



New Barclay Group Inc. v Vekker

2024 NY Slip Op 34187(U) (2024) | Cited 0 times | New York Supreme Court | November 25, 2024

New Barclay Group Inc. v Vekker 2024 NY Slip Op 34187(U) November 25, 2024 Supreme Court, Kings County Docket Number: Index No. 519287/2024 Judge: Leon Ruchelsman Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service. This opinion is uncorrected and not selected for official publication. COUNTY . PART ----- . -----
--.-----x

-

Defendant, --.- .---. ---- . Decision and

519287/2024

2Ei, 2024

Motion

of a complaint,

opposed motion. ,Papers were by

following Gregory Ve kke r

in amount

note in the \$200,000 and \$150,000 made

Marketing Vekker and guarilnteed all

upon \$550,000, and Thus,

LLC wa~ and \$:zs.,ooo qf Barclay

PoWE;r Buildirig note. Thus, the now owed



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The FILED: KINGS COUNTY CLERK 11/26/2024 01:18 PM INDEX NO. 519287/2024 NYSCEF
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1 of 4 SUPREME COURT OF THE STATE OF NEW YORK OF KINGS : CIVIL TERM:
COMMERCIAL 8 ----- NEW BARCLAY GROUP INC., Plaintiff,

against -

ALEXANDRA VEKKER,

-----:x PRESENT: HON. LEON RUCHELSMAN order

Index No.

November

Seq. #1

The plaintiff has moved pursuant to CPLR §3213 seeking
summary judgement in lieu The defendant has the submitted the parties and
arguments held. After reviewing all the arguments this court now
makes the determination.

On September 20, 2018, executed three

promissory notes. One note. the of \$200,000 was made to

the plaintiff, one amount of was made to New Barclay Group Inc., in the amount of was to

Kings Partners LLC. The defendant Alexandra Gregory Vekker three notes. There is no dispute

that receiving the defendant her husband immediately returned \$200,000. the note to Kings
Marketing Partners paid off the plaintiff utilized the

remaining \$50,000 to pay the note and \$25,000 of the defendant

\$175,000 for each note.



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defendant failed to return any of the money owed thus

[* 1] has of \$175,000

accrued of \$78,750. opposes which

well

as of CPLR §32.13 motion

must execute an instrument

demand or time: party

according terms J.31

AD3d NYS3d 4T3 [2d Dept., note is

, money

(Kim v. Yeorl

AD3d 68 [2d Thus,

movant must be "facially incontestable"

Associates, L.P.,

1009(A), B01 NYS2d [Supreme NYS Court

2005)]. Therefore, defendant questions fact instrument for payment of then

summary must be granted, 216 520 { FILED: KINGS COUNTY CLERK 11/26/2024 01:18 PM INDEX
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2 of 4 this motion been filed seeking summary judgment that as

the date of the filing the defendant owes in principal

and interest The defendant the



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motion arguing there are questions of fact foreclose a summary determination at this time.

Conclusions of Law

It is settled that in order to be entitled to judgement a matter law pursuant to the demonstrate that the other party that contains an unequivocal and unconditional promise to repay the party upon at a definite and the failed to pay to the of the instrument (Mirham v. Awad, 1211, 17 2015)). A promissory an instrument for the payment of orily and wheri sufficient evidence is presented concerning the circumstances upon which it was given then a §3213 motion is appropriate Il Kwori, 144 754, 41 NYS3d Dept., 2016)). the establish the instrument

(J. Juhn Inc., v. 3625 Oxford Avenue Associates

8 Misc3d 778 Court where a can raise of the not.es were not the money only judgement denied (Far ca v. AD2 d 2

[* 2] 62E NYS2d [2d Therefore, ct party introduces evidence :of existence loan, personal guarantees .defendant1 of judgement (seef Chase Bank ~- Batier,



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submitted

a director and officer

never returned

is not based upon any

documentary evidence and create payment

states arrived, further

was received" Affidavit of '1[26 [NYSCEF

No.

opposition, Gregory, his Electric whereby

would with

· asserts

and are defendant required to existence of these

conflict the FILED: KINGS COUNTY CLERK 11/26/2024 01:18 PM INDEX NO. 519287/2024
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3 of 4 782 Dept., 1995)).

where the

of a and the s

failure to make payments according to the terms the

instruments then summary is proper JPMorgan

N.A., 92 AD3d 641, 938 NYS2d 190 [2d Dept.,

2012]) .



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In this case, the plaintiff the affidavit of Alexander Kelenzon, of the plaintiff who stated that the defendant or Gregory paid any pursuant to the note. That assertion at Rather, the affidavit merely states that upon the due no was received. Mr. Kelenzon that "December 20, 2018 and no payment (see, Alexander Kelenzon, Doc. 3)).

In the defendant argues that the plaintiff:E and through entity called Red Hook Sign and Corp., entered into an agreement the plaintiff would

forward funds to Red Hook which be paid back work completed. Indeed, the defendant the work was completed no further funds owed. While the will be establish the agreements, which with the express terms of the note and guaranty,

3

[* 3] should be an these is to

non-,payment a motion summary j udg:emei1t lieu 226

21b 231 2024]) .• Since

may necessary todetermnine

judgement

25, 2024 N~Y. Jsc•



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4 of 4 defendants afforded opportunity to pursue

defenses. Thus, where outside proof required determine then for in of a

complaint is improper (Kitchen Winners, NY Inc., v. Triptow,

AD3d 989, NYS3d [2d Dept., ·outside proof

be whether in fact any money is owed,

the motion seeking summary is denied. So ordered.

ENTER:

DATED: November Brooklyn Hon.

[* 4]

