

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

SCAN

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JPMORGAN CHASE BANK, N.A., as successor-by-
merger from Washington Mutual Bank,

Plaintiff,

-against-

MICHELE M. WOODARD J.S.C.
TRIAL/IAS Part 12
Index No.: 19782/2009
Motion Seq. No.: 01 & 02

SELECTIVE DISTRIBUTION INTERNATIONAL INC.
a/k/a SELECTIVE DISTRIBUTION INT'L INC AND
DENNIS SCHNUR

Defendants.

DECISION AND ORDER

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Papers Read on this Motion:

Plaintiff's Notice of Motion	01
Defendant's Opposition & Cross Motion	02
Plaintiff's Reply	xx
Defendant's Reply	xx

The Plaintiff moves by Notice of Motion for an order granting it Summary Judgment against Defendants Selective Distribution International Inc. a/k/a Selective Distribution Int'l Inc. and Dennis Schnur, upon the grounds that Defendants are liable for amounts due and owing under a certain Business Line of Credit ("BLC") between the parties. Defendant opposes Plaintiff's motion and also cross-moves to dismiss this action against Defendant Dennis Schnur.

According to Plaintiff, on or about December 11, 2007, Defendant Selective Distribution International Inc. a/k/a Selective Distribution Int'l Inc. made, executed, and delivered to Washington Mutual Bank for value received, a BLC in writing, dated on that day, wherein and whereby it promised to pay to the order of Washington Mutual Bank, the principal sum of \$100,000.00 with interest thereon on the unpaid principal balance of the BLC at a variable rate per annum equal to Prime plus 2.50% and a variable default rate per annum equal to Prime plus 9.00% (Plaintiff's Exhibit E). Prior to the signing of this document, on or about November 6, 2007, Defendant Dennis Schnur made, executed, and delivered to Washington Mutual Bank, an absolute, personal, unconditional, and continuing guarantee ("BLC Personal Guaranty") of each and every obligation of Defendant Selective Distribution International Inc. a/k/a Selective Distribution Int'l Inc. to the loan holder, which is now Chase by merger from Washington Mutual Bank (Plaintiff's Exhibit F).

Defendant Selective Distribution International Inc. a/k/a Selective Distribution Int'l Inc. failed to make required monthly installment payments since May 11, 2009, therefore the loan is in default under the terms of the BLC (Plaintiff's Exhibit E). Defendant Selective Distribution International Inc. a/k/a Selective Distribution Int'l Inc. failed to pay \$80,981.22 in principal due on the BLC since May 11, 2009, the default date, together with interest at a variable rate per annum

equal to Prime plus 2.50% from April, 2009 to May 10, 2009 and a default interest rate equal to the variable rate of Prime plus 9.00% from May 11, 2009, together with late charges at a rate of 5.00% of each payment dues as set forth in the BLC. Defendant Dennis Schnur failed to make required monthly installment payments since May 11, 2009, therefore the loan is in default under the terms of the BLC Personal Guaranty (Plaintiff's Exhibit F). Defendant Dennis Schnur failed to pay \$80,981.22 in principal due on the BLC since May 11, 2009, the default date, together with interest at a variable rate per annum equal to Prime plus 2.50% from April, 2009 to May 10, 2009 and a default interest rate equal to the variable rate of Prime plus 9.00% from May 11, 2009, together with late charges at a rate of 5.00% of each payment dues as set forth in the BLC.

The Defendants opposes the Plaintiff's Motion for Summary Judgment on the basis that there are a number of issues and disputed facts in existence between the parties. Defendants also put forth a Cross Motion seeking to dismiss this action against Defendant Dennis Schnur on the basis that the Plaintiff cannot substantiate a *prima facie* validity of personal guaranty to the present cause of action.

After reading Plaintiff JPMorgan Chase Bank's Affirmation in Support of Summary Judgment dated February 16, 2010, Defendants Selective Distribution International Inc. a/k/a Selective Distribution Int'l Inc.'s Opposition to Plaintiff's Summary Judgment and Affirmation in Support of Defendant Dennis Schnur's Cross-Motion dated May 24, 2010, Plaintiff's Affirmation in Further Support of Motion for Summary Judgment and Opposition to Defendant Dennis Schnur's Opposition and Cross-Motion dated June 16, 2010, and Defendants' Reply Affirmation in Further Support of Defendant's Cross-Motion and Opposition dated July 21, 2010, it is hereby

ORDERED, that Plaintiff's motion for Summary Judgment against Defendants Selective Distribution International Inc. a/k/a Selective Distribution Int'l Inc. and Dennis Schnur is Denied. It is further

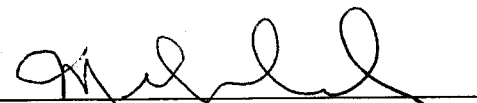
ORDERED, that Defendant's Cross Motion against Plaintiff JPMorgan Chase is DENIED. It is further

ORDERED, that the parties are to appear for Preliminary Conference on January 5, 2011 at 9:30am in DCM.

This constitutes the **DECISION** and **ORDER** of the Court.

DATED: November 19, 2010
Mineola, N.Y.

ENTERED



HON. MICHELE M. WOODARD
J.S.C.

NOV 24 2010

NASSAU COUNTY
COUNTY CLERK'S OFFICE