

RDI NYC LLC v Jeweler of Newport Beach, Inc.

2024 NY Slip Op 34394(U)

December 11, 2024

Supreme Court, New York County

Docket Number: Index No. 651827/2024

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

Justice

-----X

RDI NYC LLC,

Plaintiff,

- v -

JEWELER OF NEWPORT BEACH, INC., JACOB
NALBANDIAN

Defendant.

-----X

INDEX NO. 651827/2024

MOTION DATE 08/01/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

Upon the foregoing documents, defendants’ motion for summary judgment is denied and plaintiff’s cross-motion for summary judgment is granted.

Background and Standard of Review

This action arises out of a dispute over a diamond consignment. In 2023 Jacob Nalbandian (“Individual Defendant”) signed a purported account application (the “Agreement”) with RDI NYC, LLC, d/b/a XL Diamonds, LLC (“Plaintiff”). Plaintiff argues that Individual Defendant signed as a guarantor for Jeweler of Newport Beach, Inc. (“Corporate Defendant”, collectively with Individual Defendant the “Defendants”). Defendants argue that the document was not a sufficient personal guaranty. Three diamonds were transferred to Defendants on consignment worth a total of \$181,149.00. Defendants mailed checks in the amount of \$61,716.33, but the checks were returned. After several attempts to demand payment, Plaintiff filed suit against Defendants in April of 2024, pleading breach of contract, conversion of goods,

and unjust enrichment. Defendants filed an answer in response and have made a motion for summary judgment.

Under CPLR § 3212, a party may move for summary judgment and the motion “shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party.” CPLR § 3212(b). Once the movant makes a showing of a prima facie entitlement to judgment as a matter of law, the burden then shifts to the opponent to “produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action.” *Stonehill Capital Mgt. LLC v. Bank of the W.*, 28 N.Y.3d 439, 448 (2016). The facts must be viewed in the light most favorable to the non-moving party, but conclusory statements are insufficient to defeat summary judgment. *Id.*

Discussion

Defendants move for summary judgment in their favor, claiming that the Agreement is not a valid personal guaranty. They argue that the language is ambiguous and that the signature page has a section for “Authorized Signature” which is not personal guaranty language. Plaintiff has cross-moved for summary judgment in their favor, arguing that the Agreement is part of an overall ordering process and unambiguous. They point to specific language in the Agreement and the fact that the Agreement allows Plaintiff to obtain personal credit information from the Individual Defendant as further evidence in support of their argument.

Relevant language in the Agreement reads: “[s]igning this application gives XL Diamonds express permission to obtain business and **personal** credit information” (emphasis added). Further relevant language includes “I/We **personally guarantee** full and prompt payment according to terms granted of all invoices rendered” (emphasis added). It also states that

“[n]otwithstanding billing agreements, the undersigned accepts **personal liability** as insurer of the items received and **guarantees payment** of the purchase price set forth above” (emphasis added). The language clearly reads that the individual who signed the document (here, the Individual Defendant) would have personal liability in the transaction at issue and that they were agreeing to guarantee payment. When a “guaranty is clear and unambiguous on its face, and, by its language, absolute and unconditional, the signer is conclusively bound by its terms absent a showing of fraud, duress or other wrongful act in its inducement.” *Citibank, N.A. v. Uri Schwartz & Sons Diamonds Ltd.*, 97 A.D.3d 444, 447 (1st Dept. 2012).

Individual Defendant has submitted an affidavit stating that he was unaware that he was signing a personal guaranty, but conclusory allegations to that effect do not raise an issue of fact. *Nat’l Westminster Bank USA v. Sardi’s, Inc.*, 174 A.D.2d 470, 470 (1st Dept. 1991); *see also Citibank*, at 447; *MIMS Master Fund, L.P. v. Cambi*, 155 A.D.3d 449, 449 (1st Dept. 2017). Any inclusion of “Authorized Signature”¹ on the signature page likewise would not raise an issue of fact here. In *Chemical Bank*, the First Department held that even when a person included their corporate officer title after their signature on a personal guaranty, such a title “is merely descriptive, and does not evidence an intention to sign in a purely corporate capacity which would, in any event, be inconsistent with the nature of the guaranty.” *Chemical Bank v. Masters*, 176 A.D.2d 591, 591 (1st Dept. 1991).

Defendants do not deny that they received the diamonds from Plaintiff, and that the checks they sent Plaintiff were returned. Plaintiff has submitted invoices showing that the three diamonds sent to Defendants totaled \$185,149.00. Plaintiff here has met their burden on a motion for summary judgment as to liability against both defendants in a sum certain. Plaintiff

¹ This language does not appear in the Agreement as attached as Exhibit A and may have instead come from a similar agreement in a separate, ongoing case.

has asked for costs and disbursements pursuant to the Agreement, but the Agreement only states that Plaintiff would be entitled to “a reasonable amount in attorneys (sic) fees.” The Court has considered the Defendants’ other arguments and found them unavailing. Accordingly, it is hereby

ADJUDGED that defendants’ motion for summary judgment is denied; and it is further

ADJUDGED that plaintiff’s cross-motion for summary judgment on breach of contract is granted; and it is further

ORDERED that the clerk of the court is directed to enter judgment in favor of plaintiff as against defendants, Jacob Nalbandian and Jeweler of Newport Beach, Inc., in the amount of \$185,149.00 plus interest from December 1, 2023t; and it is further

ORDERED that an assessment of damages against defendant for attorneys’ fees is directed.

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12/11/2024
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED		
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED

<input type="checkbox"/>	NON-FINAL DISPOSITION		
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN

<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	FIDUCIARY APPOINTMENT
<input type="checkbox"/>	REFERENCE

CHECK IF APPROPRIATE: