

Bank of Baroda, N.Y. Branch v Rail.One USA Corp.

2024 NY Slip Op 32284(U)

July 3, 2024

Supreme Court, New York County

Docket Number: Index No. 650590/2024

Judge: Melissa A. Crane

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. MELISSA A. CRANE PART 60M

Justice

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BANK OF BARODA, NEW YORK BRANCH

Plaintiff,

- v -

RAIL.ONE USA CORP.,

Defendant.

-----X

INDEX NO. 650590/2024
MOTION DATE 02/05/2024
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

were read on this motion to/for JUDGMENT - SUMMARY IN LIEU OF COMPLAINT.

In this motion plaintiff Bank of Baroda, New York Branch moves, pursuant to CPLR 3213, for summary judgment in lieu of complaint as against defendant Rail.One USA Corp. Plaintiff is a public sector bank in India with its principal place of business in Vadodara, Gujarat, India. Its New York office is located at 1 Park Avenue, New York, New York 10016. The motion is unopposed. As set forth in further detail below, plaintiff's unopposed motion for summary judgment in lieu of complaint is granted as set forth in this decision and order.

Factual and Procedural Background

On 12/13/23, plaintiff filed a motion for summary judgment in lieu of complaint, pursuant to CPLR 3213, as against defendant in a prior action (*Bank of Baroda, New York Branch v Rail.One USA Corp.*, Index No. 656227/2023). On 1/29/24, the court dismissed the prior action because there was no affidavit of service. The dismissal was without prejudice. Afterwards, plaintiff filed this action seeking relief under CPLR 3213.

I. The Credit Agreement

Plaintiff and defendant entered into an Amended and Restated Credit Agreement (“Credit Agreement”) as of 12/23/16 (as amended, modified, or supplemented from time to time) (Doc 5 [Credit Agreement]). Under the Credit Agreement, plaintiff allowed certain credit facilities to defendant, totaling \$18 million in principal (Doc 5 [Credit Agreement]; Doc 4 [Desai Aff.]).

In exchange, defendant tendered two promissory notes, in plaintiff’s favor: (1) the Amended and Restated Demand Promissory Note (the “Promissory Note”) for \$2 million, representing certain overdrafts (“Overdrafts”) (Doc 7 [Promissory Note]); and (2) the Amended and Restated Term Note (the “Term Note” and together with the Promissory Note, the “Notes” and together with the Credit Agreement, the “Credit Documents”) for \$16 million, representing a term loan (“Term Loan”) (Doc 6 [Term Note]).

On 3/23/23, the parties amended the Credit Agreement to replace LIBOR with SOFR for purposes of calculating the Applicable Interest Rate. Pursuant to the 3/23/23 amended Credit Agreement, defendant had to repay the principal loan “in six annual installments,” (Doc 5 [Credit Agreement] § 2.01(b)) and “pay interest to the [plaintiff] on a quarterly basis...at a rate per annum equal to the 6-month Term SOFR plus four and one-half percent (4.5%)” until repayment was complete (Doc 8 [Amendment to Credit Agreement], § 2.02).

The Credit Agreement further provided that: (1) defendant’s failure to pay principal on the due date, or interest within five (5) Business Days of the due date, shall constitute an Event of Default (Doc 5 [Credit Agreement] §§ 9.01, 9.01(a)); (2) any outstanding amount past due “shall bear interest at a default rate [] per annum equal to two percent (2%) above the interest rate otherwise applicable” (Doc 8 [Amendment to Credit Agreement] § 4.01); and (3) the plaintiff “may [] declare the Notes, all interest thereon, and all other amounts...due and payable” by defendant upon an event of default (Doc 5 [Credit Agreement] § 9.01(i)).

The Credit Agreement and related documents are “governed by...the [] laws of the State of New York” (*id.* at § 10.08) and the parties “agree[d] to waive their respective rights to a jury trial of any claim...arising out of [the Credit] [A]greement” or “any of the other credit documents or any dealings between them relating to...this transaction and the bank/borrower relationship that is being established” (*id.* at § 10.09).

II. The Security Agreement

Additionally, defendant executed the 6/20/16 security agreement (the “Security Agreement”), granting plaintiff “a continuing lien upon and a general security interest in” defendant’s “right, title and interest in” certain property, including, without limitation, accounts receivable, deposit accounts, inventory, documents of title, and other property (Doc 9 [Security Agreement]). On 6/29/17, after the Security Agreement’s execution, plaintiff filed a UCC-1 Financing Statement with the Iowa Secretary of State, perfecting its security interest in the “Collateral,” as the Security Agreement enumerates (Doc 10 [UCC Financing Statement]).

III. Defendant’s Default

Defendant eventually defaulted under the Credit Agreement and the two Notes by failing to make the principal payments under the Term Loan on 12/31/19, 8/31/20, and 12/31/21, and by failing to make its interest payments in connection with the Term Loan and Overdrafts (Doc 4 [Desai Aff.]). Plaintiff sent a notice of default to defendant on 3/30/22 (Doc 11 [Default Letter]). The letter ultimately provided that, as of 3/28/22, defendant owed plaintiff \$11,217,936.47, consisting of \$9,490,423.24 in Term Loan principal and Overdraft, and \$1,727,513.23 in interest on the Term Loan and Overdrafts (*id.*).

On 8/10/23, plaintiff approved defendant's revised payment schedule (Doc 12 [Repayment Plan Revised]). Defendant then made certain payments due on 6/15/23 and 7/31/23 (Doc 13 [Second Default Letter]). However, defendant then defaulted on the payment due on 8/31/23 (*id.*).

As of 8/31/23 defendant owed plaintiff \$9,815,640.28, comprised of principal and interest (*id.*). Accordingly, plaintiff sent a second default letter on 9/8/23, demanding repayment of this outstanding principal and interest by September 29, 2023 (Doc 13 [Second Default Letter]). Defendant did not make that payment and, as of 11/30/23, defendant owed plaintiff \$10,091,113.94, comprised of \$6,590,843.24 in principal, \$2,695,133.54 in interest, and \$805,137.16 in default interest (Doc 14 [Loan Interest Chart]).

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], *aff'd* 2022 NY Slip Op. 00806 [1st Dept 2022]). Additionally, accelerated judgment under CPLR 3213 is also appropriate where the plaintiff establishes a *prima facie* case by virtue of a note and a failure to make payments called for therein (*Warburg, Pincus Equity Partners, L.P. v O'Neill*, 11 AD3d 327 [1st Dept 2004], citing *DDS Partners v. Celenza*, 6 A.D.3d 347, 348 [2004]). Thus, a promissory note is a "typical example of an instrument within the meaning of [CPLR 3213]" (*DDS Partners, LLC v Celenza*, 6 AD3d 347, 348 [1st Dept 2004], citing *Weissman*, 88 NY2d at 444).

Further, 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]).

The unopposed motion is granted. Plaintiff has established its *prima facie* entitlement to summary judgment in lieu of complaint under the relevant Credit Documents, including the Credit Agreement and Notes. Specifically, plaintiff has demonstrated that it entered into the Credit Documents with defendant, and that defendant defaulted under those documents, and that defendant failed to repay the amounts due to plaintiff [\$10,091,113.94] under the Notes (*see* Doc 14 [Calculations]). The Notes are instruments for the repayment of money only.

In addition, plaintiff has established that it is entitled to default interest at the contractual default rate from December 1, 2023 until the date of this decision and order. That is, plaintiff is entitled to "interest at a default rate [] per annum equal to two percent (2%) above the interest rate otherwise applicable" ("Applicable Interest Rate") (*see* Doc 8 [Amendment to Credit Agreement] § 4.01). The [ordinary] "Applicable Interest Rate" was four and one-half of one percent (4.5%) above the SOFR rate (*id.* at §§ 2.02, 3.03).

The court denies plaintiff's request for attorneys' fees and expenses. While plaintiff is entitled to recover its reasonable attorneys' fees and expenses under the relevant Credit Documents, plaintiff did not establish its *prima facie* case as to any amount of attorneys' fees or costs, because it did not submit any documents that demonstrate its incurred attorneys' fees or expenses.

The court has considered plaintiff's remaining contentions and finds them unavailing.

Accordingly, it is

ORDERED that the motion for summary judgment in lieu of complaint is granted in part, absent opposition, and the Clerk is directed to enter judgment in favor of plaintiff and against defendant in the amount of \$10,091,113.94, plus interest at the contractual default rate from December 1, 2023 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 the Clerk is directed to mark this case disposed.

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