Square Fundlng LLC v Jimbo & Co. Invs. LLC
2025 NY Slip Op 35430(U)
February 5, 2025
Supreme Court, Nassau County
Docket Number: Index No. 605026/2024
Judge: Gary F. Knobel
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SUPREME COURT – STATE OF NEW YORK

Present:

HON. GARY F. KNOBEL
Justice of the Supreme Court

SQUARE FUNDING LLC D/B/A SQUARE ADVANCE,

Plaintiff,

-against-

JIMBO AND COMPANY INVESTMENTS LLC D/B/A JIMBO AND COMPANY TRANSPORT, HANSEN INVESTMENT GROUP LLC, THATCHER FINANCIAL LLC AND JAMES D HANSEN,

Defendant(s).

IAS/TRIAL PART 18

NASSAU COUNTY

INDEX NO. 605026/2024

DECISION & ORDER

MOTION SEQ #: 2
AMENDED

Papers Considered:
Statement of Material Facts in Support (NYSCEF Doc. No. 24)..........1
Business Record Affirmation (NYSCEF Doc. No. 25)..........2
Plaintiff's Affirmation (NYSCEF Doc. No. 26)..........3
Attorney Affirmation (NYSCEF Doc. No. 27)..........4
Memorandum of Law and Exhibits (NYSCEF Doc. No. 28-34)..........4
Memorandum of Law in Opposition (NYSCEF Doc. No. 35)..........5
Affirmation in Reply (NYSCEF Doc. No. 37)..........6

Plaintiff moves for an order: (1) pursuant to CPLR § 3212 granting plaintiff summary judgment; (2) dismissing defendant's affirmative defenses; and (3) awarding plaintiff costs, expenses and disbursements.

In this action, plaintiff seeks to recover damages for a breach of a commercial agreement for the sale of future receivables. On or about March 14, 2024, the plaintiff, company defendant, and guarantor defendant entered into an agreement whereby the plaintiff agreed to purchase $157,395.00 of future receivables for a sum of $105,000.000. Defendant James D. Hansen executed a guarantee of performance of all the representations and covenants made in the contract with the plaintiff. The agreement required the corporate defendant, upon receiving the purchase

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price, to deposit all of its receipts into a designated bank account, out of which the plaintiff was authorized to debit the estimated payment of $3,147.90 per day, subject to reconciliation. The plaintiff alleges that on March 14, 2024, the plaintiff paid the defendant the purchase price minus agreed to fees and less the prior balance pursuant to the agreement, but on March 19, 2024, the company defendant failed to direct payments to the defendant thereby breaching the agreement.

The plaintiff commenced the instant action on March 22, 2024, by filing the summons and verified complaint. Issue was joined on May 20, 2024, with the filing of defendants' answer. The plaintiff now moves for summary judgment upon the grounds that there are no issues of fact with respect to the company defendant's obligations under the agreement, the guarantor defendant's unconditional guaranty of performance, and the defendants' breach of the agreement and guarantee.

In support of the plaintiff's motion, the plaintiff submitted: (1) a statement of material facts; (2) a business record affirmation; (3) Moshe Dancour, an authorized representative of the plaintiff's affirmation in support; (4) attorney affirmation; (5) memorandum of law in support; (6) the funding confirmation; (7) the pay run; (8) the summons and complaint; (9) the affidavit of service; and (9) the defendants' answer in this proceeding. Moshe Dancour states that the company defendant breached the agreement by "intentionally stopped remitting the purchased receivables to Plaintiff from the Bank Account without proper notice and failed to provide Plaintiffs[sic] financial disclosures or a written request for reconciliation" (NYSCEF Doc. No. 26). The pay run is consistent with this statement. Moshe Dancour further states that the plaintiff has not received any remittance from the defendants since March 12, 2024.

The defendants oppose the motion by memorandum of law, arguing the plaintiff's proof is insufficient to establish the defendants' breach of the agreement and guaranty or the amount

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purportedly due. Specifically, the defendant argues that the motion and discovery demands are defective as they were only served via NYSCEF and the motion is not supported by adequate documentary evidence such as accounting documents, canceled checks, wire transfers or blank balances.

In an action for breach of contract, a plaintiff moving for summary judgment must demonstrate the existence of the agreement, performance by the plaintiff, breach by the defendant, and damages resulting from the breach (see *Magee-Boyle v. Reliastar Life Ins. Co. of New York*, 173 A.D.3d 1157 [2d Dept. 2019]). To establish a breach under the terms of a written guaranty, the movant must demonstrate the existence of a primary obligation under a contract, the guarantee of such obligation by a guarantor, and a default on the part of the obligor and the guarantor (*Valley natl. Bank v. INI Holding, LLC*, 95 A.D.3d 1108 [2d Dept. 2012]).

Here, the Court finds that the plaintiff has made a *prima facie* showing of its entitlement to summary judgment as a matter of law through the existence of the agreement and guaranty, the plaintiff's performance, and the defendants' breach (see *Unique Funding Sols. LLC v. A-Z Imports Exports LLC*, 78 Misc. 1209[A] [N.Y. Sup. Ct. Nassau Cty. 2023]). In doing so the burden shifts to the defendants to "produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (*Gesuale v. Campanelli & Assoc., P.C.*, 126 A.D.3d 936 [2d Dept. 2015]; see *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320 [1986]). The defendants have failed to meet this burden. The memorandum of law by counsel, whom has no personal knowledge of the facts underlying any of the proffered defenses, is insufficient to create a material issue of fact (*McCovey v. Williams*, 105 A.D.3d 819 [2d Dept. 2013]). While the defendants challenge the plaintiff's *prima facie* showing, no evidentiary facts,

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sworn statements, or documentary evidence was submitted to counter any of the plaintiff's allegations and raise a triable issue of fact.

The Court notes that defendants' argument that plaintiff's service of papers was defective lacks merit since the action at bar is an electronically filed case via NYSCEF and consequently, pursuant to the uniform rules of the trial courts promulgated by the Chief Administrative Judge, service of the motion via NYSCEF is proper and sufficient (see 22 NYCRR § 202.5-bb[a][I]; 22 NYCRR § 202.5-bb[c][I]).

Accordingly, it is hereby

ORDERED, that the plaintiff's motion for summary judgment is GRANTED.

Settle judgment.

ENTER

DATED: February, 5, 2025

Gary Knobel
HON. GARY F. KNOBEL J.S.C.

ENTERED
Feb 07 2025
NASSAU COUNTY
COUNTY CLERK'S OFFICE

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