025, Defendants filed a cross-motion, pursuant to CPLR §§ 3211(a)(1), 3211(a)(7), and 1001(a), to dismiss the action. NYSCEF Doc. No. 20 ("Notice of Cross-Motion"). While not contesting the lack of payment, Defendants argue that Singer has no liability as a matter of law, Plaintiff failed to include a necessary party—namely the Schwartz Parties as defined below, Plaintiff cannot make a *prima facie* case showing that it is entitled to judgment under the law, and there are issues of fact that preclude a finding of summary judgment in Plaintiff's favor. NYSCEF Doc. No. 37 at 6, 14, 16, 19, 27, 29 ("Defs. Mem. of Law").

For the reasons discussed below, Plaintiffs' motion is granted, and Defendants' cross-motion is denied.

Relevant Factual and Procedural Background

This action arises out of a default in a Recission and Settlement Agreement (the "Agreement"), executed by Plaintiff, Defendants, and non-parties Elchonon Schwartz and the Elchonon Schwartz Family Trust (the "Schwartz Parties"). Prior to this Agreement, Defendants and the Schwartz Parties entered into a Securities Purchase Agreement, dated August 13, 2021, to sell Nightingale Realty, LLC, to Plaintiff for $13,000,000 in cash. Plaintiff then filed an action in New York State Court, seeking a recission of this transaction. NYSCEF Doc. No. 10 at 2 ("Pl.

Mem. of Law"). On March 3, 2023, Plaintiff, Defendants, and the Schwartz Parties executed the Recission and Settlement Agreement, requiring that Defendants and the Schwartz Parties repay Plaintiff $11,000,000 over the course of six installments, concluding April 30, 2024. NYSCEF Doc. No. 4 at 8–9 (Agreement).

Recission and Settlement Agreement

The relevant provisions of the Agreement are as follows. Under Section 2.1 of the Agreement, the specific procedure for the repayment states: "On the terms and subject to the conditions of this Agreement, the Parties agree to rescind the Transaction as follows: At the Rescission Closing (as defined below):

a) the Schwartz Parties shall pay the initial $5,000,000 installment of the Settlement Amount (as set forth in Section 5.3 below) to Buyer;

b) the Schwartz Parties and the Singer Parties shall, subject to the limitations set forth in Section 5.3 below, pay the Settlement Amounts due and payable following the Rescission Closing Dater on the dates set forth therein…"

Section 5.3(a) of the Agreement states, "the Sellers and the Principals agree, **jointly and severally**, to pay to the Buyer (or its designee), in cash, ELEVEN MILLION AND 00/100 DOLLARS ($11,000,000.00) in the aggregate (the "Settlement Payment'). The Settlement Payment shall be paid to the Buyer in six (6) installments as follows … [table omitted]." (emphasis added). Summarily, the Schwartz Parties were to pay the initial $5,000,000, and the remaining $6,000,000 would be split between Defendants and the Schwartz Parties, with Defendants paying no more than 50% of each gross installment payment and up to a maximum of $3 million in the aggregate. *See* Agreement at § 5.3(b).

Critically, the parties contemplated and agreed that "Section 5.3 constitutes an Agreement for the payment of money only. The Sellers and the Principals expressly agree that failure to make payment under this Agreement, as and when due, shall entitle Buyers to enforce the payment obligations under this Agreement pursuant to NY CPLR 3213." Agreement at § 5.3(f).

Under Section 5(g) of the Agreement (*see* Ex. E, "Pledge Agreement"), "Default" is defined as "a breach under the Recission Agreement." Accordingly, under Section 8, remedies for default include the right of the Secured Party "to institute any claim, action, suit, or proceeding seeking specific performance in connection with any of the agreements."

Default on Obligations under the Recission and Settlement Agreement

The Schwartz Parties remitted the first two installment payments under the Agreement, but made no further payments. NYSEF Doc. No. 3 (Shah Aff.) at ¶ 19. Accordingly, on August 1, 2023, Plaintiff issued Defendants and the Schwartz Parties a Notice of Breach, for failure to pay the required $1,250,000 by the mandated date of July 31, 2023. NYSCEF Doc. No. 5 ("Notice of Breach"). This notice invoked Plaintiff's right to demand payment of the outstanding principal amount owed by Defendants. Additional demands for payment were sent on August 1, 2023,

November 13, 2023, March 5, 2024, and October 25, 2024. *See* NYSCEF Doc. Nos. 6–9. To date, Singer has made no payments under the Agreement. Shah Aff. at ¶ 22.

As of December 5, 2024, Plaintiff calculates the total amount owed as $3,000,000, which includes the maximum principal amount which Defendants can be liable for, plus pre-judgment interest at a rate of 9% per annum per CPLR § 5004. Pl. Mem. of Law at 9.

Legal Discussion

CPLR § 3213 provides an expedited procedure for claims based upon "documentary claims so presumptively meritorious that a formal complaint is superfluous, and even the delay incident upon waiting for an answer and then moving for summary judgment is needless." *Weissman v. Sinorm Deli*, 88 N.Y.2d 437, 443 (1996) (internal quotations omitted). "When an action is based upon an instrument for the payment of money only . . . the plaintiff may serve with the summons a motion for summary judgment and the supporting papers in lieu of a complaint." CPLR § 3213. To establish entitlement to relief under CPLR § 3213, a plaintiff must show the existence of an instrument for the payment of money only, along with proof of nonpayment in accordance with its terms. *27 W. 72nd St. Note Buyer LLC v. Terzi*, 194 A.D.3d 630, 631 (1st Dept. 2021); *Valencia Sportswear, Inc. v. D.S.G. Enterprises, Inc.*, 237 A.D.2d 171, 171 (1st Dept. 1997).

Here, Plaintiff has satisfied its *prima facie* burden by submitting: (i) the Recission and Settlement Agreement executed on March 3, 2023 by Defendants and the Schwartz Parties, agreeing to pay $11,000,000 to Plaintiff (NYSCEF Doc. No. 4); (ii) the August 1, 2023 Notice of Breach (NYSCEF Doc. No. 5) and subsequent demand letters (NYSCEF Doc. Nos. 6–9); (iii) the December 23, 2024 Affidavit of Service to Simon Singer, along with the December 23, 2024 Affidavit of Service to the Simon Singer Family Trust, affirming that Defendants received sufficient notice of the actions brought against them (NYSCEF Doc. Nos. 13, 14); and (iv) affirmation of Defendants' default and the total amount due on the Agreement (Shah Aff. at ¶ 29). *See DB 232 Seigel Mezz LLC v. Moskovits*, 223 A.D.3d 610, 611 (1st Dept. 2024) (summary judgment properly granted under CPLR § 3213 where plaintiff submitted promissory note, evidence of default, and demand letter). Plaintiff provides support and calculations for the interest and fees owed, citing CPLR § 5004, which sets the legal rate of interest on judgments at a standard of 9% per annum. Shah Aff. at ¶¶ 25, 28. Plaintiff does not seek attorney's fees or other specific incidental costs.

In regards to Defendants' cross-motion, the Court does not credit these arguments. As a preliminary matter, Singer does not contest his agreement to Section 5.3 of the Agreement, which unequivocally states that the parties agreed that the Agreement is enforceable under CPLR § 3213. *See SCP (Bermuda) In. v. Bermudatel Ltd.*, 224 A.D.2d 214, 216 (1st Dept. 1996).

Defendants argue that the initial payment from the Schwartz Parties and delivery of various executed documents constitutes conditions precedent to the enforceability of the Agreement based on its interpretation of "subject to the conditions of this Agreement" found at Section 2.1. First, Defendants provide no legal authority to demonstrate that this language creates a condition precedent and point to no clear language in the Agreement to substantiate that the parties intended either of these events to constitute a condition precedent. *Bank of N.Y. Mellon Trust Co. v. Morgan*

Stanley Mortg. Capital, Inc., 821 F.3d 297, 305 (2d Cir. 2006). Rather, Singer does not dispute that he agreed to be jointly and severally liable under Section 5.3(a) of the Agreement.

Additionally, Defendants assert that the failure to include Schwartz as a defendant is fatal because Schwartz is a necessary party under CPLR § 1001. Defendants are mistaken. First, this argument hinges on a finding that the Schwartz Parties' initial payment was a condition precedent to Defendants' liability—Defendants state, "the only possible way that this Court could hold that Singer is liable for the full $3,000,000 is by determining that Schwartz defaulted on his obligations as well." Defs.' Mem of Law at 15. The Court has determined that no such condition precedent is found in the Agreement. Defendants' cited precedent refers to parties who were deemed as necessary because their actions were valid conditions precedent. *See Castaway Motels v. Schuyler*, 24 N.Y.2d 120, 125 (1969) ("Power Authority, whose advice as to noninterference with Niagara Project was condition precedent to conveyance of submerged public lands" was found to be a necessary party). Second, CPLR § 1002 (permissive joinder) governs where parties are jointly and severally liable, as is the case here. *Hecht v. City of New York*, 60 N.Y.2d 57, 62–63 (1983).

Defendants also argue that there are triable issues of fact as to Plaintiff's role in and knowledge of the Schwartz Parties' fraud, Plaintiff's good faith in general, and consequently, the Agreement should be voided altogether. Defs.' Mem. of Law at 19, 31. Defendants attack Plaintiff's good faith, stating that Plaintiff induced Defendants into the Agreement while aware of the Schwartz Parties' fraud. *Id*. at 27. However, this argument is ultimately barred by Section 4.2 of the Agreement, where Defendants sign a statement directly admitting that they have "not been influenced to any extent whatsoever in doing so by any other Party or by any other person or entity, except for those representations, statements and promises expressly set forth herein."

Finally, the Court determines that none of Defendant's litany of purported issues of fact are relevant to or otherwise sufficient to form a defense to liability.

The Court has considered the parties' remaining contentions and finds them to be unavailing.

Accordingly, it is hereby

ORDERED that Plaintiffs' Motion for Summary Judgment in Lieu of Complaint against Defendants is GRANTED and Defendant's Cross-Motion to Dismiss is DENIED; and it is further

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ORDERED that the Clerk is directed to enter judgment in favor of Plaintiff Newmark Partners L.P. against Defendants Simon Singer and The Simon Singer Family Trust, jointly and severally, in the amount of $3,000,000 plus pre-judgment interest at the default rate of 9% per annum, as per CPLR § 5004.

The foregoing constitutes the decision and order of this Court.

8/26/2025
DATE

ANAR R. PATEL, A.J.S.C.

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