

**D.B. Grant Assoc., Inc. v Correctional Educ.
Consortium**

2009 NY Slip Op 33165(U)

December 23, 2009

Supreme Court, New York County

Docket Number: 601635/08

Judge: Emily Jane Goodman

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

PRESENT: EMILY JANE GOODMAN
Justice

PART 17

DB Grant Associates

INDEX NO. 601635/08

MOTION DATE _____

Correct'L Education Consortium

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

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 is decided for
attached

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

FILED
JAN 11 2010
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 12/23/09

[Signature]

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
J.S.C. EMILY JANE GOODMAN

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK I.A.S. PART 17

-----X
D.B. GRANT ASSOCIATES, INC.,

Plaintiff,

-against-

CORRECTIONAL EDUCATION CONSORTIUM
and SHARON BRAND,

Defendants.

-----X
EMILY JANE GOODMAN, J.S.C.:

Index No. 091635/08

FILED
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Upon the foregoing papers, it is ordered that this motion by Plaintiff for partial summary judgment against the Defendant Correctional Education Consortium, to amend the caption to identify Defendant's true name as Correctional Educational Consortium, and for partial summary judgment against the Defendant Sharon Brand on the first cause of action (breach of contract) and the third cause of action (denominated as one for personal liability against Brand for arrearage payments) is granted as to partial summary judgment against Defendant Correctional Educational Consortium in the amount of \$53,000 and as to amendment of the caption, and is otherwise denied.

The central issue in this action involves a May 12 agreement which provides, in relevant part, that "If payments have not been made according to the above condition, Sharon Brand will be personally liable for making the payment that would have been due." In opposing partial summary judgment, Defendants maintain that there are issues of fact for trial because two May 12 agreements were signed under duress. Defendants

further maintain that one of the May 12 agreements is ambiguous, and too vague to be considered a guaranty. Specifically, Defendants argue that the language regarding personal liability is capable of two different interpretations because the May 12 agreement is between Plaintiff and Correctional Education Consortium (and not Brand), and, because Sharon Brand signed that agreement as “Executive Director, CEC.”

Discussion

There is no ambiguity under the May 12 agreement as to personal liability, although the language regarding amount owed is ambiguous and must be decided by the trier of fact. The amount owed is “for making the payments that would have been due” which could refer payments due at the time the agreement was signed (May 12, 2007) or payments due under that agreement (for the period of July 1, 2007 - June 30, 2008). Further, the amount owed is calculated “out of payment from contracts other than OASAS” and proof of amounts owed under those contracts has not been proffered. However, contrary to Defendants’ position there is no ambiguity as to personal liability. A signature in a representational capacity as an officer can bind the officer as an individual if it is clear from the document that personal liability is intended (see Paribas Properties, Inc. v Benson, 146 AD2d 522 [1st Dept 1989]).¹ Here, to conclude that the language “If payments have not been made according to the above condition, Sharon Brand will be personally liable for making the payment that would have been due” does

¹Defendants do not raise GOL §5-701 [a] [2] as a defense in this action.

not personally bind Brand, would be to render the entire provision meaningless.

The parties have not sufficiently briefed the issue of duress. Plaintiff correctly points out that duress does not exist unless the threat made to the person asserting it is wrongful (See Graudbard v. Edelstein, 173 AD2d 230 [1st Dept. 1991]). Defendants maintain that the agreements were signed under duress because Plaintiff “threatened to withhold performance and cause the termination of the OASAS contract unless her terms were met.” Sharon Brand also alleges that she signed the agreement containing the personal liability provision because Plaintiff threatened to “use her influence with persons at OASAS to ensure that our funding from OASAS would be cut off” and attaches an email to support her statement. Although it would not be unlawful for Plaintiff to, as Plaintiff states, demand “payment of arrearages and guaranty of payment in order for [Plaintiff] to continuing [sic] to provide services” neither side has addressed whether, if true, the latter threat would be unlawful. However, as Defendants’ duress arguments are based upon Brand agreeing to assume personal liability for corporate debt, partial summary judgment is granted against the corporation in the amount of \$53,000.

Accordingly, it is

ORDERED that Plaintiff’s motion for partial summary judgment is granted against Defendant Correctional Educational Consortium in the amount of \$53,000 and as to amendment of the caption, and is otherwise denied; and it is further

ORDERED that the caption is amended to read

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK I.A.S. PART 17

-----X
D.B. GRANT ASSOCIATES, INC.,

Plaintiff,

Index No. 601635/08

-against-

CORRECTIONAL EDUCATIONAL CONSORTIUM
and SHARON BRAND,

Defendants.

-----X

and it is further

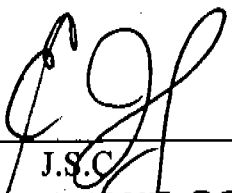
ORDERED that Plaintiff file a copy of this Decision and Order with Trial Support
and the County Clerk for amendment of the caption; and it is further

ORDERED that the parties and the attorneys personally appear for a settlement
conference on February 4, 2010 at 12 noon.

This constitutes the Decision and Order of the Court.

Dated: December 23, 2009

ENTER:



J.S.C.
EMILY JANE GOODMAN

FILED
JAN 11 2010
NEW YORK
COUNTY CLERK'S OFFICE