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

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ALLY BANK, ALLY FINANCIAL INC.

Plaintiffs,

- v -

LEON RYBNER, AMG AUTO, INC.,

Defendants.

INDEX NO. 652277/2025

MOTION DATE 04/11/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19

were read on this motion to/for JUDGMENT - SUMMARY IN LIEU OF COMPLAINT.

Upon the foregoing documents, and for the reasons set forth on record (*tr.* 7.1.25), Ally Bank and Ally Financial, Inc. (the **Ally Parties**)'s motion for summary judgment in lieu of complaint under CPLR 3213 is DENIED.

CPLR 3213 provides that "[w]hen an action is based upon an instrument for the payment of money only or upon any judgment, the plaintiff may serve with the summons a notice of motion for summary judgment and the supporting papers in lieu of a complaint." As such, summary judgment in lieu of complaint is an accelerated procedure for the adjudication of actions based on instruments for the payment of money only (CPLR 3213; *see Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A., "Rabobank Intl.," N.Y. Branch v Navarro*, 25 NY3d 485, 491 [2015]). To make out a prima facie case, a plaintiff must demonstrate there was a suitable instrument and failure to make payments under that instrument (*Weissman v Sinorm Deli*, 88 NY2d 437, 444 [1996]).

As the Appellate Division previously explained in *PDL Biopharma, Inc. v Wohlstadter*, 147 AD3d 494 (1st Dept 2017):

> "The prototypical example of an instrument within the ambit of [CPLR 3213] is of course a negotiable instrument for the payment of money—an unconditional promise to pay a sum certain, signed by the maker and due on demand or at a definite time" (*Weissman v Sinorm Deli*, 88 NY2d 437, 444 [1996]). CPLR 3213 is generally used to enforce "some variety of commercial paper in which the party to be charged has formally and explicitly acknowledged an indebtedness," so that "a prima facie case would be made out by the instrument and a failure to make the payments called for by its terms" (*Interman Indus. Prods. v R. S. M. Electron Power*, 37 NY2d 151, 154-155 [1975]). A document does not qualify for CPLR 3213 treatment if the court must consult other materials besides the bare document and proof of nonpayment, or if it must make a more than de minimis deviation from the face of the document (*id.*).

(*id.* at 495).

Reference is made to (i) a certain Master-Retail Lease Agreement (the **MLRA**; NYSCEF Doc. No. 3), dated October 16, 2018, by and among the Ally Parties and AMG Auto, Inc. (**AMG**) and (ii) the Guaranty and Acknowledgement Agreement for Retail Chargebacks (the **Guaranty**; NYSCEF Doc. No. 2), dated October 16, 2018, executed by Leon Rybner, individually, and AMG in favor of the Ally Parties.

Pursuant to the MLRA, the Ally Parties agreed to purchase retail installment contracts subject to the terms and conditions set forth in the Ally Retail Plan attached as Exhibit 1 to the MLRA (NYSCEF Doc. No. 3 at 6). Pursuant to the MLRA, the parties also agreed that AMG was required to promptly register and title vehicles within 90 days of the sale. In the event that AMG did not register and title a car within such 90-day period, AMG was required to accept reassignment of the contract and was otherwise obligated to pay the full amount of the unpaid balance upon demand (*id.*).

Pursuant to the Guaranty, Leon Rybner and AMG "unconditionally guarantee[d] to each of the Ally Parties and their respective successors and assigns, payment when due, whether by acceleration or otherwise, of all existing and future indebtedness to each of the Ally Parties (including, without limitation, all costs of collecting such indebtedness, including reasonable attorneys' fees) and any and all obligations arising pursuant to the [MRLA], whether or not such indebtedness is known the undersigned at the time of this Guaranty or at the time any future indebtedness is incurred" (NYSCEF Doc. No. 2 § 2). Notice of acceptance and demand were waived (*id*. § 3).

On April 9, 2025, the Ally Parties filed a summons in this case and moved, pursuant to CPLR 3213, for summary judgment in lieu of complaint. In support of their motion, they adduce the affidavit of Adam Flood (NYSCEF Doc. No. 10). According to Mr. Flood:

> 24. The Dealer failed to comply with Section 4 of the Retail Plan with respect to the retail installment sales contracts listed on Exhibit C hereto ("Contracts"). The Ally Parties previously demanded that the Dealer accept reassignment of each of those contracts following the Dealer's failure to promptly register and title the corresponding vehicles in a manner sufficient to perfect a valid and enforceable security interest in the Ally Parties' favor. As of February 5, 2025, the total repurchase amount due to the Ally Parties as a result is $427,889.27, which amount corresponds to the full amount of the unpaid balances under such contracts.
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> 25. In addition, the Dealer is in default of the MRLA because the Dealer failed to pay to the Ally Parties a total of $95,208.17, which amount is comprised of: (i) the certain SDT issued to the Dealer d/b/a AMG and dated March 2, 2025, which covers the period from February 1, 2025 to February 28, 2025 (in the amount of $33,829.41); and (ii) the certain SDT issued to the Dealer d/b/a M Sport and dated March 2, 2025, which covers the period from February 1, 2025 to February 28, 2025 (in the amount of $61,378.76). The two aforementioned SDTs are collectively attached hereto as Exhibit D.
>
> 26. Further, the Dealer has also failed to pay to the Ally Parties $72,143.85 in

> connection with the vehicle identified in Exhibit E hereto ("Exhibit E Vehicle"). The Exhibit E Vehicle was acquired by the Dealer as a trade-in made in connection with a retail sale by the Dealer to an individual named Erick Miranda. The Dealer has failed to pay off Mr. Miranda's original retail installment sales contract in favor of the Ally Parties on the Exhibit E Vehicle (and the Exhibit E Vehicle was sold by Dealer to Mr. Miranda on another Ally contract).

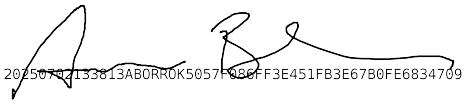
(NYSCEF Doc. No. 10 ¶¶ 24-26).

The amounts allegedly due here cannot be computed without consulting other materials and proof of non-payment. Nor can this be said to be a de minimis deviation from the face of either the Guaranty or the MLRA. As such, the motion is DENIED.

Accordingly, it is hereby ORDERED that the motion for summary judgment in lieu of complaint is denied and the matter converted to a plenary action; and it is further

ORDERED that the plaintiffs' moving papers are hereby deemed the complaint in this action and the defendants are directed to file an answer within 20 days of this decision and order; and it is further

ORDERED that if the defendants fail to appear or respond within such period, the plaintiff may move for default judgment pursuant to CPLR 3215.



7/2/2025
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:		**CASE DISPOSED**		[X]	**NON-FINAL DISPOSITION**		
	[ ]	**GRANTED**	[X] **DENIED**	[ ]	**GRANTED IN PART**	[ ]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**