

**Koh v Paik**

2009 NY Slip Op 32111(U)

September 11, 2009

Supreme Court, New York County

Docket Number: 105258-08

Judge: Marilyn Shafer

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

PRESENT: **MARILYN SHAFER**

PART 8

Justice

Index Number : 105258/2008

KOH, YOUNG

VS.

PAIK, DEANIE S.

SEQUENCE NUMBER : # 001

PARTIAL SUMMARY JUDGMENT

INDEX NO.

105258-08

MOTION DATE

MOTION SEQ. NO.: #001

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

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

*is granted in record with the averted memorandum.*

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

Dated: 9/16/09

**MARILYN SHAFER**

J.S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

**FILED**  
SEP 16 2009  
COUNTY CLERK'S OFFICE  
NEW YORK

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

PRESENT: HON. MARILYN SHAFER PART 8  
Justice

YOUNG KOH, INDEX NO. 105258/08  
Plaintiff, MOTION SEQ. NO. 001

-against-

DEANIE S. PAIK, as administratrix of the Estate of  
Sung Ku Paik,  
Defendant.

The following papers, numbered 1 to 5, were read on this motion:

	<u>PAPERS NUMBERED</u>
Notice of Motion, Affidavit – Exhibits	1,2
Memorandum of Law	3
Affirmation In Opposition	4
Memorandum of Law	5
Cross-Motion: <input type="checkbox"/> Yes <input type="checkbox"/> No	

**FILED**  
SEP 16 2009  
COUNTY CLERK'S OFFICE  
NEW YORK

Upon the foregoing papers, the motion is granted as follows:

Background

The following facts are undisputed. The plaintiff had a long-standing and intimate relationship with the decedent to whom she bore a child. He died shortly after the initiation of this action and his estate, by his wife, as administratrix, was substituted as defendant.

During the plaintiff's relationship with the decedent, on September 15, 1999, she

executed a Promissory Note in his favor in the amount of \$100,000, payable in eighteen months, or March 15, 2001,<sup>1</sup> and additional documents creating a security interest in her cooperative apartment as collateral for payment of the Note. The additional documents consisted of a Security Agreement and Uniform Commercial Code Financing Statement covering the cooperative stock certificate and proprietary lease, both of which were held *in escrow* by decedent's attorney.

Plaintiff never made any payments on the Note nor executed any documents amending or modifying the Note.

In November, 2007, plaintiff entered into a contract of sale for her apartment and requested decedent release his lien on her apartment. Upon his refusal, the sale was cancelled and plaintiff initiated this action, seeking:

1. a declaration that the Note is unenforceable as time-barred;
2. a declaration that the lien executed by the filing of the UCC Financing Statement and Continuation Statement is invalid:
3. a declaration that the Security Agreement is unenforceable; and
4. directing the defendant to instruct the Escrow Agent to return plaintiff's Coop Stock Certificate and Proprietary Lease to the plaintiff; and
5. dismissing the defendant's counterclaims which seek to enforce the Note.

#### Discussion

The law is clear that a claim on a promissory note is time-barred if an action is not commenced within the applicable statute of limitations period. (*Nordberg v The South Street*

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<sup>1</sup> The Note indicates the maturity date March 15, 2000, which plaintiff asserts is a typographical error.

*Seaport Corp*, 43 AD3d 774 [1<sup>st</sup> Dept 2007]) A cause of action on a promissory note accrues on the day after which the note becomes due. (*UCC § 3-122(1)(a)*) The statute of limitations for a cause of action on a contractual obligation is 6 years. (*CPLR § 213(2)*)

The Note herein was payable on March 15, 2001. Thus, the statute of limitations expired on March 16, 2007. This court finds that, since no action to enforce the Note was commenced within the limitations period, enforcement of the Note is time-barred.

Declaratory relief is appropriate to determine the validity of a debt instrument, such as a promissory note and related security interests. (*Dahlin v Alfredo*, 11 NY2d 804 [1962]) This Court finds that, since the Note is unenforceable, any liens based upon the Note are invalid. (*Irons v Roberts*, 206 AD2d 683 [3d Dept 1994])

We have considered the other arguments raised by the parties and find them without merit.

Accordingly, it is hereby

ORDERED that the motion by plaintiff Young Koh for partial summary judgment is granted; and it is further

ORDERED that the Promissory Note dated September 15, 1999 is unenforceable; and it is further

ORDERED that the lien executed by the filing of the UCC Financing Statement and Continuation Statement is invalid; and it is further

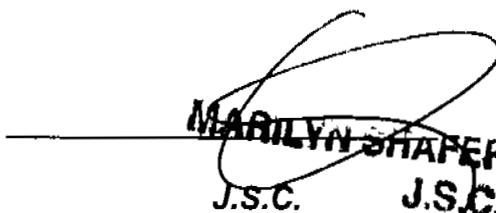
ORDERED that the Security Agreement is unenforceable; and it is further

ORDERED that the defendant instruct Dae-Ki Min, as Escrow Agent, to return plaintiff's Coop Stock Certificate and Proprietary Lease within 20 days of the date hereof; and it is further

ORDERED that the First and Second Counterclaim asserted in defendant's answer are dismissed.

This reflects the decision and order of this Court.

Dated: 9/11/09

  
MARILYN SHAPER  
J.S.C. J.S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

**FILED**  
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