

Victory State Bank v Calvary Worship Ctr., Inc.

2007 NY Slip Op 30042(U)

March 9, 2007

Supreme Court, Richmond County

Docket Number: 0013222

Judge: Robert J. Gigante

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

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VICTORY STATE BANK,

Plaintiff,

DCM PART 4

Present:

Hon. Robert J. Gigante

-against-

CALVARY WORSHIP CENTER, INC., formerly known as
THIRD DAY WORSHIP CENTER, INC., formerly known as
CALVARY WORSHIP CENTER, INC., formerly known as
SECOND CALVARY PENTECOSTAL TEMPLE
ASSEMBLIES OF GOD, THIRD DAY WORSHIP
CENTER, INC., formerly known as CALVARY
WORSHIP CENTER, INC., formerly known as
SECOND CALVARY PENTECOSTAL TEMPLE,
ASSEMBLIES OF GOD; SECOND CALVARY
PENTECOSTAL TEMPLE, ASSEMBLIES OF GOD;
DANIEL DELGADO and SAMUEL RODRIGUEZ,

Decision and Order

Index No. 13222/01

Motion No. 2450-007

Defendant(s).

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The following papers numbered 1 to 3 were used on this motion on the 8TH day of December, 2006:

	Pages Numbered
Notice of Motion by Plaintiff, Victory State Bank for an Order Granting Leave to Renew, with Exhibits (dated July 28, 2006).....	1
Affirmation in Opposition by Defendant Calvary Worship Center, Inc., with Exhibits (dated October 15, 2004[sic]).....	2
Reply Affirmation, with Exhibits (dated November 16, 2006).....	3

Upon the foregoing papers leave to renew is granted and, upon renewal, plaintiff is

awarded summary judgment on its complaint as against defendant Calvary Worship Center, Inc.

Plaintiff Victory State Bank (hereafter Victory) moves by notice of motion for an order pursuant to CPLR 2221 granting leave to renew its previous motion for summary judgment. Should renewal be granted, Victory moves for an order granting summary judgment against defendant Calvary Worship Center, Inc. (hereafter Calvary). Calvary opposes that part of the motion which seeks summary judgment.¹

In the absence of any stated objection thereto, leave to renew is granted.

The instant action arises from a “Commercial Installment Loan Note with Security Agreement” in the principal sum of \$100,000.00 executed between Victory to Calvary on February 8, 2000. Plaintiff commenced this action on or about October 12, 2001 by filing and service of a Summons and Notice of Motion for Summary Judgment in Lieu of Complaint. Issue was joined by defendant Calvary on or about May 12, 2001.

In denying plaintiff’s prior application for summary judgment as against Calvary, this Court determined that triable issues of fact existed as to whether the loan was properly authorized by Calvary and whether the proceeds were utilized in the furtherance of its organizational objectives (see Religious Corporation Law §169). However, the Court did grant summary judgment as against defendants, Daniel Delgado and Samuel Rodriguez, the unconditional guarantors of payment².

In renewing its motion for summary judgment, Victory alleges that account documents not previously available negate Calvary’s claim in opposition to the original motion that the proceeds of the loan were transferred into a secret “Calvary” account at Chase Manhattan of which the church leadership was unaware. Victory now claims that previously unavailable bank records reflect both the knowledge of the church leadership and its use of the funds for temporal

administration and/or the preservation and care of church property. In fact, Victory claims that the documents reveal that this “secret” Chase account was Calvary’s primary operating account at the time of the loan, and that some of its proceeds were disbursed therefrom, *inter alia*, to defend this lawsuit. Moreover, these account records are said to reflect the drawing of checks (1) to Kevin Stevens, Calvary’s former attorney, (2) Luis Figueroa, the current Pastor and President of Calvary, (3) Franklin Hurd, an Associate Pastor, and (4) Rev. Peter DeJesus, a signer of Calvary’s Amended Certificate of Incorporation. Additionally, it is alleged that bank records show that checks from this account were used to pay Calvary’s operating expenses, including its mortgage, payroll taxes, employee salaries, utility bills and other miscellaneous expenses. It is Victory’s contention that this new information unequivocally establishes that the defense tendered by Calvary in response to its original summary judgment motion was and is a sham.

In addition, Victory claims that Calvary’s response to discovery has failed to produce any competent evidence to substantiate Calvary’s alternate defense that the loan was unauthorized. In particular, Victory notes that Calvary has failed to produce any evidence or documentation regarding the identity of the members of the Church Board at the time that the loan was made. According to Calvary, only the Board had the power to authorize the loan. In any event, Victory argues that the authorization may be proved circumstantially by the evidence of Calvary’s use of the proceeds as reflected in the account records. Although not directly probative on the question of authority, Victory notes that the General Council of the Assemblies of God, *i.e.*, the national organization of which Calvary is a member, has stated in writing to its Reverend, Luis Figueroa:

“[T]he church you pastor has a moral, ethical and legal obligation to make payment in full at Victory State Bank for the loan that was given to the church under the time that brother Rodriguez served as Pastor. His name was on the loan because he was signing as President of the Corporation.

He did not derive any benefit personally from the loan. It went to the church” (Victory’s Exhibit “L”)

Finally, Victory notes that it is undisputed that Calvary made payments on the loan for some 17 months before defaulting. This is alleged by Victory to constitute a ratification.

Summary judgment is a drastic remedy that should be granted only if no triable issues of fact exist and the movant is entitled to judgment as a matter of law (see Rotuba Extruders v. Ceppos, 46 NY2d 223; Herrin v. Airborne Freight Corp., 301 AD2d 500). On a motion for summary judgment, the function of the court is issue finding, not issue determination (see Weiner v. Ga-Ro Die Cutting, 104 AD2d 331, *affd* 65 NY2d 732). In making such an inquiry, the proof must be scrutinized carefully in the light most favorable to the party opposing the motion (see Glennon v. Mayo, 148 AD2d 580). To prevail on the motion, the moving party must present *prima facie* evidence of its entitlement to judgment as a matter of law (Alvarez v. Prospect Hosp., 68 NY2d 320, 324). Upon its failure to do so, the motion will be denied. Once a *prima facie* showing has been made, however, the burden shifts to the party opposing the motion to produce competent evidence demonstrating the existence of triable issues of fact (Zuckerman v. City of New York, 49 NY2d 557, 562). In this regard, “mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient” to raise a triable issue (*id.* at 562). Thus, summary judgment, which operates to deprive a party of his or her day in court, is only appropriate where the movant’s initial burden of proof has been satisfied, and the opposing party has failed to adduce competent evidence demonstrating the presence of a genuine issue of material fact (Persaud v. Darbeau, 13 AD3d 347).

With this criteria in mind, it is the opinion of this Court that plaintiff has established its *prima facie* right to judgment as a matter of law through the bank documents

submitted to the Court. Accordingly, it is incumbent upon Calvary to adduce competent evidence of a triable issue of material fact in order to avoid summary judgment.

In opposition, Calvary relies, *inter alia*, upon an attorney's affirmation, and selected deposition testimony by Peter Cruz, a member of Calvary's Board of Trustees at the time that the loan was obtained. Insofar as it may be relevant, Mr. Cruz testified that he did not recall any vote by the Board with regard to this loan (Defendant's Exhibit "A", pp. 55-56). Additionally, Calvary alleges that questions of fact exist as to the capacity of the individuals who signed the note to bind Calvary to its terms. In particular, Calvary refers to the fact that Angel Cruz Jr. executed the note as "Treasurer", but contends that Janet Cruz was its treasurer when the note was executed (*id.* at 52- 54). According to Calvary, Victory must be deemed to have acted at its peril in granting the loan without proper inquiry into the authority of the signers to borrow on behalf of Calvary. In addition, Calvary implies that the Note and Corporate Resolution annexed to Victory's motion papers (Victory's Exhibit "B") were improperly or fraudulently executed by the individuals whose signatures appear thereon. Calvary also maintains that the cessation of loan payments shortly after Samuel Rodriguez was removed as its president presents a triable issue on ratification. Finally, Calvary claims that Victory's documents fail to prove that the proceeds of the loan were used for its day-to-day operations. Thus, it is pointed out that two of the larger checks were made payable to Daniel Delgado and PSS, Inc., a corporation which he owned.

In the opinion of this Court, Calvary has failed to meet its burden of proof. While Calvary relies heavily upon the deposition testimony of Peter Cruz, such testimony is equivocal at best. For example, the fact that he does not *recall* a vote being taken to authorize the loan is not probative on the question of whether such a vote was actually taken. Also

notable is his further testimony that the then-president, Samuel Rodriguez, enjoyed the full support of Calvary's Board of Trustees in whatever he wanted to do (Defendant's Exhibit "A", p 56). Turning to the question of the authenticity of the documents submitted to the bank, Calvary relies upon the affirmation of an attorney, who fails to indicate that he is familiar with the signatures in question. Neither the sworn statements of the purported signers nor competent expert opinion as to the authenticity of these signatures has been provided. Finally, Calvary has produced no competent evidence to rebut Victory's *prima facie* demonstration that the proceeds of the loan were used in its temporal administration and to preserve its property.

Accordingly, it is

ORDERED that motion for leave to renew is granted; and it is further

ORDERED that, upon renewal, plaintiff's motion for summary judgment as against defendant Calvary Worship Center, Inc. is granted; and it is further

ORDERED that the Clerk enter judgment accordingly.

ENTER,

Robert J. Gigante, J.S.C.

Dated: March 9, 2007

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¹By decision and order dated September 5, 2002 this Court denied Victory's motion for summary judgment in lieu of complaint as against Calvary, but granted such relief as against defendants Daniel Delgado and Samuel Rodriguez.

²It must be noted that the cross motion of both losing defendants i.e. Daniel Delgado and Samuel Rodriguez for subrogation to the rights of victory was conditionally granted should they make payment of all the amounts necessary to satisfy the underlying debt.