

Webster Bank, N.A. v Emmaus Mgt. Servs., LLC
2025 NY Slip Op 35424(U)
March 11, 2025
Supreme Court, Westchester County
Docket Number: Index No. 50288/2023
Judge: Alexandra D. Murphy
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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 WESTCHESTER
PRESENT: HON. ALEXANDRA D. MURPHY, J.S.C.**

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WEBSTER BANK, N.A.,

Plaintiff,

Index No. 50288/2023

– against –

Motion Seq. 2

EMMAUS MANAGEMENT SERVICES, LLC;
FITNESS & RECOVERY MEDICAL PRACTICE,
P.C.; MACK LEE SULLIVAN MD MS URGENT
MEDICAL CARE OF EAST CHESTER, PLLC;
EU&C REAL ESTATE, INC.; MANAHAWKIN BAY
SERVICES, INC.; 369 WHITE PLAINS ROAD
MEDICAL PRACTICE, P.C.; and MACK LEE
SULLIVAN,

Defendants.

DECISION & ORDER

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In an action to recover damages for, inter alia, breach of contract, the plaintiff moves for summary judgment against the defendants pursuant to CPLR 3212:

Papers Considered

NYSCEF Doc. Nos. 60-69; 73-78

1. Notice of Motion/Affirmation of Linda Mandel Gates, Esq./Exhibits A-C/Affidavit of Mark Korman/Exhibits A-B/Memorandum of Law in Support/Statement of Material Facts;
2. Affirmation of Mack Lee Sullivan, M.D., in Opposition/Memorandum of Law in Opposition/Response to Statement of Material Facts;
3. Reply Affirmation of Linda Mandel Gates, Esq./Reply Affidavit of Mark Korman/Memorandum of Law in Reply.

Discussion

On February 21, 2020, the plaintiff made a business loan in the amount of \$1,860,300.00 to the following defendants (Borrowers): (1) 369 White Plains Road Medical Practice, P.C.; (2) Manahawkin Bay Services, Inc.; (3) EU&C Real Estate, Inc.; (4) Mack Lee Sullivan MD MS Urgent Medical Care of East Chester, PLLC; (5) Fitness & Recovery Medical Practice, P.C.; and (6) Emmaus Management Services, LLC. As partial collateral security for the loan, the Borrowers executed a security agreement wherein they granted a security interest and general lien to the plaintiff, which the plaintiff perfected on

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the same date. According to the note, defendant Mack Lee Sullivan is the President of each of the Borrowers.

The plaintiff alleges that the Borrowers defaulted in July 2021 and that the parties then entered into a forbearance agreement in December 2021, which expired in June 2022. The plaintiff sent the defendant a notice of default and acceleration letter on December 1, 2022.

The plaintiff commenced this action to recover damages for, inter alia, breach of contract with the filing of a summons and complaint on December 14, 2022. The defendant Mack Lee Sullivan was served personally with the summons and complaint on February 4, 2023. The remaining defendants were served with the summons and complaint on January 18, 2023, through the Secretary of State.

The defendants filed an answer with counterclaims on April 26, 2023. On October 9, 2023, the defendants filed a notice of withdrawal of counterclaims without prejudice. The defendant's answer asserts nine (9) affirmative defenses.

In support of the complaint, the plaintiff annexes the note, loan agreement, Small Business Administration (SBA) authorization, guaranty, forbearance agreement, security agreement, and UCC-1 financing statements.

The plaintiff moves for summary judgment on the complaint and seeks the following damages: (1) \$1,804,815.05 in unpaid principal; (2) \$288,604.65 in unpaid interest through September 12, 2024; (3) \$43,191.27 in unpaid attorneys' fees and costs as of August 31, 2024¹; and (4) \$28,864.89 in late charges through September 12, 2024, plus interest and additional costs, which continue to accrue. The plaintiff asserts that the defendants are in default as of July 2021, in that the defendants have failed to repay the amounts due under the loan documents.

In opposition, the defendants assert that the plaintiff has failed to establish a prima facie showing of its entitlement to summary judgment in that the plaintiff has failed to clarify the causes of action on which it seeks summary judgment. The defendants further assert that the plaintiff has failed to submit admissible evidence in support of its motion.

In reply, the plaintiff asserts that it is not pursuing the third, fifth, and sixth causes of action of the complaint, but rather is pursuing summary judgment on the first, second, and fourth causes of action. The plaintiff further asserts that the defendants admit their default on the loan.

The proponent of a motion for summary judgment must make a 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 (*see Winegrad v N.Y. Univ. Med. Ctr.*,

¹ With respect to attorneys' fees, the plaintiff states that it waives its right to recover attorneys' fees and late charges, provided summary judgment is granted and there is no inquest or further hearing on damages (NYSCEF Doc. No. 61 at ¶ 34).

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64 NY2d 851, 853 [1985]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers (see *Winegrad v N.Y. Univ. Med. Ctr.*, 64 NY2d at 853).

"Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; see *Zuckerman v City of New York*, 49 NY2d at 562). Mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient to defeat a prima facie showing of entitlement to summary judgment (see *Zuckerman v New York*, 49 NY2d at 562).

In order to recover damages for breach of contract, the plaintiff must demonstrate the existence of a contract, the plaintiff's performance pursuant to the contract, the defendant's breach of its contractual obligations, and damages resulting from the breach (see *Investment Retrievers, Inc. v Fox*, 150 AD3d 1090 [2d Dept 2017]).

In order to demonstrate a prima facie showing of entitlement to judgment as a matter of law, the plaintiff must establish "the existence of a note and guaranty and the defendants' failure to make payments according to their terms" (*Verela v Citrus Lake Dev., Inc.*, 53 AD3d 574, 575 [2d Dept 2008]).

Here, the plaintiff established entitlement to judgment as a matter of law through the submission of an affidavit from an employee who is a custodian of the plaintiff's business records and personally reviewed the plaintiff's business records as related to the defendants, the collective loan documents executed by the defendants, including the note and guaranty and evidence of the default, which established its prima facie entitlement to judgment as a matter of law on the complaint.

The burden then shifted to the defendant to establish by admissible evidence the existence of a triable issue of fact (see *JPMorgan Chase Bank, N.A. v Galt Group, Inc.*, 84 AD3d 1028, 1029-1030 [2d Dept 2011]). The defendants failed to meet their burden. The defendants do not contest the validity of the note, the guaranty, or the default. Rather, the defendants argue that they have made multiple attempts to work with the plaintiff and that they disagree with the amounts due, yet they fail to annex proof of discrepancy in the amount due. The defendant's arguments are insufficient to raise a triable issue of fact.

Accordingly, it is

ORDERED that the plaintiff's motion for summary judgment on the first, second, and fourth causes of action of the complaint is **GRANTED**; and it is further

ORDERED that the plaintiff shall serve a copy of this order with notice of entry upon the defendants within twenty (20) days from the date herein; and it is further

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ORDERED that the plaintiff shall submit a proposed judgment to the Westchester County Clerk in its favor and against the defendants in the amount of \$1,804,814.05, plus costs and disbursements, as taxed by the clerk.

Dated: White Plains, New York
March 11, 2025



HON. ALEXANDRA D. MURPHY, J.S.C.