

Aspire Fed. Credit Union v Estate of Leroy
2018 NY Slip Op 30061(U)
January 8, 2018
Supreme Court, New York County
Docket Number: 153012/2017
Judge: Nancy M. Bannon
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 42

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ASPIRE FEDERAL CREDIT UNION

Plaintiff

Index No.153012/2017

v

DECISION AND ORDER

ESTATE OF JACQUELINE LEROY, a/k/a
JACQUELINE DESIRE, a/k/a JACQUELINE DESIRE-
LEROY, a/k/a JACQUELINE D. LEROY

Defendants.

MOT SEQ 001

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NANCY M. BANNON, J.:

I. INTRODUCTION

In this action, inter alia, seeking recovery on two promissory notes and on an account stated, and to foreclose on collateral securing a loan, the plaintiff, Aspire Federal Credit Union (Aspire), moves pursuant to CPLR 3215 for leave to enter a default judgment. The motion is granted, without opposition, to the extent that Aspire may enter a default judgment against the defendants on the first, fourth, and fifth causes of action with respect to the two notes, and the motion is otherwise denied.

II. BACKGROUND

Aspire alleges that, on June 4, 2012, Jacqueline Leroy executed a promissory note in favor of Aspire in the face value of \$400,000.00 (the 2012 note) and that, on December 20, 2013,

she executed a second promissory note in favor of Aspire in the face value of \$160,000.00 (the 2013 note). Aspire further asserts that Leroy entered into a security agreement with it referable to the notes.

In support of its motion, Aspire submits the complaint, an attorney's affirmation, and a copy of the two notes, which identify Leroy as the obligor, and obligated her to repay Aspire the sums of \$400,000.00 with interest at the rate of 3.75% per annum, in monthly installments over a five-year period, and \$160,000.00 with interest at the rate of 3.75% per annum over a three-year period. The notes permit Aspire to accelerate payment if Leroy defaulted thereunder and the right to foreclose on the collateral securing the notes, consisting of a taxicab medallion and vehicle appurtenances such as meters and roof lights affiliated with the medallion. Aspire also submits two security agreements, the executed UCC-1 financing statements securing its interest in a taxicab medallion purchased by Leroy with the proceeds of the subject loan, and a demand letter. It further submits the affidavit of Nicole Seymour, its operations manager, who describes the terms of the notes, security agreements, and UCC-1 financing statement, Leroy's obligations under the notes and her failure to satisfy them, and the filing of the UCC-1 statements. Seymour asserts that Aspire is now the holder of that notes, and Leroy retained the medallion, and all appurtenant

equipment and titles, after default.

Aspire further explains that Leroy died on May 4, 2014, and that her daughter, Rolande Sabine Desire, was appointed executor of her estate by the Surrogate's Court, Kings County, on January 19, 2015.

III. DISCUSSION

A. Standards for Leave to Enter Default Judgment

"On a motion for leave to enter a default judgment pursuant to CPLR 3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting party's default in answering or appearing (see CPLR 3215[f]; Allstate Ins. Co. v Austin, 48 AD3d 720, 720)." Atlantic Cas. Ins. Co. v RJNJ Services, Inc. 89 AD3d 649 (2nd Dept. 2011); see Rivera v Correction Officer L. Banks, 135 AD3d 621 (1st Dept. 2016). The proof submitted must establish a prima facie case. See Guzetti v City of New York, 32 AD3d 234 (1st Dept. 2006).

Aspire meets this burden with respect to its breach of contract (first) cause of action, foreclosure (fourth) cause of action, and replevin (fifth) cause of action asserted in connection with the two notes and the collateral secured thereby. It has not met its burden as to the account stated (second) cause of action or unjust enrichment (third) cause of action in

connection with that note.

B. Breach of Contract (First Cause of Action)

Aspire's proof establishes, prima facie, the facts supporting the first cause of action, which is for breach of contract, by showing that there was "formation of a contract between the parties, performance by the plaintiff['s] [assignor], the defendant's failure to perform, and resulting damage."

Flomenbaum v New York Univ., 71 AD3d 80, 91 (1st Dept. 2009).

Where, as here, a contractual obligation is a promissory note, a plaintiff meets its burden by proving the existence of the subject note and nonpayment according to its terms. See Bonds Financial, Inc. v Kestrel Tech., LLC, 48 AD3d 230 (1st Dept. 2008).

The proof shows that the defendant's decedent, as obligor, executed the notes, along with a security agreements and UCC-1 financing statements, in consideration for two loans. Aspire established that it is entitled, on the first cause of action, to the principal sum of \$366,729.02 as to the 2012 note and the principal sum of \$151,612.28 as to the 2013 note, inclusive of contractual interest and late fees as of March 28, 2017, for a total of \$518,341.30, along with statutory prejudgment interest from March 29, 2017.

The court notes that, although notes provide for Aspire's

recovery of attorneys' fees in the case of the default of the defendant's decedent, and Aspire requested such an award in its motion, it has not provided the court with an affidavit of legal services, invoices from its attorney, or a specification of the fees that it incurred. Hence, its request for an award of attorneys' fees is denied without prejudice to renewal.

C. Account Stated (Second Cause of Action)

"An account stated is an agreement between the parties to an account based upon prior transactions between them with respect to the correctness of the separate items composing the account and the balance due, if any, in favor of one party or the other. . . [R]eceipt and retention of plaintiff's accounts, without objection within a reasonable time, and agreement to pay a portion of the indebtedness, [gives] rise to an actionable account stated."

Shea & Gould v Burr, 194 AD2d 369, 370 (1st Dept. 1993); see Morrison Cohen Singer and Weinstein, LLP v Waters, 13 AD3d 51 (1st Dept. 2004). Aspire submits no proof that it repeatedly invoiced Leroy or the executor of her estate, or that they accepted invoices without objection, and it has thus not submitted proof supporting its right to judgment on the second cause of action, which seeks to recover on an account stated.

D. Unjust Enrichment (Third Cause of Action)

Since Aspire may recover under an express agreement, no cause of action lies to recover for unjust enrichment, and

Aspire's proof is insufficient to support judgment on the third cause of action. See Clark-Fitzpatrick, Inc. v Long Is. R.R. Co., 70 NY2d 382 (1987); JDF Realty, Inc. v Sartiano, 93 AD3d 410 (1st Dept. 2012). In any event, to establish unjust enrichment, "the plaintiff must show that the defendant was enriched, at the plaintiff's expense, and that it is against equity and good conscience to permit the defendant to retain what is sought to be recovered." Castelotti v Free, 138 AD3d 198, 207 (1st Dept. 2016); see Georgia Malone & Co., Inc. v Rieder, 19 NY3d 511 (2012); Mandarin Trading Ltd. v Wildenstein, 16 NY3d 173 (2011). Crucially, a plaintiff cannot succeed on an unjust enrichment claim unless he or she has a "sufficiently close relationship" with the defendant. See Georgia Malone & Co., Inc. v Rieder, supra, at 516; Sperry v Crompton Corp., 8 NY3d 204 (2007). Since Aspire has made no showing in this regard, there is no basis for the entry of judgment on the third cause of action.

E. Foreclosure of Security Interest (Fourth Cause of Action)

Aspire also demonstrates, prima facie, that it is entitled to judgment as a matter of law on its fourth cause of action, which seeks to foreclose the security interest that it has pursuant to the UCC-1 statements. The security interest became enforceable by reason of the debtor's signed security agreement describing the collateral, her receipt of value in consideration

for her receipt of the collateral, her executor's clearly identifiable rights in the collateral, consisting of the current possession of the taxi medallion and appurtenances, and the plaintiff's filing of UCC-1 financing statements. See UCC 9-203(1), 9-310(a). When a debtor whose obligation is so secured defaults, the secured party has the right to "reduce [its] claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure" UCC 9-501(1). Hence, Aspire is entitled to a default judgment permitting it to foreclose on the collateral. See EMI Music Mktg. v Avatar Records, Inc., 317 F.Supp. 2d 412 (SD NY 2004); see generally Fleet Credit Corp. v Cabin Serv. Co., 192 AD2d 421 (1st Dept. 1993).

F. Replevin (Fifth Cause of Action)

To establish a right to replevin it must be shown that the defendant in is possession of certain property to which the plaintiff claims a superior right. See Nissan Motor Acceptance Corp. v Scialpi, 94 AD3d 1067 (2nd Dept. 2012). In connection with the fifth cause of action, which seeks replevin, Aspire makes a prima facie showing of its entitlement to the replevin of the collateral secured by the security agreement and UCC-1 statement, consisting of New York City taxicab medallion #5B25, by demonstrating that it now lawfully holds the note, security agreement, and UCC-1 statement, the defendant's decedent

defaulted thereunder by virtue of her nonpayment, the defendant is in possession of the medallion, and Aspire has a right to possession and delivery of the medallion and all appurtenances under the terms of the security agreement and UCC-1 statement.

IV. CONCLUSION

Accordingly, it is

ORDERED that the plaintiff's motion for leave to enter a default judgment is granted, without opposition, to the extent that it may enter judgment on the first, fourth, and fifth causes of action, and the motion is otherwise denied; and it is further,

ORDERED that the Clerk of the court shall enter a money judgment in favor of the plaintiff, Aspire Federal Credit Union, and against the defendant, Estate of Jacqueline Leroy, on the first cause of action in the principal sum \$518,341.30, plus with statutory prejudgment interest from March 29, 2017; and it is further,

ORDERED that the Clerk of the court shall enter judgment in favor of the plaintiff permanently foreclosing the defendants' right or title to, or interest in, the collateral that is the subject of UCC-1 Financing Statements 201206048192694, dated June 4, 2012, and 201312208509785, dated December 20, 2013; and it is further,


ORDERED that the plaintiff shall serve a copy of this order

and judgment upon, Rolande Sabine Desire, as executor of the estate of Jacqueline Leroy, at her last known address by regular and certified mail, return receipt requested, within 20 days of this order; and it is further,

ORDERED that within 20 days of service of a copy of this order with notice of its entry upon her, Rolande Sabine Desire, as executor of the estate of Jacqueline Leroy, shall deliver to the plaintiff New York City Taxicab Medallion #5B25 and all other collateral, including but not limited to taxi meters and roof lights.

This constitutes the Decision and Order of the court.

Dated: 1-8-18

ENTER: 

HON. NANCY M. BANNON