

Lotus Funding Group, LLC v Herrera Stone Works

2025 NY Slip Op 35351(U)

January 30, 2025

Supreme Court, Rockland County

Docket Number: Index No. 037483/2024

Judge: David Fried

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right (CPLR §5513 [a]), you are advised to serve a copy of this Order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X
LOTUS FUNDING GROUP, LLC,

Plaintiff,

-against-

HERRERA STONE WORKS and ROBERT
ALEXANDER HERRERA,

Defendants.

-----X
HON. DAVID FRIED, A.J.S.C.

DECISION & ORDER

Index No. 037483/2024
Motion Sequence No. 1

The papers filed electronically via NYSCEF numbered 1 through and including 9 (“Motion”) were read and considered herein. Upon such reading and consideration, the Motion is disposed as follows:

BACKGROUND

This action was commenced by the filing of a Summons and Motion for summary judgment in lieu of a complaint pursuant to CPLR §3213 on December 10, 2024, stemming from Defendant Herrera Stone Works’ and Defendant-Guarantor Robert Alexander Herrera’s alleged failure to tender a percentage of Defendant Herrera Stone Works’ receivables, purchased by Plaintiff Lotus Funding Group, LLC (“Plaintiff”), in the amount of \$29,980.00, in accordance with an agreement entered into between the parties on April 11, 2024 (“Merchant Agreement”). Defendant Herrera Stone Works purportedly remitted a sum of \$21,562.70 of its receivables owed on the Merchant Agreement but thereafter prevented Plaintiff from making further withdrawals from its bank account in breach of said Merchant Agreement, leaving a balance of \$8,417.30 due and owing to Plaintiff by Defendants plus interest, costs, disbursements, and attorney’s fees.

On November 15, 2024, Defendants executed a stipulation of settlement (“Settlement Agreement”), acknowledging indebtedness to Plaintiff in the amount of \$14,067.30 and agreed to pay same through \$1,000.00 weekly installments, beginning on November 15, 2024, until the settlement balance was paid in full. Plaintiff contends that Defendants initially remitted said installment payment on November 15,

2024 but failed to remit any payments thereafter, leaving a balance on the indebtedness of \$13,067.30 plus interest, costs, disbursements, and attorney's fees.

Plaintiff now brings the within Motion, seeking an Order pursuant to CPLR §3213, for summary judgment in favor of Plaintiff, as against Defendants, awarding it a judgment in the amount of \$13,067.30 with interest thereon. Defendants have not opposed said Motion.

DISCUSSION

When an action is based upon an instrument for the payment of money only or upon any judgment, CPLR §3213 permits a plaintiff to contemporaneously move for summary judgment when filing its summons. In the Second Department, to qualify as an instrument for the payment of money within the ambit of CPLR §3213, the instrument the movant seeks to enforce must contain an unconditional guaranty of payment, irrespective that the instrument imposes other obligations on the nonmovant unrelated to their obligation to pay (*see Juste v. Niewdach*, 26 AD3d 416, 417 [2d Dept 2006] ["...The mere presence of additional provisions in the guaranty...did not constitute a bar to CPLR 3213 relief, because these provisions did not require additional performance as a condition precedent to repayment, or otherwise alter the defendant's promise of payment]; *see also* Mark C. Dillon, Prac Commentaries, McKinney's Cons Laws of NY, CPLR C3213:4). An instrument does not qualify under CPLR §3213 if a court must consult material beyond the bare document and proof of nonpayment (*see Kitchen Winners NY, Inc. v. Triptow*, 226 AD2d 989 [2d Dept 2024]).

The remedy of summary judgment is a drastic one and it should only be granted when it is clear no triable issue of material fact exists (*see Alvarez v. Prospect Hosp.*, 68 NY2d 320 [1986]). On a motion for summary judgment, the proponent "must make prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (*Winegrad v. New York Univ. Med. Center*, 64 NY2d 851, 852 [1985]; *Zuckerman v. City of New York*, 49 NY2d 557 [1980]). Once such a showing has been made, the burden of proof shifts such that an opponent to a motion for summary judgment must demonstrate the existence of a genuine triable issue of fact (*see* 68 NY2d at 320).

As summary judgment is the procedural equivalent of a trial, if there is any doubt as to the existence of a triable issue of fact, or where a material issue of fact is even "arguable", the motion must be denied (*see Phillips v. Kantok & Co.*, 31 NY2d 307 [1982]). The papers submitted in support of and in opposition to a summary judgment motion should be scrutinized in a light most favorable to the party opposing the motion. (*see Dowsey v. Megerlan*, 121 AD2d 497 [2d Dept 1986]; *Gitlin v. Chirkin*, 98 AD3d 561 [2d Dept 2012]). However, mere conclusions or unsubstantiated allegations unsupported by competent evidence are insufficient to raise a triable issue (*see Gilbert Frank Corp. v. Federal Ins. Co.*, 70 NY2d 966 [1988]).

"Stipulations of settlement between parties are binding contracts and, as such, they are favored and

‘not lightly cast aside’” (*Rogers v. Malik*, 126 AD3d 874, 875 [2d Dept 2015] quoting *Hallock v. State of New York*, 64 NY2d 224, 230 [1984]). “Only where there is a legally sufficient cause to invalidate a contractual obligation, such as where it is manifestly unfair to one party because of the other’s overreaching or where its terms are unconscionable or constitute fraud, collusion, mistake, or accident, will a party be relieved from the consequences of the bargain struck with the stipulation” (AD3d at 875 citing *Matter of Matinzi v. Joy*, 60 NY2d 835 [1983]). “More than mere or conclusory allegations are required, ... since stipulations of settlement serve the interests of efficient dispute resolution, the proper management of court calendars and the integrity of the litigation process” (126 AD3d at 875 citing *Hallock v. State of New York*, 64 NY2d 224, 230 [1984]).

Here, Plaintiff presents a copy of the Settlement Agreement, which does not qualify as an “instrument for the payment of money only” within the meaning of CPLR §3213. As proof of Defendants’ alleged breach of the Settlement Agreement, Plaintiff presents the affidavit of its representative attesting to Defendants’ failure to remit payments required by such agreement. The Settlement Agreement references the Merchant Agreement, but does not incorporate same. The Settlement Agreement also states that “there arose an action which resulted in a judgment amount of \$14,067.30 [].” As the court must consult material beyond the bare Settlement Agreement, upon which the pending Motion is brought, said document does not qualify under CPLR §3213. Even if the Settlement Agreement did qualify as an “instrument for the payment of money only,” the Motion would still be denied because Plaintiff has not met its burden.

Plaintiff’s Memorandum of Law in Support (NYSCEF Document No. 5) and Affidavit in Support (NYSCEF Document No. 4) raise triable issues of fact with respect to the nexus between the principal owed by Defendant on the underlying Merchant Agreement (\$8,417.30) and the sum Defendant acknowledged was due to Plaintiff in the Settlement Agreement (\$14,067.30). Plaintiff has failed to explain how Defendant incurred additional debts to Plaintiff in the sum of \$5,650.00. Further, the opening paragraph of the Settlement Agreement states that the parties “agree to resolve any and all disputes with respect to the Merchant Agreement [], whereby there arose an action which resulted in a judgement amount of \$14,067.30 [].” Plaintiff’s Memorandum of Law states that, “After the commencement of the action, the parties entered into a settlement agreement dated November 15, 2024 [].” Curiously, the papers submitted provide absolutely no indication as to what this statement pertains, creating further issues of fact. The “action” is not identified, and cannot relate to this action, which has not yet resulted in a Judgment, and is described as pre-dating the Settlement Agreement. The issues of fact here, are many, and summary judgment is not appropriate.

Additionally, Plaintiff has not affirmed that the original balance due on the Settlement Agreement (\$14,067.30) does not include attorney’s fees incurred from the underlying Merchant Agreement, which may only be awarded by a court after a *quantum meruit* assessment, taking in to consideration, the time and labor required for the services rendered, the difficulty of the issues involved, and the skill and effectiveness of counsel (*see SO/Bluestar LLC v. Canarsie Hotel Corp.*, 33 AD3d 986 [2d Dept 2006]).

In light of the foregoing, it is hereby

ORDERED, that Motion Sequence No. 1 is DENIED in its entirety; and it is further

ORDERED, that pursuant to CPLR §3213, the denied motion is deemed to be a Complaint. Defendants shall file and serve an Answer and or otherwise move, not later than March 14, 2025. Appearances before the undersigned are required on March 25, 2025 at 9:15AM for purposes of a Preliminary Conference; and it is further

ORDERED, that Plaintiff shall serve a copy of this Decision & Order, with Notice of Entry, upon Defendants via NYSCEF and certified mail within ten (10) days of the entry hereof, and by such date shall also upload to NYSCEF, an affirmation of such service. Annex to said affirmation of service, proof of said certified mailing and include the certified mailing tracking number.

The foregoing constitutes the Decision & Order of this Court.

Dated: New City, New York
January 30, 2025

ENTER:



HON. DAVID FRIED, A.J.S.C.
STATE OF NEW YORK
COUNTY OF ROCKLAND