

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 39

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J-BAR REINFORCEMENT INC.

INDEX NO. 650294/2017

Plaintiff,

MOTION DATE 4/26/17

- v -

MOTION SEQ. NO. 001

MANTIS FUNDING LLC,

DECISION AND ORDER

Defendant.

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HON. SALIANN SCARPULLA:

Plaintiff J-Bar Reinforcement Inc. (“J-Bar”) moves for summary judgment in lieu of complaint against defendant Mantis Funding, LLC, pursuant to CPLR 3213. Mantis cross-moves to dismiss this action for failure to state a cause of action or based on documentary evidence. In the alternative, Mantis cross-moves to consolidate this action with the prior action, pursuant to CPLR 602(a).

On July 14, 2014, Mantis and non-party Crest Hill executed a promissory note (“the Note”) under which they agreed to borrow \$1 million dollars from J-Bar. The Note provided that “simple interest . . . shall be charged on the outstanding principal amount (“Outstanding Balance”) . . . of this Note from the date hereof until the payment in full of the Outstanding Balance at a rate of fifteen percent (15%) per annum” to be paid annually on the last business day of each year and on the maturity date.

The Note provided for an initial maturity date of January 16, 2016, with an automatic extension for an additional six-month term “unless the Lender shall provide a notice (a “Non-Extension Notice”) six months prior to the Initial Maturity Date or the Extended Maturity Date, as applicable . . .”

J-Bar alleges that Mantis and Crest Hill failed to pay the outstanding amount due under the Note. J-Bar then commenced an action against Mantis and Crest Hill (Index No. 650404/2016) (“the Crest Hill Action”). In that action, J-Bar alleged that it sent a Non-Extension Notice to Crest Hill and Mantis on July 16, 2015, which required Crest Hill and Mantis to repay the Note by January 16, 2016. However, in my decision and order dated September 26, 2016, I determined that the Non-Extension Notice was ineffective as to Mantis, and that the maturity date was therefore automatically extended. Accordingly, I dismissed the action against Mantis because it was not yet ripe.

On January 18, 2017, J-Bar commenced this separate action against Mantis. J-Bar now argues that it is entitled to summary judgment in lieu of complaint against Mantis in the amount of \$1 million in principal, \$464,907.97 in interest as of December 31, 2016.¹ In opposition, Mantis argues that the complaint should be dismissed because: (1) J-Bar is contractually barred from commencing this action while Mantis and Crest Hill are still indebted to its senior lenders; and (2) Mantis is currently not in breach of its obligations to J-Bar.

¹ J-Bar argues that Mantis and Crest Hill previously paid \$225,000 in interest, which it has taken into account in calculating the remaining interest due.

Discussion

“To establish *prima facie* entitlement to summary judgment in lieu of complaint, a plaintiff must show the existence of a promissory note executed by the defendant containing an unequivocal and unconditional obligation to repay and the failure of the defendant to pay in accordance with the note's terms. Once the plaintiff submits evidence establishing these elements, the burden shifts to the defendant to submit evidence establishing the existence of a triable issue with respect to a bona fide defense.” *Zyskind v FaceCake Mktg. Tech., Inc.*, 101 A.D.3d 550 (1st Dep’t 2012) (citations omitted). “To establish a *prima facie* case, plaintiff must present an ‘instrument[] for the payment of money only’ and evidence of a failure to make the payment called for by its terms.” *Matas v. Alpargatas S.A.I.C.*, 274 A.D.2d 327, 328 (1st Dep’t 2000) (quoting *Interman Indus. Prods. v R. S. M. Electron Power*, 37 NY2d 151, 155 (1975)).

Here, J-Bar submitted a copy of note annexed to its moving papers, which is for the payment of money only. For evidence of Mantis’ failure to make the payment called for by the note, J-Bar submits the Bouderau affidavit, in which Bouderau states that J-Bar sent a demand for payment and non-extension. Bouderau also states that Mantis has not made any payments against the sums due under the loan. J-Bar therefore makes its *prima facie* showing that Mantis failed to repay the amounts owed under the note. *See JMD Holding Corp. v. Cong. Fin. Corp.*, 4 N.Y.3d 373, 384 (2005) (“In this regard, CPLR 3212 [b] provides that a summary judgment motion ‘shall be supported by affidavit’ of a person ‘having knowledge of the facts’ as well as other admissible evidence.”).

Mantis contends that J-Bar is contractually barred from commencing this action while Mantis and Crest Hill remain indebted to their senior lenders, Dominion Capital, LLC and DC CHMF I, LLC under a subordination agreement. Mantis acknowledges that I previously partially rejected this argument, because it would be commercially unreasonable to perpetually deny a junior creditor the right to reduce a defaulted, unpaid junior debt to a judgment. *See, e.g., Kornfeld v. NRX Technologies*, 93 A.D.2d 772, *aff'd* 62 NY2d 686 (1984) (“Any question in terms of priority as to the rights of the plaintiffs as against other creditors has no bearing upon the plaintiffs' right to judgment as against the [defendants]”); *Imtrac Indus. v. Glassexport Co.*, 1996 U.S. Dist LEXIS 1022 at *16 (S.D.N.Y. 1996) (“Subordination affects only the *priority* of debt, not the *existence* of the underlying liability. The subordination clause in the [agreement at issue] impacts only [plaintiff's] right to collect, not its entitlement to judgment.”).²

However, I agree with Mantis that *execution* on the judgment must await payment in full of the Senior Lenders, or termination of the Subordination Agreement between J-Bar and the Senior Lenders. Accordingly, while I grant judgment in favor of J-Bar on the defaulted promissory note, execution on the judgment will be stayed in accordance with the terms of the Subordination Agreement between J-Bar and the Senior Lenders.

² It may very well be advantageous for a junior lender to reduce a defaulted debt to judgment even if the junior lender cannot execute on the judgment because of a subordination agreement. For example, post-judgment interest on the junior debt may exceed the interest rate set forth in the junior loan. Moreover, a judgment on the junior debt may trigger a default on the senior debt. A default on the senior debt may, in turn, start the process whereby the junior creditor may collect on the judgment, once the senior lender is paid on the defaulted senior debt.

Mantis maintains that J-Bar incorrectly calculated the interest amount due under the Note. Based on the parties' submissions, I find that there is an issue of fact as to the amount of interest outstanding on the Note. Accordingly, I grant J-Bar's motion for summary judgment in lieu of complaint on the issue of liability. The parties are directed to appear at a conference to discuss the most expeditious manner to determine the outstanding amount of principal and interest due. In light of my decision to grant J-Bar's motion for summary judgment, I deny Mantis' cross-motion to dismiss the complaint. In addition, Mantis' cross-motion to consolidate this action with the Crest Hill Action is moot.

In accordance with the foregoing it is hereby

ORDERED that plaintiff J-Bar Reinforcement Inc.'s motion for summary judgment in lieu of complaint is granted on the issue of liability; and it is further

ORDERED that the parties are directed to appear on October 25, 2017 at 2:15 to discuss the most expeditious manner to determine the outstanding amount of principal and interest due;

ORDERED that defendant Mantis Funding LLC's cross-motion to dismiss this action for failure to state a cause or based on documentary evidence is denied;

ORDERED that defendant Mantis Funding LLC's cross-motion to consolidate this action with the prior action (Index No. 650404/2016) is denied as moot.

This constitutes the decision and order of the court.

DATE:

10/5/17


SALIANN SCARPULLA, JSC