

Alvarez v Falconi

2011 NY Slip Op 31822(U)

June 29, 2011

Supreme Court, Nassau County

Docket Number: 15952/10

Judge: Anthony L. Parga

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SHORT FORM ORDER

SUPREME COURT-NEW YORK STATE-NASSAU COUNTY
PRESENT:

HON. ANTHONY L. PARGA
JUSTICE

-----X PART 8
NURY ALVAREZ,

Plaintiff,

INDEX NO. 15952/10

-against-

MOTION DATE: 05/17/11
SEQUENCE NO. 001, 002

JOE C. FALCONI, ANA I. TRIGOSO,
JCF SATELLITE, JOE C. FALCONI, INC.
d/b/a JCF SATELLITE,

Defendants.

-----X	
Notice of Motion, Affs. & Exs.....	<u>1</u>
Notice of Cross Motion & Affs.....	<u>2</u>
Reply Affirmation.....	<u>3</u>
Reply Affidavit.....	<u>4</u>

Plaintiff's motion for summary judgment, pursuant to CPLR 3212, is granted as against defendant Joe C. Falconi, individually, on liability grounds only, and plaintiff's complaint is dismissed as against JCF Satellite and Joe C. Falconi, Inc. d/b/a JCF Satellite, as directed below. Defendant Ana I. Trigoso's cross-motion for summary judgment is granted.

The following facts are taken from pleadings and submitted papers and do not constitute findings of fact by this Court.

This is an action to recover upon a promissory note in the form of a Loan Commitment agreement. On May 16, 2008, defendant Joe C. Falconi entered into a Loan Commitment agreement with plaintiff in which the parties agreed that plaintiff would loan \$20,000 to defendant Joe C. Falconi and that Joe C. Falconi would deliver the amount borrowed, \$20,000, to plaintiff within one year. They also agreed that plaintiff would receive "an incentive of 3% monthly for borrowed money...given every 30 days...." The agreement also called for Joe C. Falconi to provide a profit of \$7.50 for sale on Direct TV and Dish Network. The promissory note was signed by Joe C. Falconi, before a Notary Public, on May 16, 2008.

Plaintiff submits an affidavit in which she attests that she loaned defendant Joe C. Falconi \$20,000 in accordance with the agreement and that Joe C. Falconi has failed to comply with the terms of the agreement and "is in default" by failing to issue payment in accordance with the terms of same. Plaintiff submits a copy of the cancelled check which she issued to "Joe C. Falconi" on May 16, 2008. Plaintiff argues that she is entitled to judgment in the amount of \$20,000, plus interest and attorneys fees in the amount of \$5,000. The Court notes that there is no explanation as to how the amount of \$5,000 in interest and attorneys fees was calculated.

In opposition, Joe C. Falconi submits an affidavit in which he attests that he is the President of the corporation, Joe C. Falconi, Inc. He attests that Joe C. Falconi, Inc. did business as JCF Satellite, which involved the selling of Direct TV and Dish Network. He attests that the loan by the plaintiff was a corporate loan and that he never agreed to be personally liable for the debt at issue. He also attests, in support of defendant Ana Trigosos cross-motion, that Ana Trigosos did not sign the note and was not obligated under same. Additionally, in his reply affidavit, Joe C. Falconi attests that he has repaid \$12,949.00 of the loan, mostly in cash payments, but submits copies of two money orders issued to plaintiff in the amount of \$250.00 each. Accordingly, he argues that the amount owed to plaintiff is not accurate.

In support of her cross-motion, defendant Ana Trigosos attests that she did not sign the note and was not involved in the transaction wherein the note was signed. Accordingly, she contends that she is entitled to summary judgment.

In opposition to the cross-motion brought by Ana Trigosos, plaintiff argues that said motion is premature, as discovery remains outstanding, and that Ana Trigosos "had some relationship" with JCF Satellite, and as the wife of defendant Joe C. Falconi, "she enjoyed the use of the monies either through the business known as "JCF Satellite" or as the wife of defendant, Joe C. Falconi."

Upon the Court's review of the promissory note, in the form of a "Loan Commitment" agreement, the loan was issued only to "Joe C. Falconi," and not Ana Trigosos, JCF Satellite, or Joe C. Falconi, Inc. d/b/a JCF Satellite. Additionally, the Loan Commitment agreement is only signed by "Joe C. Falconi" and the plaintiff, Nury Alvarez. Further, Joe C. Falconi executed the agreement in his name, without a qualification that he was signing as the officer of any corporate entity. Accordingly, the only parties bound by the promissory note at issue herein are Joe C. Falconi, individually, and plaintiff Nury Alvarez. As such, defendant Ana Trigosos's cross-motion for summary judgment is granted and, upon this Court's own motion, summary judgment is granted to defendants JCF Satellite and Joe C. Falconi, Inc. d/b/a JCF Satellite. Accordingly, plaintiff's action is hereby dismissed as against defendants Ana Trigosos, JCF Satellite, and Joe

C. Falconi, Inc. d/b/a JCF Satellite.

Plaintiff has demonstrated a prima facie showing of entitlement to summary judgment as against defendant Joe C. Falconi upon the grounds that defendant Joe C. Falconi is liable for payment under the promissory note at issue herein. Plaintiff has established a prima facie showing of entitlement to summary judgment on liability grounds against defendant Joe C. Falconi by demonstrating proof of the unpaid note and a failure to make payments called for by its terms. (*Gateway State Bank v. Shangri-La Private Club for Women, Inc.*, 113 A.D.2d 791 (2d Dept. 1985); *see also, E.D.S. Security Systems, Inc. v. Allyn*, 262 A.D.2d 351 (2d Dept. 1999)). It is well-settled that a party is entitled to summary judgment for breach of contract upon establishing proof of a contract, performance of the contract by one party, breach by the other party, and damages. (*WorldCom, Inc. v. Sandoval*, 182 Misc.2d 1021, 701 N.Y.S.2d 834 (Sup Ct. N.Y. Cty. 1999); *Rexnord Holdings, Inc. v. Biderman*, 21 F.3d 522 (2d Cir. 1994)).

The proponent of a summary judgement motion "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact." (*Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320 (Ct. of App. 1986)). Once the movant has demonstrated a prima facie showing of entitlement to judgement, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of a fact which require a trial of the action. (*Zuckerman v. City of New York*, 49 N.Y.2d 557 (Ct. of App. 1980)).

Once plaintiff established a prima facie showing of entitlement to summary judgment, it was incumbent upon defendant Joe C. Falconi to come forward with proof of evidentiary facts showing the existence of a triable issue with respect to a bona fide defense. (*Gateway State Bank v. Shangri-La Private Club for Women, Inc.*, 113 A.D.2d 791 (2d Dept. 1985)). Defendant Joe C. Falconi has not contested the existence of the Loan Commitment agreement, nor has he contested his signature at the bottom of same. Defendant Joe C. Falconi has also conceded that the entire amount of the loan was not repaid, attesting that he has repaid only \$12,949.00.

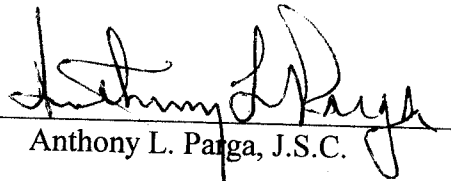
Where a promissory note contains unequivocal promises by defendant to pay a sum of money to plaintiff, the defendant's signature at the bottom of the note reflects his intention to be bound by the entire note, including the promises to pay. (*North Fork Bank & Trust v. Holbrook*, 89 A.D.2d 599, 452 N.Y.S.2d 645 (2d Dept. 1982)). It is well settled that a signer is responsible for reading a contract and having consented to its terms. (*See, BWI Guaranty Trust v. Banque Internationale a Luxembourg*, 567 N.Y.S.2d 731 (1st Dept. 1991); *Sofio v. Hughes*, 162 A.D.2d 518, 556 N.Y.S.2d (2d Dept. 1990) (*citing, Gilman v. Chase Manhattan Bank*, 73 N.Y.2d 1, 534 N.E.2d 824 (1988))). Where an agreement is clear and unambiguous on its face and, "by its

[* 4]
language, absolute and unconditional, the signer is conclusively bound by its terms absent a showing of fraud, duress or other wrongful act in its inducement.” (*Citibank v. Plapinger*, 55 N.Y.2d 90 (1985); (See, *Gilman v. Chase Manhattan Bank*, 73 N.Y.2d 1, 534 N.E.2d 824 (1988)(holding that absent a showing of fraud, duress, or other wrongful act by a party to a contract, a signer of an agreement is deemed to be conclusively bound by its terms whether or not he or she read it)).

Defendant Joe C. Falconi has failed to raise any triable issue of fact with respect to his liability under the terms of the Loan Commitment agreement. He has, however, raised a triable issue of fact with respect to the amount of monies that remain due and owing to plaintiff in accordance with the agreement. Accordingly, plaintiff’s motion for summary judgment is granted as against defendant Joe C. Falconi on liability grounds only, and, at the conclusion of discovery, this matter shall proceed to a trial for an assessment of damages (the amount due and owing to plaintiff) only.

The parties shall appear for a Preliminary Conference on **August 10, 2011, at 9:30 A.M.** in the Differentiated Case Management Part (“DCM”), Nassau County Supreme Court, to schedule all discovery proceedings. Plaintiff shall serve a copy of this order upon the DCM Case Coordinator of the Nassau County Supreme Court within fifteen (15) days.

Dated: June 28, 2011



Anthony L. Parga, J.S.C.

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ENTERED
JUN 29 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE