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EDWARD H. MOODY

COOK COUNTY RECORDER OF DEEDS

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ORDER, entered on April 23, 2019 by the Circuit Court of Cook County, Illinois. BMO Harris Bank N.A. v. AG Express, Inc., and Lakhbir Singh. Case No. 2018 L 0006987.

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

BMO Harris, N.A.,)	Case No. 18 L 6987
)	
Plaintiff,)	Calendar Y
)	
)	Judge James E. Snyder
vs.)	
)	
AG Express, Inc. and Lakhbir Singh,)	
)	
Defendants.)	

ORDER

The matter before the Court is Plaintiff's Motion for Summary Judgment pursuant to Illinois Code of Civil Procedure, 735 ILCS 5/2-1005. Plaintiff claims as follows: Defendant AG Express entered into four loan agreements (September 6, 2013, September 11, 2013, November 21, 2014 and June 16, 2015) with General Electric Capital Corporation; each loan agreement was secured with collateral, namely four individual Volvo trucks. Compl. ¶¶8-18. On November 21, 2014 and June 16, 2015, Defendant Singh signed continuing guaranties for all of the indebtedness owed by Defendant AG to General Electric. *Id.* ¶¶14, 17. On October 1, General Electric transferred, conveyed and assigned all of its rights, titles, interests and liabilities in the June 16, 2015 agreement to Transportation Truck and Trailer Solutions; on December 1, 2015, Transportation Truck and Trailer Solutions assigned its rights in the June 16, 2015 agreement to Plaintiff. *Id.* ¶19. On December 1, 2015, General Electric's successor-in-interest conveyed and assigned all of its rights, titles, interests and liabilities for the September 6, 2013, September 11, 2013 and November 21, 2014 agreements to Plaintiff. *Id.* ¶20. On July 18, 2017, Plaintiff notified Defendants of the defaults on each agreement. *Id.* ¶23. Plaintiff then filed the instant action alleging five counts: Count I – Breach of Contract Against Debtor; Count II - Breach of Contract Against Singh; Count III - Injunctive Relief; Count IV – Special Performance; and Count V – Replevin.

Plaintiff moves for summary judgment arguing that Plaintiff "is entitled to summary judgment against Defendants because it is beyond dispute that Defendants breached the

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Agreements by failing to make timely payments causing damage to Plaintiff.” Pl. Mot. at 9. Plaintiff further argues “there is not a genuine dispute with respect to damages” and the “amount due is set forth in detail” in documents attached to Plaintiff’s motion specifically an affidavit of Christopher Jackson, litigation specialist for Plaintiff. *Id.* at 10.

Defendants argue Plaintiff fails to meet its burden showing there is no issue of material fact that Plaintiff is the assignee of the agreements because Mr. Jackson’s affidavit contradicts Exhibits K and L which show that one of the loans “was assigned to Transportation Truck and Trailer Solutions, LLC not the Plaintiff.” Def. Resp. at 3-4. Defendants further argue Plaintiff fails to show that Defendant AG Express failed to make payments because Plaintiff relies on the affidavit of Mr. Jackson which does not attach the “documents which Jackson relied upon in forming [his] conclusion.” *Id.* at 5. Defendants also argue that even if Plaintiff met its burden regarding those issues there is an issue of material fact regarding damages because “none of the books and records Jackson relied upon in making his calculations are attached to his affidavit” and “Plaintiff’s damages should be reduced by the value of the collateral in Plaintiff’s unilateral possession and control.” *Id.* at 6-7.

In reply to Defendants’ response Plaintiff argues that Exhibit K to Mr. Jackson’s affidavit shows a transfer from Transportation Truck and Trailer Solutions, LLC to Plaintiff and as such “does not contradict the Jackson Affidavit.” Pl. Reply at 3. Plaintiff further argues that Exhibit N to the Jackson affidavit show the default date of each loan and that further Defendants admitted in their answer to Plaintiff’s verified complaint that “Defendants failed to make payment under the Loan Agreements.” *Id.* As to damages, Plaintiff argues the Jackson affidavit and its supporting documents, specifically Exhibit N, clearly and concisely calculate the damages. *Id.* Plaintiff further argues that the “Uniform Commercial Code (“UCC”) allows a secured creditor to ‘repossess the collateral for the purpose of protecting it and concurrently proceed to enforce the debt’ or to ‘sue on the debt and proceed to repossess and sell the collateral.’” *Id.* at 4.

Summary judgment is appropriate when the pleadings, depositions, admissions and affidavits, viewed in the light most favorable to the non-movant, fail to establish a genuine issue of material fact, thereby entitling the moving party to judgment as a matter of law. 735 ILCS 5/2-1005; *Progressive Universal Ins. Co. v. Liberty Mut. Fire Ins. Co.*, 215 Ill. 2d 121, 127-28 (2005). The purpose of summary judgment is not to try a question of fact, but to determine

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whether one exists. *Jackson v. TLC Assoc., Inc.*, 185 Ill. 2d 418, 423 (1998). A genuine issue of material fact exists when the material facts are disputed or the material facts are undisputed, but reasonable people may draw different inferences from those facts. *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008).

After review of the pleadings and the affidavits the Court finds that Plaintiff is entitled to judgment was a matter of law. The Court does not find that the exhibits attached to Mr. Jackson's affidavit contradict the affidavit as Exhibit K contains a transfer from Transportation Truck and Trailer Solutions, LLC to Plaintiff. Further, the Court finds there are no material issues of fact to whether Defendant AG Express failed to make payments on the loan agreements. The Court also does not find there is a material issue of fact regarding damages as Plaintiff's claimed damages are supported by the affidavit of Mr. Jackson as well as attached business records. The Court finds Plaintiff's argument regarding mitigation of damages and Plaintiff's application of the UCC to be correct and as such, there is no issue of material fact regarding Plaintiff's mitigation of damages. Plaintiff's Motion for Summary Judgment is granted.

IT IS ORDERED:

1. Plaintiff's Motion for Summary Judgment is granted;
2. Judgment is entered in favor of BMO Harris, N.A. against Defendants AG Express, Inc. and Lakhbir Singh, jointly and severally in the amount of \$263,268.40; and
3. This is a final order of the Circuit Court of Cook County.

Entered:

Judge James E. Snyder-1970

