

Orix Fin. Servs., Inc. v Laronga

2007 NY Slip Op 30386(U)

March 21, 2007

Supreme Court, New York County

Docket Number: 0601507

Judge: Shirley W. Kornreich

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT

PART 54

Index Number : 601507/2003

ORIX FINANCIAL SERVICES, INC.

vs
LARONGA, DENNIS A.

Sequence Number : 006

REARGUMENT/RECONSIDERATION

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

The following papers, numbered 1 to 6 were read on this motion to/for reargue

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...
Answering Affidavits — Exhibits _____
Replying Affidavits _____

PAPERS NUMBERED	
1, 2	_____
3, 4	_____
5, 6	_____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM
DECISION AND ORDER.**

FILED
MAR 28 2007
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 3/21/2007

SHIRLEY WERNER KORNREICH
J.S.C.
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE _____ FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

-----X
ORIX FINANCIAL SERVICES, INC.,

Plaintiff,

Index No.: 601507/03

-against-

**DECISION
and
ORDER**

DENNIS A. LARONGA and JOSEPH LARONGA,

Defendants.

KORNREICH, SHIRLEY WERNER, J.:

FILED
MAR 28 2007
NEW YORK
COUNTY CLERK'S OFFICE

This is an action to enforce guarantees of the obligations under several notes. On July 25, 2006, the court awarded summary judgment to plaintiff Orix Financial Services, Inc. ("Orix"). Defendant Joseph Laronga ("Joseph") now moves for reargument, arguing that Orix's summary judgment motion (the "summary judgment motion") should have been denied.

1. ***Facts***

While the facts of this case are more fully articulated in the July 25 order, a brief summary follows. Joseph's brother Dennis Laronga ("Dennis") owned P & A Logistics ("P & A"), which executed a Conditional Sales Contract Note ("Note") for the sale of a tractor. Via an assignment, Orix's predecessor-in-interest (hereinafter "Orix") became the Note's holder.

Orix claims that on April 9, 1997, both Dennis and Joseph executed a personal Guaranty of all P & A's obligations under the Note. A copy of a Guaranty contains a signature purporting to be Joseph's, which is acknowledged by Deborah Petruska, a notary public of the State of New Jersey. Ms. Petruska averred in her affidavit that the signature of the notary on the Guaranty is hers and that she believes that the defendants appeared before her at the time she notarized their

respective signatures. However, in her original affidavit, Ms. Petruska averred that she was a notary public only since the year 2000— more than two years after her acknowledgment of the Note. In a subsequent affidavit, Ms. Petruska sought to correct her prior statement.

At his deposition, Joseph testified that the signature on the Guaranty was forged, offering copies of other documents signed by him to demonstrate that the signature on the Guaranty was a forgery. No expert affidavit comparing the handwriting was submitted.¹

When P & A defaulted on its payments, Orix contacted Joseph via certified and first-class mail with letters dated July 15, 1998, May 16, 2000, October 23, 2000, and April 11, 2001 and also sent Joseph Notices of Public Sale of the collateral for P & A's indebtedness.

II. *Conclusions of Law*

Initially, plaintiff's submissions are sufficient to persuade the court that it misapprehended the facts and law in issuing the original decision. *See Pro Brokerage, Inc. v. Home Ins. Co.*, 99 A.D.2d 971 (1st Dept. 1984) (motion for reargument is designed to give party opportunity to establish that court overlooked or misapprehended relevant facts, or misapplied any controlling principle of law) citing *Foley v. Roche*, 68 A.D.2d 558 (1st Dept. 1979). Specifically, the Appellate Division, First Department has determined that while "the notarization of a signature raises a presumption that the signature is genuine . . . , the presumption is rebuttable." *Seaboard Sur. Co. v. Earthline Corp.*, 262 A.D.2d 253 (1st Dept. 1999) (internal citations omitted). In *Seaboard*, the First Department found that the defendant's affidavit, in which he averred that certain signatures—purportedly his and upon which plaintiff relied—were

¹ While, in his reply, Joseph has submitted the affidavit of a handwriting expert who avers that the signature was not made by Joseph, the court may not consider this new evidence submitted for the first time in reply papers.

forgeries, was “sufficient to raise an issue of fact as to the authenticity of the subject signatures and, accordingly, warranted the motion court’s denial of plaintiff’s motion for summary judgment against [defendant] based on the indemnification agreement apparently bearing his signature[.]” *Id.*

Here, defendant Joseph has testified and averred that the signature on the Guaranty is a forgery. Although the Guaranty is acknowledged, pursuant to the holding in *Seaboard*, Joseph’s affidavit is sufficient to create a question of fact as to the authenticity of the signature. The Second Department cases originally cited by this court in the July 25 order are inapposite.²

Further, included with his opposition to the summary judgment motion, Joseph had submitted copies of his signature, which he argued that the trier of fact would be able to compare to the Guaranty and conclude that the Guaranty was a forgery. CPLR 4536 (“Comparison of a disputed writing with any writing proved to the satisfaction of the court to be the handwriting of the person claimed to have made the disputed writing shall be permitted”). *See also Seoulbank, N.Y. Agency v. D&J Export & Import Corp.*, 270 A.D.2d 193, 194 (1st Dept. 2000) (trial court “erred in conclusively determining, based upon its own comparison of the signatures on the two documents, that [defendant] had signed the guaranty” since “handwriting comparison under CPLR 4536 is not appropriate on a motion for summary judgment, *but, rather, gives rise to an issue of fact*”); *CT Sys. (Isr.) Ltd. v. Melamed*, 290 A.D.2d 266 (1st Dept. 2002) (denial of summary judgment motion proper where “record discloses the existence of a triable issue of fact

² *See Lum v. Antonelli*, 102 A.D.2d 258 (2d Dept. 1984) (despite plaintiff’s claim that her signature was forged, multiple witnesses testified that they witnessed plaintiff signing disputed deed); *Wash. Mut. Home Loans, Inc. v. Rueda*, 12 A.D.3d 438 (2d Dept. 2004) (no specification of what evidence was considered in finding that plaintiff failed to rebut presumption of due execution).

as to the authenticity of the signatures on the wire transfer documents at issue”). Thus, defendant Joseph has submitted evidence sufficient to create a question of fact as to the signature on the Guaranty.

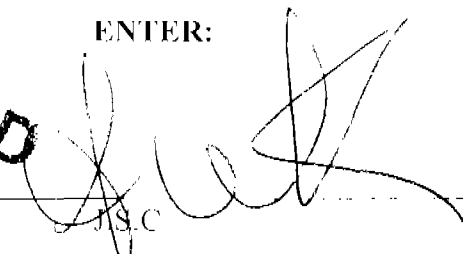
Finally, the conflicting affidavits of Ms. Petruska, the notary, as to whether she was a notary at the time the Guaranty was executed, also create a question as to the validity of the acknowledgment. Orix argues that in order to create a question of fact as to Ms. Petruska’s status Joseph would need to present public records “to see if she was a notary when the Guaranty was notarized.” The court disagrees. On its motion for summary judgment in lieu of a complaint, *Orix had the burden* of demonstrating that Ms. Petruska’s acknowledgment was valid. Here, the evidence itself - Ms. Petruska’s conflicting affidavits - created a question as to the time frame in which she was a notary. Accordingly, it is

ORDERED that defendant Joseph Laronga’s motion to reargue is granted; and it is further

ORDERED that, upon reargument, plaintiff’s motion for summary judgment is denied in its entirety; and it is further

ORDERED that the parties are to appear before the court for a ^{pre-trial} ~~preliminary~~ conference at 11:00 A.M. on April 5, 2007 at Part 54, 111 Centre Street, Room 1227, New York, N.Y.

Date: March 21, 2007
New York, New York

ENTER: 
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