

MTF Propco LLC v Williams

2024 NY Slip Op 34055(U)

November 15, 2024

Supreme Court, New York County

Docket Number: Index No. 653877/2024

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

-----X
 MTF PROPCO LLC,

Plaintiff,

- v -

PHILIP L WILLIAMS, EMERSON PARTNERS,
 INC., MONTGOMERY TREE FARMS, LLC

Defendant.
 -----X

INDEX NO. 653877/2024

MOTION DATE 08/01/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
 MOTION**

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2
 were read on this motion to/for JUDGMENT - SUMMARY IN LIEU OF COMPLAINT

Upon the foregoing documents, MTF Propco LLC (the **Lender**)'s motion for summary judgment
 (Mtn. Seq. No. 001) in lieu of complaint is GRANTED as unopposed.

This is an action for money owed under a Loan Agreement (the **Agreement**; NYSCEF Doc. No. 4), dated March 20, 2023, by and between Arena Limited SPV, LLC (the **Original Lender**) and Montgomery Tree Farms of Texas, LTD. (the **Borrower**) together with guarantors Philip L. Williams and Emerson Partners (the **Guarantors**). In connection with the Agreement, the Borrower executed a Promissory Note (the **Note**; NYSCEF Doc. No. 5), whereby the Borrower received a \$8,135,000.00 loan, and the Borrower unconditionally promised to pay the Original Lender in accordance with the terms of the Note and Agreement. The obligations under the Agreement and Note were guaranteed by the Guarantors pursuant to a Guaranty of Payment and Performance (the **Payment Guaranty**; NYSCEF Doc. No. 6), dated March 20, 2023, by and between the Guarantors and the Borrower. On April 10, 2024, the Original Lender assigned all

rights, title, and interest in the Agreement and related loan documents to the Lender (NYSCEF Doc. No. 7).

On June 3, 2024, the Borrower and the Guarantors entered into a forbearance agreement (the **Forbearance Agreement**; NYSCEF Doc. No. 8), admitting and acknowledging, among other things, that a maturity default had occurred, that the Lender had notified the Borrower and Guarantors via a letter dated April 15, 2024, and that the debt remained outstanding. The forbearance period expired no later than June 30, 2024. It is undisputed that the Borrower and Guarantors failed to pay all amounts due and owing upon expiration of the forbearance period and remain in default of the loan. This is prima facie evidence of entitlement to summary judgment pursuant to CPLR § 3213 (*DDS Partners, LLC v Celenza*, 6 AD3d 347, 348 [1st Dept 2004]). No opposition was filed.

Pursuant to § 16(a) of the Forbearance Agreement, the Borrower and Guarantors agreed, jointly and severally, to reimburse Lender for “all reasonable out-of-pocket costs and expenses (including attorneys’ fees and disbursements) incurred” in connection with the loan, including the enforcement of any obligations of or collecting any payments due from the Borrower and Guarantors under any of the loan documents (NYSCEF Doc. No. 8 § 16[a]). Accordingly, the Lender is entitled to \$6,898,148.79 plus reasonable attorney’s fees and costs.

Accordingly, it is

ORDERED that the Lender's motion for summary judgment in lieu of complaint is granted; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of MTF Propco LLC and against Philip L. Williams, Emerson Partners, Inc., and Montgomery Tree Farms, LLC, jointly and severally, in the amount of \$6,898,148.79 as of July 31, 2024; and it is further

ORDERED that the portion of the plaintiff's claim that seeks the recovery of reasonable attorney's fees and costs is severed and the issue of the amount of reasonable attorney's fees and costs that the plaintiff may recover against the defendants is referred to a Special Referee to hear and determine; and it is further

ORDERED that counsel for the plaintiff shall, within 30 days from the date of this order, serve a copy of this order with notice of entry, together with a completed Information Sheet,¹ upon the Special Referee Clerk in the General Clerk's Office (Room 119), who is directed to place this matter on the calendar of the Special Referee's Part for the earliest convenient date; and it is further

ORDERED that such service upon the Special Referee Clerk shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

11/15/24
DATE

Andrew Borrok
ANDREW BORROK, JSC

CHECK ONE:

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

APPLICATION:

CHECK IF APPROPRIATE: