T.D. Bank, N.A. v Savitri Singh, MD P.C.
2025 NY Slip Op 35621(U)
March 7, 2025
Supreme Court, Suffolk County
Docket Number: Index No. 629515/2023
Judge: James F. Matthews
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SUPREME COURT OF THE STATE OF NEW YORK
PART 24 - COUNTY OF SUFFOLK

PRESENT:

Hon. James F. Matthews
Justice of the Supreme Court

INDEX NO. 629515/2023
Short Form Order

Mot. Seq. No. 001, 002
Orig. Return Date: Dec. 17, 2024
Mot. Submit Date: Feb.4, 2025

TD BANK, N.A.,

Plaintiff,

-against-

SAVITRI SINGH, MD P.C., ARYA'S PROPERTIES INC. and SAVITRI SINGH,

Defendants.

Plaintiff's Attorney:
Platzer, Swergold, Goldberg,
Katz & Jaslow, LLP
475 Park Ave South, 18th Floor
New York, NY 10016

Defendants' Attorney:
Robert T. Fuchs, Esq.
85 West Main St, Suite 201
Bay Shore, New York 11706

Upon the following papers read on defendants' motion to dismiss and plaintiff's cross-motion for summary judgment, e-filed documents numbered 43 through 99, and upon due deliberation and consideration given to the foregoing papers; it is hereby:

ORDERED that defendant's motion to dismiss pursuant to CPLR §§3211(e) and 306(b) is denied and plaintiff's cross-motion for summary judgment is granted pursuant to CPLR §3212.

Plaintiff, TD Bank N.A., commenced the instant action via summons and complaint filed on November 30, 2023, seeking monetary judgment for breach of contract and unjust enrichment on three different bank loans it granted to defendants Savitri Singh MD P.C., Arya's Properties Inc., and Savitri Singh. Plaintiff filed an amended complaint on March 6, 2024, seeking judgment now on only two of the bank loans, and issue was joined by all defendants via filing of Answer on September 20, 2024.

The underlying proceeding arises from a consumer credit transaction in which the defendants agreed, via contract and guaranty, to repayment of one "term loan" granted in the amount of $125,000 and one "revolving line of credit" loan granted in the amount of $39,000. Plaintiff alleges defendants breached the terms of both agreements dated December 17, 2021, by failing to make the monthly payments due under the loan documents, which triggered a default causing the entire amount outstanding and unpaid to become due, including interest and attorney's fees under the terms of the agreement. Plaintiff sent a demand letter to defendants on September 11, 2024, and subsequently filed this suit.

Defendants' motion to dismiss

Defendants now move for dismissal of plaintiff's amended complaint pursuant to CPLR §§3211(e) and 306(b) on the basis that this Court lacks jurisdiction due to improper service of defendants. Defendants argue in its affirmation in support that proper service was never effectuated within the statutory 120 days pursuant to CPLR § 306(b) and that plaintiff failed to move to dismiss defendants' affirmative defense of improper service within 60 days of defendants' answer pursuant to CPLR §3211(e).

Plaintiff submits as Exhibits B, C, E and F, (NYSCEF #s 58, 59, 60, 62) in its opposition, affidavits of service on both corporate defendants. Both show service via the Secretary of State on March 7, 2024, within 120 days of the filing of the complaint November 30, 2023, and, subsequently on August 18, 2024, within 120 days of filing the amended complaint March 6, 2024. Thus, as to the two corporate defendants Savitri Singh, MD P.C., and Arya's Properties, Inc., there is no issue as to jurisdiction or service and that portion of defendants' motion is denied.

The individual defendant Savitri Singh submitted an Affidavit with defendants reply papers wherein she stated she had moved her residence in 2022 and sold her business, with a mortgage held by plaintiff, in December 2023, after the filing of the initial summons and complaint but before the filing of the amended summons and complaint. She argues therein that plaintiffs knew or should have known her actual address for service. Defendant Singh also states that the first time she received any papers regarding this lawsuit was August 2, 2024, acknowledging the service to an employee at her medical office.

Plaintiff submits as Exhibits G and H (NYSCEF #s 63, 64) in its opposition, affidavits of attempted service of the initial summons and complaint and actual service of the summons amended complaint on individually named defendant Savitri Singh via an employee at her office, as well as via mailing to her home address, the same address confirmed in defendant's own affidavit. Plaintiff's affirmation attests that the original complaint was also in that service package. In this action, plaintiff's amended complaint seeks significantly less damages than its original complaint because the cause of action for the mortgage default had been satisfied in the interim. In its cross-motion, filed within 20 days of defendants' motion to dismiss, plaintiff acknowledges no application was made to extend the 120-day statutory timeline within that window, and now moves for leave for the late service on the individual defendant and a determination that such service was timely *nunc pro tunc*.

The 120-day service provision of CPLR §306(b) can be extended by a Court, upon motion, for "good cause shown or in the interest of justice". The statute is silent as to plaintiff's time to e-file the proofs of service, nor must a motion to extend be filed within the 120-day service deadlines. To establish good cause, a plaintiff must demonstrate reasonable diligence in attempting service. (*see* ***Bumpus v New York City Transit Auth.***, 66 AD3d 26, 31-32, 883 NYS2d 99 [2d Dept 2009]). Here, Plaintiff has filed with its motion papers an Affidavit of service showing four attempts at service of individual plaintiff prior to the expiration of the initial 120-day statutory period for the complaint and an Affidavit of actual service of the summons and amended complaint.

The interest of justice standard requires a careful judicial analysis of the factual setting of the case and a fair balancing of the competing interests presented by the parties. Unlike an extension request premised on good cause, plaintiff need not establish reasonably diligent efforts at service as a threshold matter. However, the court may consider diligence, or lack thereof, along with any other relevant factor in making its determination, including expiration of the statute of limitations, the meritorious nature of the cause of action, the length of delay in service, the promptness of a plaintiff's request for the extension of time, and prejudice to defendants (***Leader v Maroney, Ponzini & Spencer,*** 97 NY2d 95, 761 NE2d 1018, 736 NYS2d 291 [2001]).

Here, the statute of limitations has not expired, in fact is not close to expiring and, as Plaintiff's counsel details in her affirmation on opposition, this action would be swiftly refiled. Plaintiff has submitted specific, uncontroverted, documentary evidence and a client affidavit in support of its meritorious causes of action, plaintiff has shown multiple attempts at service of individually named defendant within the 120-day statutory period and filed its motion within 20 days of defendants' motion to dismiss. This Court finds no prejudice to defendants as they have all appeared by counsel. As such, plaintiff's request for an order granting timely service *nunc pro tunc* as to individual plaintiff Singh is granted.

Plaintiff's cross-motion for summary judgment

The Court now turns to plaintiff's cross-motion for summary judgment pursuant to CPLR §3212 on the underlying facts and documentary evidence.

Summary judgment is a drastic remedy and should only be granted in the absence of any triable issues of fact (*see* ***Rotuba Extruders, Inc. v Ceppos***, 46 NY2d 223, 413 NYS2d 141[1978]; ***Andre v Pomeroy***, 35 NY2d 361, 362 NYS2d 131 [1974]). The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law by tendering evidence in admissible form sufficient to eliminate any material issues of fact from the case (***Alvarez v. Prospect Hosp.***, 68 NY2d 320, 508 NYS2d 923 [1986]; ***Winegrad v. New York Univ. Med. Ctr.***, 64 NY2d 851, 487 NYS2d 316 [1985]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers, *supra.* Once such proof has been offered, the burden then shifts to the opposing party who must proffer evidence in admissible form and must show facts sufficient to require a trial of any issue of fact to defeat the motion for summary judgment (CPLR §3212(b); *see* ***Alvarez v Prospect Hosp., supra***; ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980]). Conclusory allegations unsupported by competent evidence are insufficient to defeat a summary judgment motion *supra* at 324-325. Courts have the authority to search the record on a motion for summary judgment and make determination in accordance with the admissible evidence presented (*see* ***Marciano v Ran Oil Co. East, LLC***, 63 AD3d 1118, 882 NYS2d 452 [2d Dept 2009]; ***Amore Partners, Inc. v Mephisto, Inc.***, 222 AD2d 473, 635 NYS2d 57 [2d Dept 1995]).

Here, plaintiff made prima facie showing of entitlement to judgment as a matter of law on its causes of action by tendering sufficient evidence that there was an agreement, which the defendants accepted and made payments thereon and which was breached when the Defendants failed to make the required payments. Plaintiff submitted a sworn client affidavit, all pertinent loan documents, guarantees and agreements. Defendants did not submit any papers or arguments in opposition, in fact, did not address plaintiff's cross-motion at all. Accordingly, it is hereby:

ORDERED that plaintiff, TD Bank N.A., is granted judgment against defendants jointly and severally (1) as to the "term loan," plaintiff's first, second and third causes of action: the sum of the unpaid principal, default interest at the contract rate through August 31, 2023, and late fees, in the total amount of $116,542.15, as well as default interest at the rate of 18% per annum accruing from August 31, 2023 until date of judgment, and statutory costs and disbursements; (2) as to the "revolving line of credit" loan, plaintiff's fourth and fifth causes of action: the sum of the unpaid principal, interest at the contract rate through August 31, and late fees, in the total amount of $ 40,152.36, as well as default interest at the rate of 18% per annum accruing from August 31, 2023 until date of judgment, and statutory costs and disbursements; and (3) as to plaintiff's sixth cause of action, the claim for attorney's fees, in the amount of $11,000; and is it further:

ORDERED that plaintiff is directed to submit a proposed Clerk's money judgment to the Suffolk County Clerk on ten (10) days' notice to defendant.

The foregoing constitutes the decision and Order of the Court.

Dated : March 7, 2025

Riverhead, New York

ENTER

Hon. James F. Matthews, JSC