

Grasshopper Bank, N.A. v Proujansky

2024 NY Slip Op 32283(U)

July 3, 2024

Supreme Court, New York County

Docket Number: Index No. 650340/2024

Judge: Melissa A. Crane

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. MELISSA A. CRANE **PART** **60M**
Justice

-----X
GRASSHOPPER BANK, N.A.
Plaintiff,
- v -
PHILIP PROUJANSKY and
B&T VISIONS HOLDINGS, LLC
Defendant.
-----X

INDEX NO. 650340/2024
MOTION DATE N/A
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 were read on this motion to/for JUDGMENT - SUMMARY IN LIEU OF COMPLAINT.

In Motion Seq. No. 02, plaintiff Grasshopper Bank, N.A moves for summary judgment in lieu of complaint against defendant under Guaranties related to a Loan and Security Agreement (Loan) (Doc 5 [Loan]).

On December 31, 2020, plaintiff Grasshopper Bank, N.A. (Grasshopper) loaned \$8,000,000 to nonparty RE-VC Visions Holdings, LLC (RE-VC) pursuant to the Loan (Doc 21 [Loan Advance Certificate]). Grasshopper’s principal office is located in New York. In consideration for the Loan, defendants B&T Visions Holdings, LLC (B&T) and Philip Proujansky (Proujansky) entered into the Unconditional Secured Guaranty (Corporate Guaranty) (Doc 6 [Corporate Guaranty]) and Springing Unconditional Secured Guaranty (Doc 7 [Individual Guaranty]), respectively. Proujansky is B&T’s managing member (Doc 16 ¶ 1 [Affirmation of Philip Proujansky]; Doc 4 ¶¶ 5, 7 [Affirmation of Grant Skeens]).

The Loan obligated RE-VC to pay off the entire principal balance by the Revolving Maturity Date (Doc 5, § 2.3(c)). The maturity date was originally December 31, 2021, but it was

extended three times to March 2, 2023 in the Loan Agreement's third amendment (*see id.* [Loan Agreement and annexed amendments]). The interest rate for the Loan was set at the greater of (i) the U.S. Prime Rate plus 1.0% or (2) 4.25% (*id.*, § 2.3(a)). Section 2.3 (b) of the Loan Agreement states:

"If any payment is not made within ten (10) days after the date such payment is due, Borrower shall pay Bank a late fee equal to the lesser of (i) five percent (5%) of the amount of such unpaid amount or (ii) the maximum amount permitted to be charged under applicable law."

In addition, interest would accrue at the contractual default rate:

"All Obligations shall bear interest, from and after the occurrence and during the continuance of an Event of Default, at a rate equal to five (5) percentage points above the interest rate applicable immediately prior to the occurrence of the Event of Default."

(*id.*, section 2.3 [b]).

The borrower, RE-VC, was also required to deliver certain financial reports to Grasshopper "within . . . 60 days of the end of each fiscal quarter ending March 31, June 30, September 30" (*id.*, § 6.3(a)). RE-VC also had to deliver investment statements to plaintiff biannually (*id.* § 6.3(c)).

In the Corporate and Individual Guaranties, each defendant

"unconditionally and irrevocably, jointly and severally, guarantees to Bank and to its successors, endorsees and/or assigns, the full and prompt payment and performance of the Guaranteed Obligations. The term 'Guaranteed Obligations', as used herein means: the principal amount of all Advances, and interest accrued thereon from time to time pursuant to the terms of the Loan Agreement (including interest accruing on or after the filing of any petition in bankruptcy, or the commencement of any insolvency, liquidation, winding-up, dissolution, reorganization or like proceeding by or against Borrower), due or to become due, and any and all extensions, renewals and amendments of or to the Loan Agreement, whether such obligations are now existing or hereafter arising"

(Doc. 6 § 1; Doc. 7 § 1).

On January 5, 2023, Grasshopper sent RE-VC a letter stating that they would not renew the loan, meaning that all the unpaid principal and interest would be due on the Revolving Maturity Date, March 2, 2023 (Doc 8 [notice of non-renewal]). When no payment had been made on March 17, 2023, 15 days after the Revolving Maturity Date's passing, Grasshopper sent RE-VC and both defendants the Default Notice, alleging four events of default (Doc 9 [default notice]). Plaintiff identified breaches of the following Loan Agreement sections: § 8.1 for failing to pay on the March 2, 2023 Revolving Maturity Date; and §§ 6.3(a) and 6.3(c) for failure to timely provide reports for the fiscal quarters ending on September 30, 2022, and December 31, 2022. In addition, plaintiff asserted that B&T breached reporting requirements under the corporate guaranty (*id.*).

Plaintiff now moves for summary judgment in lieu of complaint against defendants under the Corporate and Individual Guaranties. Plaintiff seeks a judgment in the amount of \$6,198,040.30, comprised of the following:

- Outstanding Principal Balance: \$5,426,780.96
- Accrued and Unpaid Interest at Interest Rate of 9.5% from August 1-31, 2023, and 14.5% from September 1-November 8, 2023: \$390,656.56
- Late Charges: \$286,609.60
- Attorneys' Fees: \$93,993.18

DISCUSSION

CPLR 3213 provides for accelerated judgment where the instrument sued upon is for the payment of money only and the right to payment can be ascertained from the face of the document without regard to extrinsic evidence, "other than simple proof of nonpayment or a similar *de minimis* deviation from the face of the document" (*Weissman v Sinorm Deli, Inc.*, 88 NY2d 437, 444 [1996]; see *Arbor-Myrtle Beach PE LLC v Frydman*, 2021 NY Slip Op. 30223[U], 2 [Sup Ct, NY County 2021], *affd* 2022 NY Slip Op. 00806 [1st Dept 2022]). Generally, an action on a guaranty is an action for payment of money only (see e.g. *Cooperative Centrale Raiffesisen-Boerenleenbank, B.A., "Rabobank Intl.," N. Y. Branch v Navarro*, 25 NY3d 485, 492 [2015])

(“*Cooperative Centrale*”). The same standards that apply to motions for summary judgment under CPLR 3212 apply to CPLR 3213 motions. Movant must make a prima facie case by submitting the instrument and evidence of the defendant’s failure to make payments in accordance with the instrument’s terms (*see Weissman*, 88 NY2d at 444; *Matas v Alpargatas S.A.I.C.*, 274 AD2d 327, 328 [1st Dept 2000]). “A guaranty may be the proper subject of a motion for summary judgment in lieu of complaint whether or not it recites a sum certain, and the need to consult the underlying documents to establish the amount of liability does not affect the availability of CPLR 3213” (*Bank of Am., N.A. v Solow*, 19 Misc 3d 1123(A) [Sup Ct, NY County 2008]).

Plaintiff’s Prima Facie Entitlement to Summary Judgment in Lieu of Complaint

The Corporate Guaranty and Individual Guaranty are instruments for the repayment of money only and qualify for CPLR 3213 relief. Plaintiff has established prima facie entitlement to summary judgment in lieu of complaint regarding the outstanding principal balance, accrued and unpaid interest, and late charges (*see e.g.* Doc 5 §§ 2.1, 2.3). Plaintiff submits the Loan and Security Agreement, Corporate Guaranty, Individual Guaranty, and the Affirmation of Grant Skeens, plaintiff’s Chief Risk Officer. Skeens explains the parties’ entrance into the Loan and guaranty agreements and sets forth defendants’ failure to pay the amounts owed (Doc 4, ¶¶ 8-32). Thus, plaintiff has established its prima facie entitlement to summary judgment in lieu of complaint under the guaranties with respect to these amounts.

However, plaintiff has not established the amounts owed for its reasonable attorneys’ fees. While plaintiff is entitled to attorneys’ fees under the loan agreement and guaranties, the court cannot determine whether the amount of attorneys’ fees sought [\$93,993.18] is reasonable because the plaintiff has not submitted any proof to substantiate the claimed amount.

Defendants’ Opposition and Plaintiff’s Reply

Defendant argues that the motion should be denied because it is not clear how plaintiff calculated the amounts claimed to be owed under the guaranties. Contrary to defendants' contentions, plaintiff's proof is not insufficient except with respect to its unsupported request for attorneys' fees. In addition, plaintiff submits Skeens' Supplemental Affirmation (Doc 20), the \$8 million Loan Advance Certificate (Doc 21), RE-VC's Bank Statement (Doc 22), RE-VC's Loan History Report (Doc 23) and Loan Rate History Report (Doc 24), the Late Fee Report (Doc 25), and Proujansky's User Activity Report (Doc 26). Skeens' affidavit and the annexed documentary exhibits further support and confirm plaintiff's calculations regarding the outstanding principal balance, accrued and unpaid interest, and late charges.

Conclusion

Plaintiff has met its prima facie burden to entitlement to recover \$6,104,047.12, together with interest at the default contractual rate set forth in section 2.3 (c) of the Loan Agreement (Doc 5 at pg 8) from January 24, 2024 until entry of judgment, and thereafter at the statutory rate. That amount is the total of outstanding principal balance, unpaid regular and default interest through January 23, 2024, and late charges owed. Defendants failed to raise a triable issue of fact as to those items. Although plaintiff has demonstrated that it is entitled to recover its reasonable attorneys' fees under the Guaranties, it failed to provide any documentation to support the amount of requested fees. Thus, the court denies that part of plaintiff's motion seeking to recover its reasonable attorneys' fees without prejudice.

The court has considered the parties' remaining contentions and finds them unavailing.

Accordingly, it is

ORDERED that the motion for summary judgment in lieu of complaint is granted in part, and the Clerk is directed to enter judgment in favor of plaintiff and against defendants,

jointly and severally, in the amount of \$6,104,047.12, together with interest at the contractual default rate from January 24, 2024 until the date of this decision and order, and thereafter at the statutory rate, as calculated by the Clerk, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that plaintiff's proposed judgment to the Clerk shall include an affidavit detailing the applicable default interest rate(s) for the period from January 24, 2024 through the date of this decision and order; and it is further

ORDERED that the Clerk is directed to mark this case disposed; and it is further

ORDERED that there shall be no further motion practice without a pre-motion conference.

7/3/2024
DATE


MELISSA A. CRANE, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input checked="" type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	DENIED
			<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT