

**Mehta v Chugh**

2009 NY Slip Op 31627(U)

July 14, 2009

Supreme Court, New York County

Docket Number: 603339/2008

Judge: Louis B. York

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

PRESENT: LOUIS B. YORK  
J.S.C.

PART 2

Index Number : 603339/2008

MEHTA, SHERRY

INDEX NO. \_\_\_\_\_

vs

CHUGH, ROGER

MOTION DATE \_\_\_\_\_

Sequence Number : 001

MOTION SEQ. NO. 1

DISMISS ACTION

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

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

PAPERS NUMBERED

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

Answering Affidavits, Exhibits \_\_\_\_\_

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

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

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

**FILED**

JUL 22 2009

COUNTY CLERK'S OFFICE  
NEW YORK

Dated: 7/14/09

Ley  
**LOUIS B. YORK** 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: IAS PART 2**

-----X

**SHERRY MEHTA,**

**Plaintiff,**

**Index No. 603339/2008**

**-against-**

**ROGER CHUGH a/k/a RAJESH CHUGH,  
KRISHNA D. CHUGH, and NEW AGE  
PERFUMES, INC.,**

**Defendants.**

**FILED**  
JUL 22 2009  
COUNTY CLERK'S OFFICE  
NEW YORK

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**LOUIS B. YORK, J.:**

According to the Complaint in this action, around May 11, 2003 plaintiff loaned defendant Roger Chugh \$76,000. At the time, Mr. Chugh, then working in the office of the Secretary of State for the State of New Jersey under Governor James E. McGreevey, was being investigated about his alleged strong arm tactics in connection with his fundraising activities during the gubernatorial campaign. The Complaint also asserts that Mr. Chugh needed the money in question to pay the attorneys hired to defend him in the investigation and related civil suits, that Mr. Chugh agreed to repay Ms. Mehta within two weeks, and that he and his wife, co-defendant Krishna D. Chugh, assumed joint and several liability for this debt.

Instead of adhering to the agreed-upon schedule, the Complaint asserts, the Chughs made periodic payments between the time of the loan and February 4, 2004. At this point, the Chughs allegedly stopped making any payments at all, leaving an outstanding balance of \$34,831.69 plus interest. Therefore, Ms. Mehta sues the couple for the outstanding loan.

In addition, Ms. Mehta sues New Age Perfume Inc. ("New Age"), which makes the current motion to dismiss. According to the Complaint, Mr. Chugh transferred funds to Ms. Chugh and to New Age to avoid his obligations to Ms. Mehta. Therefore, in her second and third causes of action Ms. Mehta asserts the transfers are void under New York Debtor & Creditor Law Section 274 and 275 and New Age is liable for the amount of the transfer. In the fourth cause of action Ms. Mehta states that under New York Debtor & Creditor Law Section 276 the transferred amount should be deemed restored to Mr. Chugh and judgment entered against him for the restored funds. Ms. Mehta's fifth cause of action asserts a claim for unjust enrichment against New Age.<sup>1</sup>

As indicated, New Age currently moves to dismiss the claims asserted against it. It argues through the affidavit of its principal officer Krishan Lalwani that no relationship exists between plaintiff Sherry Mehta and Ms. Lalwani. In fact, Ms. Lalwani states, "I have neither known nor seen the plaintiff Sherry Mehta in my life to date. I further state that I have not dealt with her in any manner whatsoever." Lalwani Aff. ¶ 3. Ms. Lalwani does acknowledge that she knows Mr. Chugh and that she loaned him \$27,000, which he repaid to her on May 11, 2003. In support, she annexes a check for \$27,000, from Ms. Mehta to New Age, dated May 11, 2003. The annexed copy of the check is dated May 11, 2003 and states "loan returned" on the subject

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<sup>1</sup> These claims are also asserted against Ms. Chugh.

line. The motion further states that Ms. Mehta knew about the check and did not protest its existence or approach and question New Age about it.

This is a motion to dismiss the complaint based on documentary evidence – that is, the check and Ms. Lalwani’s affidavit. As New Age argues, a complaint may still be the subject of attack under CPLR Section 3211(a) if the movant can show that the material allegations on which the claim depends “are plainly contradicted by documentary evidence.” Matz v. Prospect Energy Corp., - A.D.3d -, -, - N.Y.S.2d -, - (1<sup>st</sup> Dept. June 30, 2009) (avail at 2009 WL 1851383, at \*1). In a motion to dismiss the court accepts the facts alleged in the complaint as true. See Leon v. Martinez, 84 N.Y.2d 83, 87, 614 N.Y.S.2d 972, 974 (1994). Therefore, a court should grant a motion to dismiss based on documentary evidence only “where the essential facts [in the complaint] have been negated beyond . . . question by the affidavits and evidentiary matter submitted.” Biondi v. Beekman Hill House Apartment Corp., 257 A.D.2d 76, 81, 692 N.Y.S.2d 304, 308 (1st Dept. 1999)(citation and quotation marks omitted), *aff’d*, 94 N.Y.2d 659, 709 N.Y.S.2d 861 (2000). However, in the rare case in which the claims are “flatly contradicted by the documentary evidence, . . . summary disposition . . . is appropriate.” KSW Mechanical Serv., Inc. v. Willis of New York, Inc., - A.D.3d -, -, 879 N.Y.S.2d 328, - (1<sup>st</sup> Dept. 2009).

As against New Age, plaintiff relies on three provisions of the State Debtor and Creditor Law. The first is section 274, which states:

Every conveyance made without fair consideration when the person making it is . . . about to engage in a . . . transaction for which the property remaining in his hands after the conveyance is an unreasonably small capital, is fraudulent as to creditors and as to other persons who become creditors during the continuance of such business or transaction without regard to his actual intent.

The second, section 275, asserts:

Every conveyance made and every obligation incurred without fair consideration when the person making the conveyance . . . intends or believes that he will incur debts beyond his ability to pay as they mature, is fraudulent as to both present and future creditors.

Third, and finally, section 276 states:

Every conveyance made . . . with actual intent . . . to hinder, delay, or defraud . . . creditors, is fraudulent as to both present and future creditors.

These statutes prohibit a debtor from borrowing money and then transferring some or all of the money to third parties, leaving himself or herself without the funds to repay the creditor. It does not require a transaction or relationship to exist between the creditor (here, plaintiff Mehta) and the third party (here, New Age). Instead, all the creditor must allege is that the debtor transferred money to a third party with either the actual or constructive intent to avoid repaying the loan to the creditor.

New Age claims that the affidavit and check definitively contradict these three claims.

New Age states, in full, at page three of counsel's affirmation, that

the document the check in question bares *{sic}* signatures *{sic}* of the plaintiff and also memo on the check states that the purpose of payment is toward return of the loan. Therefore, regardless of any othe *{sic}* allegation, the said document is deffinately *{sic}* disposes of the claim of the plaintiff.

However, counsel does not explain how this evidence relates to or supports his argument. In arguing this point, counsel relies on a check which Mehta herself wrote to New Age. This evidence contradicts counsel's argument. The fact that the check was paid to New Age and drafted by Ms. Mehta contradicts Ms. Lalwani's statement that she has never dealt with Ms.

Mehta in any fashion. Ms. Lalwani's contention that the check constituted repayment to her of a loan she had made to Mr. Chugh and thus was not a fraudulent conveyance simply creates an issue of fact as to the purpose of the check. The statement on the subject line, "loan returned," adds to the credibility of her contention but does not resolve the issue definitively.

Moreover, in relying on the alleged lack of relationship between New Age and Ms. Mehta, New Age misconstrues the import of the Debtor Creditor Law claims. As the transfer of assets in a Debtor Creditor § 274, 275 or 276 claim is between the debtor/defendant and another party, rather than between the creditor and that party, the allegation that Ms. Lalwani, the transferee, does not know or have a relationship with Ms. Mehta, the creditor is irrelevant to Ms. Mehta's causes of action against New Age. Counsel for plaintiff alleges that because "at no place plaintiff [in the complaint does plaintiff Mehta allege] that she provided any loan or money to movant defendant New Age," Chaubey Aff. at p 4, the complaint fails to state a cause of action against New Age. Against, this misconstrues the laws upon which the Complaint relies.

The Court notes that the papers before it are muddled at best. As indicated above, it appears that movant does not comprehend or respond to the claims plaintiff asserted against it, which are based on fraudulent conveyance rather than on the check which movant has annexed. Similarly, plaintiff Sherry Mehta's opposition alleges only that she did not write "loan returned" on the check and perhaps someone else, such as a representative of New Age, improperly added the phrase. Perhaps because New Age did not address the substance of the claims against it, plaintiff did not address the substance of her claims. However, because the opposition also does not seem to relate to the case at hand, the Court has found it more difficult to evaluate either set of papers.

The papers and the check at hand raise other questions which are not currently before the Court. Therefore, the Court does not address them at this time.

Based on the above, it is

ORDERED that the motion is denied.

Dated: July 14, 2009

Enter:

Lly  
LOUIS B. YORK, J.S.C.

**LOUIS B. YORK  
J.S.C.**

**FILED**

JUL 22 2009

**COUNTY CLERK'S OFFICE  
NEW YORK**