SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

TD Bank, N.A. v. A.H. Dental P.C.

2025 NY Slip Op 06796 (N.Y. Ct. App. 2025) · No. Index No. 161295/21; Appeal No. 5295; Case No. 2024-02846 · Decided December 4, 2025

SUMMARY

The Appellate Division, First Department unanimously affirmed a judgment awarding TD Bank, N.A. $1,342,369.42 for breaches of promissory notes and guarantees. The court held that the bank established defendants' defaults through the notes, guarantees, loan records, demand letter, and supporting affidavit, while defendants failed to raise factual issues or substantiate most of their affirmative defenses.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Kern, J.P.; Friedman, J.; Gesmer, J.; Pitt-Burke, J.; O'Neill Levy, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	December 4, 2025
DOCKET	Index No. 161295/21; Appeal No. 5295; Case No. 2024-02846
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed from a judgment entered in favor of TD Bank and sought review of the order granting the bank summary judgment on its claims and dismissing defendants' affirmative defenses.
STANDARD OF REVIEW	Summary judgment is proper where the movant establishes entitlement to judgment as a matter of law and the opposing party fails to raise a triable issue of fact; the Appellate Division reviewed the summary judgment determination and underlying order.
PRECEDENTIAL VALUE	Published
PARTIES	A.H. Dental P.C., et al. v. TD Bank, N.A.

TOPICS

breach of contract · summary judgment · affirmative defenses · evidence · appellate procedure

PRACTICE AREAS

contract law · commercial litigation · civil procedure · evidence · remedies

QUESTIONS PRESENTED

1. Whether TD Bank established prima facie entitlement to summary judgment on its claims for amounts due under the promissory notes and guarantees.
2. Whether defendants raised a triable issue of fact in opposition to the summary judgment motion.
3. Whether defendants supported their affirmative defenses, including alleged failure to mitigate damages by pursuing replevin of certain equipment.

HOLDINGS

1. TD Bank made a prima facie showing of entitlement to the amounts due by submitting the notes, guarantees, other loan documents, demand letter, and an affidavit confirming defendants' nonpayment.
2. Defendants failed to raise an issue of fact because their opposition consisted solely of a memorandum of law and did not address the underlying factual assertions supported by TD Bank's evidence.
3. Defendants waived the affirmative defenses they failed to address or support, and failed to substantiate their remaining mitigation defenses with credible evidence.

KEY QUOTATIONS

> *"Defendants' opposition, consisting solely of a memorandum of law, failed to raise an issue as to the underlying facts asserted in the motion"* ([*1])

> *"Defendants failed to address or provide evidence to support their first through fourth, sixth, seventh, and ninth through fifteenth affirmative defenses, thereby waiving them"* ([*1])

FACTUAL BACKGROUND

TD Bank sought to recover amounts due under promissory notes, guarantees, and other debt instruments establishing loans to defendants. The bank submitted the notes, guarantees, demand letter, and an affidavit from its vice president stating that defendants had failed to pay the outstanding loan balances; the record showed defaults on December 28 and December 30, 2020, totaling $1,342,369.42 including interest and costs.

PROCEDURAL HISTORY

Supreme Court, New York County, granted TD Bank's motion for summary judgment on claims arising from promissory notes and guarantees and dismissed defendants' affirmative defenses. The court entered judgment for $1,342,369.42, inclusive of interest and costs, and the Appellate Division unanimously affirmed.

DISPOSITION

affirmed

CASES CITED

- Schron v. Grunstein, 105 A.D.3d 430 (1st Dep't 2013)
- Bank of Am., N.A. v. Brannon, 156 A.D.3d 1, 8 (1st Dep't 2017)
- Madeline D'Anthony Enters., Inc. v. Sokolowsky, 101 A.D.3d 606, 609 (1st Dep't 2012)
- Josephson LLC v. Column Fin., Inc., 94 A.D.3d 479, 480 (1st Dep't 2012)
- Commissioners of the State Ins. Fund v. Ramos, 63 A.D.3d 453 (1st Dep't 2009)
- Hattem v. Smith, 149 A.D.3d 1339, 1341 (3d Dep't 2017)

OPINION

PER CURIAM.

TD Bank, N.A. v A.H. Dental P.C. (2025 NY Slip Op 06796) TD Bank, N.A. v A.H. Dental P.C. 2025 NY Slip Op 06796 Decided on December 04, 2025 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered: December 04, 2025 Before: Kern, J.P., Friedman, Gesmer, Pitt-Burke, O'Neill Levy, JJ. Index No. 161295/21|Appeal No. 5295|Case No. 2024-02846| [*1]TD Bank, N.A., Plaintiff-Respondent, v A.H.

Dental P.C. et al., Defendants-Appellants. Lebedin Kofman, LLP, New York (Michael S. Leinoff of counsel), for appellants. Goetz Platzer LLP, New York (Robert J. Mastrogiacomo of counsel), for respondent. Judgment, Supreme Court, New York County (Alexander M. Tisch, J.), entered March 27, 2024, in favor of plaintiff and against defendants in the total amount of $1,342,369.42, inclusive of all interest and costs, and bringing up for review an order, same court and Justice, entered December 5, 2023, which granted plaintiff's motion for summary judgment on its claims and dismissing defendants' affirmative defenses, unanimously affirmed, without costs.

In this action to recover damages for breach of promissory notes and guarantees, plaintiff made a prima facie showing of its entitlement to the amounts due under the notes (see Schron v Grunstein, 105 AD3d 430 [1st Dept 2013]). Plaintiff presented the notes, guarantees, other debt instruments establishing the loans, the demand letter, and the affidavit of its vice president confirming that defendants had not paid the outstanding amounts due on the loans.

The affidavit laid a proper foundation for the statements contained therein as the affiant stated that he had personal knowledge of plaintiff's business practices, and the records he personally reviewed were maintained by plaintiff in the course of its regularly conducted business (see CPLR 4518[a]; Bank of Am., N.A. v Brannon, 156 AD3d 1, 8 [1st Dept 2017]).

Accordingly, the record supports that defendants defaulted on the loans on December 28, 2020 and December 30, 2020, respectively, and owed a total amount of $1,342,369.42, inclusive of all interest and costs. Defendants' opposition, consisting solely of a memorandum of law, failed to raise an issue as to the underlying facts asserted in the motion (see Madeline D'Anthony Enters., Inc. v Sokolowsky, 101 AD3d 606, 609 [1st Dept 2012]).

Defendants failed to address or provide evidence to support their first through fourth, sixth, seventh, and ninth through fifteenth affirmative defenses, thereby waiving them (see Josephson LLC v Column Fin., Inc., 94 AD3d 479, 480 [1st Dept 2012]).

As to defendants' remaining affirmative defenses based on plaintiff's alleged failure to mitigate damages by not pursuing its motion to replevy certain equipment from defendant A.H. Dental P.C. as payment, defendants failed to offer credible evidence to substantiate those defenses (see Commissioners of the State Ins. Fund v Ramos, 63 AD3d 453 [1st Dept 2009]).

Not only did defendants oppose this relief, but the equipment sought was exclusively within their control (cf. Hattem v Smith, 149 AD3d 1339, 1341 [3d Dept 2017] [the plaintiff failed to mitigate damages by not selling collateral assets already in his possession to satisfy lien]). THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: December 4, 2025

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