

52 A.D.3d 794, 859 N.Y.S.2d 378, 2008 N.Y. Slip Op. 05901
(Cite as: **52 A.D.3d 794**)

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Supreme Court, Appellate Division, Second Department, New York.

NORTHPORT CAR WASH, INC., respondent,
v.

NORTHPORT CAR CARE, LLC, et al., appellants.
June 24, 2008.

Jonathan A. Stein, P.C., Cedarhurst, N.Y., for appellants.

Weinstein, Kaplan & Cohen, P.C., Garden City, N.Y. (Alexander Mark Kaplan and Rebecca A. Provder of counsel), for respondent.

***794** In an action to recover on a promissory note and guaranty brought by motion for summary judgment in lieu of complaint pursuant to [CPLR 3213](#), the defendants appeal (1), as limited by their brief, from so much of an order of the Supreme Court, Nassau County (Martin, J.), dated May 30, 2007, as granted the plaintiff's motion and denied that branch of their cross motion which was pursuant to [CPLR 3211](#) to dismiss the action, and (2) from a judgment of the same court dated July 12, 2007, which, upon the order, is in favor of the plaintiff and against them in the sum of \$576,501.14.

ORDERED that the appeal from the order is dismissed; and it is further,

ORDERED that the judgment is affirmed; and it is further,

ORDERED that one bill of costs is awarded to the plaintiff.

The appeal from the intermediate order must be dismissed because the right of direct appeal therefrom terminated with the entry of judgment in the action (see *Matter of Aho*, 39 N.Y.2d 241, 248, 383

N.Y.S.2d 285, 347 N.E.2d 647). The issues raised on the appeal from the order are brought up for review and have been considered on the appeal from the judgment (see [CPLR 5501\[a\]\[1\]](#)).

The plaintiff established its prima facie entitlement to judgment as a matter of law by submitting, in support of its motion, proof of the promissory note and guaranty, and of the defendants' failure to make the payments provided for by their terms (see ***795** *Governor & Co. of Bank of Ireland v. Dromoland Castle*, 212 A.D.2d 759, 624 N.Y.S.2d 855). In response, the defendants failed to raise a triable issue of fact with respect to a bona fide defense (see *Gateway State Bank v. Shangri-La Private Club for Women*, 113 A.D.2d 791, 792, 493 N.Y.S.2d 226, *affd.* 67 N.Y.2d 627, 499 N.Y.S.2d 679, 490 N.E.2d 546; *Seaman-Andwall Corp. v. Wright Mach. Corp.*, 31 A.D.2d 136, 137-138, 295 N.Y.S.2d 752, *affd.* 29 N.Y.2d 617, 324 N.Y.S.2d 410, 273 N.E.2d 138). Accordingly, the Supreme Court properly granted the plaintiff's motion (see *Governor & Co. of Bank of Ireland v. Dromoland Castle*, 212 A.D.2d 759, 624 N.Y.S.2d 855).

The defendants' remaining contentions are without merit.

PRUDENTI, P.J., SKELOS, COVELLO and BALKIN, JJ., concur.

N.Y.A.D. 2 Dept. 2008.

Northport Car Wash, Inc. v. Northport Car Care, LLC

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