

**Pryadko v Agranat**

2007 NY Slip Op 31507(U)

April 12, 2007

Supreme Court, New York County

Docket Number: 0115845/2005

Judge: Herman Cahn

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PRESENT: **HERMAN CAHN**

PART 49

Justice

Pryadko, A

INDEX NO. 115845/05

MOTION DATE 10/20/06

MOTION SEQ. NO. 01

MOTION CAL. NO. \_\_\_\_\_

Agranat, L

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

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

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that this motion

**FILED**

APR 19 2007

NEW YORK  
COUNTY CLERK'S OFFICE

**MOTION IS DECIDED IN ACCORDANCE  
WITH ACCOMPANYING MEMORANDUM  
DECISION IN MOTION SEQUENCE .....**

Dated: 4/12/07

Herman Cahn

J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

FOR THE FOLLOWING REASON(S):

[\* 2 ]  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: I.A.S. PART 49

-----X  
ALEKSEY PRYADKO,

Plaintiff,

-against-

Index No. 115845/05

LEONID AGRANAT,

**DECISION AND ORDER**

Defendant.  
-----X

**HERMAN CAHN, J:**

Plaintiff moves for summary judgment, CPLR 3212, for the amount of \$101,926.10 together with interest from July 30, 2002, and reasonable attorneys' fees.

Plaintiff, Aleksey Pryadko brings this action to recover the amount he was required to pay to American Honda Finance Company (AHF) and Emigrant Savings Bank (Emigrant), plus expenses, after his former friend, defendant Leonid Agranat, defaulted on a joint mortgage note and a car lease. Agranat signed an agreement promising to release Pryadko from these obligations but failed to do so.

Pryadko also seeks to recover on a promissory note executed by Agranat in favor of Pryadko in the amount of \$6,000.00.

Pryadko alleges that he wanted to help Agranat, a personal friend, obtain a car and an apartment, as well as other items. Accordingly, on May 18, 2001 Pryadko entered into a financing agreement with AHF to finance \$28,979.53 to lease a 2001 Acura. Pryadko leased the Acura for Agranat's use, with the understanding that Agranat would pay the monthly charges incurred.

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NEW YORK  
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Thereafter, on August 28, 2001, Pryadko executed a general power of attorney in favor of Agranat. On that same day, Agranat, his mother, Ella Brodsky, and Agranat, as Pryadko's attorney-in-fact, purchased a condominium identified as Unit 12 C, located at 845 United Nations Plaza, New York, N.Y. as joint tenants with rights of survivorship (the Condominium). The Condominium cost \$665,000. Agranat paid a 10% down payment of \$66,500.00, and took out a mortgage with Emigrant. The Condominium was for Agranat's use and it was understood by the parties that Agranat would pay for all charges related to it.

In May 2002, Agranat became ill and ceased making the mortgage and common charges payments on the Condominium as well as the lease charges on the Acura. On July 30, 2002, Pryadko's attorney delivered a letter agreement to Agranat which Agranat signed on August 5, 2002 (the August 2002 Agreement) (Tesser Aff, Ex. G). Pursuant to that agreement, Agranat promised, inter alia, that he would immediately take all steps necessary to release and discharge Pryadko from the Acura lease and an American Express Card and Saks Credit Card obligation, and that those releases would be finalized and effectuated within 60 days. In addition, Agranat agreed that he would immediately take all action necessary to release and discharge Pryadko from the mortgage and note issued by Emigrant and that those releases would be finalized and effectuated within 180 days (Ex. G, ¶¶ 2 [B], [C]).

The August 2002 Agreement also provided that, simultaneously with its execution, Agranat and Brodsky would execute a promissory note in the amount of \$6,000.00, which was due upon the closing of another condominium owned by the parties. In addition, the August 2002 Agreement provided that if all of the discharge obligations were not satisfied in a timely manner, Agranat would be responsible for all costs incurred by Pryadko, including reasonable

legal fees (id.).

After Agranat signed the August 2002 Agreement, the Acura was repossessed by AHF. It was sold at a public auction on August 29, 2002. After the sale, a deficiency amount of \$10,391.16 remained outstanding on Pryadko's account. Pryadko alleges that, on February 18, 2004, after negotiations with AHF, he paid \$5,500.00 in full satisfaction of that debt.

On November 13, 2002, Emigrant commenced an action to foreclose on the Condominium and obtained a Judgment of Foreclosure and Sale. On May 12, 2004, the Condominium was sold at public auction for \$752,000. After the sale, Emigrant obtained a deficiency judgment against Pryadko in the amount of \$99,136.43. Pryadko alleges that after extensive negotiations, on October 14, 2005, he paid Emigrant \$90,000.00 in full settlement of the judgment. However, prior to Pryadko's settlement with Emigrant, Emigrant had the City Marshal execute the judgment against Pryadko's assets. The Marshal's fees amounted to \$426.10 which was also paid by Pryadko out of the seized assets.

Pryadko also seeks to recover judgment on the amount of the promissory note executed in conjunction with the August 2002 Agreement. That note was dated July 30, 2002, in the principal sum of \$6,000, plus interest at the rate of 9% per annum (the Promissory Note) (Pryadko Aff., Ex. O). The Promissory Note provided that the principal and interest were due on the date of closing of the sale of another condominium owned by the parties, known as Unit 12 E at the Highpoint Condominium, located at 250 East 40<sup>th</sup> Street, New York, N.Y., or by November 1, 2002, whichever came sooner. Pryadko alleges that the closing for the Highpoint Condominium was on August 22, 2002, but Agranat never paid the amount due under the Note.

Based upon the Acura lease, the Condominium mortgage note, the August 2002

Agreement and the Promissory Note, Pryadko seeks the following amounts:

Acura lease	\$5,500.00
Condominium deficiency	\$90,000.00
Marshall's Fees	\$426.10
Note	<u>\$6,000.00</u>
Total	\$101,926.10

In opposition to the motion, Agranat does not dispute that he had agreed to pay the Acura lease or the mortgage and common charges on the Condominium. Instead, he states that he offered to vacate the apartment and give full title to Pryadko but that Pryadko refused. Agranat further states that he listed the Condominium with brokers and tried to sell it but was unsuccessful. He alleges that he tried to assume the mortgage himself, but was unable to do so, because of his financial circumstances. While these assertions, if true, indicate Agranat's good faith attempt to avoid the public sale of the Condominium, they do not negate his liability to Pryadko for the Acura lease, or the deficiency judgment and Pryadko's expenses in light of the August 2002 Agreement.

As to the August 2002 Agreement, Agranat states that at the time he signed the agreement he had recently been released from the hospital and that the pain medication, post surgical trauma, and post-operative depression interfered and impaired his ability to knowingly and intelligently comprehend and understand the agreement. Specifically, Agranat states that:

Thereafter in late July 2002, plaintiff's lawyer, Lewis Tesser, Esq. asked me to sign a Letter Agreement, which is attached to plaintiff's motion for summary judgment as Exhibit G. I agreed to meet with Mr. Tesser. . .

On the day I met Mr. Tesser, the pain medication, post surgical trauma, and post-operative depression interfered and impaired my ability to knowingly and intelligently comprehend and understand the Letter Agreement. I felt extremely lethargic and sluggish and was not

able to completely concentrate and understand Mr. Tesser and the Letter Agreement.

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(Agranat Aff., ¶¶ 7 - 8). Agranat contends that he was “under duress” at the time he signed the agreement, and that it should therefore be voided.

A contract is voidable on the grounds of duress when it is established that the party making the claim was forced to agree to it by means of a wrongful threat that precluded the exercise of his free will (Austin Instrument, Inc. v Loral Corp., 29 NY2d 124, 130 rearg. denied 29 NY2d 749 [1974]; Fruchthandler v Green, 233 AD2d 214, 214 [1<sup>st</sup> Dept 1996]). Here, Agranat has not alleged that Pryadko made any threats whatsoever. Rather, he has alleged that when he signed the agreement he was unable to fully understand its meaning. There is a “heavy presumption, not overcome herein, that, ‘a deliberately prepared and executed written instrument manifest the true intention of the parties.’” (Bull & Bear Group v Fuller, 170 AD2d 275, 279 [1<sup>st</sup> Dept 1991])(internal citations omitted). See also State Bank of India, New York Bank v Patel, 167 AD2d 242, 243 [1<sup>st</sup> Dept 1990]). Here, Agranat has not offered a reasonable explanation for not seeking to understand the meaning of the August 2002 Agreement. Further, although Agranat implies that he was presented with the August 2002 Agreement in Tesser’s office, Tesser affirms that the agreement was mailed to Agranat on July 30, 2002 and returned by Agranat after it was signed. Evidence of this is that the agreement was signed before a notary in Kings County and Tesser’s office is in New York County.

Finally, Agranat argues that he found a real estate investor who was willing to assume the mortgage and note, but that despite repeated phone calls to Pryadko and his lawyer, neither party returned these calls. Agranat states that during this time, Pryadko was struggling with drug abuse

and was in a residential drug rehabilitation program, and his unavailability made it impossible to have him relieved from the mortgage. Agranat has not presented any evidence supporting these allegations, but they would not in any event be a valid defense to this action. Moreover, the evidence presented by Pryadko in response to these allegations shows a constant stream of letters from Pryadko's attorney to the broker handling the property, as well as to Agranat, inquiring as to a potential sale. In fact, correspondence submitted by Pryadko indicates that in September 2003, Tesser's office wrote a letter to the broker indicating that they had left numerous telephone messages that had gone unreturned. That broker, Gala Borzenko, informed the attorneys that the property had been taken off the market by Agranat in February 2003. In short, the allegations are completely unsupported and are insufficient to raise an issue of fact with respect to this suit.

Under the terms of the August 2002 Agreement, whereby Agranat agreed that he would release and discharge Pryadko from the above obligations, Agranat is now liable to Pryadko for the damages incurred.

As to the Promissory Note, Agranat states that upon his best recollection, but subject to "further investigation," he paid that debt. He does not, however, submit any evidence that it was paid. This action was commenced in November 2005. Agranat has had sufficient time to investigate whether he did in fact pay this debt. Having failed to produce any evidence whatsoever indicating that the debt was paid, Agranat has failed to raise an issue of fact as to this claim.

Accordingly, it is

ORDERED that plaintiff Aleksey Pryadko shall have judgment in the amount of \$101,926.10 with interest on \$90,000 from October 14, 2005; on \$426.10 from March 8, 2005;

on \$5,500.00 from February 18, 2004; and on \$6,000.00 from August 22, 2002, plus reasonable attorneys' fees; and it is further

ORDERED that the issue of reasonable attorneys' fees is referred to a Special Referee to hear and report with recommendations, except that, in the event of an upon the filing of a stipulation of the parties, as permitted by CPLR 4317, the Special Referee or another person designated by the parties to serve as referee, shall determine the aforesaid issue; and it is further

ORDERED that the issue of reasonable attorneys' fees is held in abeyance pending receipt of the report and recommendations of the Special Referee and a motion pursuant to CPLR 4403 or receipt of the determination of the Special referee or the designated referee; and it is further

ORDERED that a copy of this order with notice of entry shall be served on the Clerk of the Judicial Support Office to arrange a date for the reference to a Special Referee.

Dated: April 12, 2007

**FILED**  
APR 19 2007  
NEW YORK  
COUNTY CLERK'S OFFICE  
ENTERED  
*[Signature]*  
J.S.C.