

Labeouf v Saide

2014 NY Slip Op 30459(U)

February 24, 2014

Sup Ct, NY County

Docket Number: 651878/2013

Judge: Eileen Bransten

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART THREE

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SHIA SAIDE LABEOUF and SHAYNA SAIDE,

Plaintiffs,

Index No. 651878/2013
Motion Date: 12/9/2013
Motion Seq. No.: 001

-against-

BARRY SAIDE,

Defendant.

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BRANSTEN, J.

In this action, Plaintiffs Shia Saide LaBeouf and Shayna Saide seek repayment of \$800,000 loaned to Defendant Barry Saide with interest and attorneys' fees. Presently before the Court is Plaintiffs' motion for summary judgment in lieu of complaint. For the reasons that follow, Plaintiffs' motion is granted.

I. Background

This action stems from a loan made by Plaintiffs to a family member, Defendant Barry Saide. *See* Affidavit of Barry Saide ("Barry Saide Aff.") ¶ 3. On August 10, 2009, Defendant executed a Promissory Installment Note (the "Note") in favor of Plaintiffs. *See* Affidavit of Matthew H. Saver ("Saver Aff.") Ex. A. Under the Note, Defendant Saide agreed to pay Plaintiffs, or an entity controlled by Plaintiffs, the principal amount

of \$800,000, defined as “the Loan.” *Id.* The Loan was to be paid in fifteen installments of \$53,333.33, together with interest on the unpaid balance at the rate of five percent per annum. *Id.* The first installment due on January 2, 2011. *Id.* In the event of a default in the payment of the principal or interest due under the Note, Plaintiffs had the option “without notice or demand, [to] declare this [N]ote immediately due and payable.” *Id.*

Defendant allegedly failed to make a single payment of either principal or interest on the Note. *See* Affidavit of Shia Saide LaBeouf ¶ 4; Affidavit of Shayna Saide ¶ 4. Thereafter, Plaintiffs filed the instant action seeking payment of the principal amount of \$800,000 plus interest at five percent per annum through April 2, 2012, the date when Plaintiff’s final installment was purportedly due. In addition, Plaintiffs requested statutory interest at the rate of 9% per annum from April 2, 2012, as well as attorney’s fees and costs.

II. Discussion

CPLR 3213 provides in pertinent part that “[w]hen an action is based upon an instrument for the payment of money only or upon any judgment, the plaintiff may serve with the summons a notice of motion for summary judgment and the supporting papers in lieu of a complaint.” CPLR 3213. “The procedure for accelerated judgment under CPLR 3213 is appropriate where plaintiff establishes a prima facie case by virtue of a note and a

failure to make payments called for therein.” *Warburg, Pincus Equity Partners, L.P. v. O’Neill*, 11 A.D.3d 327, 327 (1st Dep’t 2004).

Here, the Note upon which this action is based contains an unequivocal and unconditional promise by Defendant Saide to repay to Plaintiffs the amount of the Loan. Moreover, Plaintiffs aver that Defendant failed to make any of the required repayments. Accordingly, Plaintiffs have established their prima facie case.

In opposition, Defendant contends that summary judgment in lieu of complaint is unavailing since the Loan is secured by twenty-five percent of Defendant’s ownership interest in four corporations. Since the Note provides that Defendant *could* satisfy the entire Loan amount by transferring title to this security to Plaintiffs, Defendant asserts the Note is a hybrid instrument and not an instrument for the payment of money only, as required for judgment under CPLR 3213.

Defendant’s argument has been soundly rejected by the First Department. Property used to secure a promissory note “does not alter its essential character as an instrument for the payment of money only and, accordingly, is immaterial to plaintiff’s right to relief pursuant to CPLR 3213.” *Solanki v. Pandya*, 269 A.D.2d 189, 189 (1st Dep’t 2000); *see also Warburg, Pincus Equity Partners, L.P.*, 11 A.D.3d at 327 (“Despite defendant’s assertions to the contrary, the fact that the agreement was secured by stock

does not alter the essential character of the agreement as an instrument for payment of money only.”).

Moreover, Defendant’s reliance on *Tradition North America, Inc. v. Sweeney*, 133 A.D.2d 53 (1st Dep’t 1987), is misplaced. Defendant contends that *Tradition* stands for proposition that any secured note that can be satisfied by the forfeiture of the security is a “hybrid” instrument to which CPLR 3213 is by rule inapplicable. The First Department did not so hold. Instead, the First Department’s denial of summary judgment in the *Tradition* case hinged on a factual determination regarding the amount owed by defendant under the six notes at issue. Under the notes, defendant in *Tradition* had the option of repaying his debt by earning bonuses. The First Department noted defendant’s contention that three of the notes were satisfied and that the remaining notes were satisfied in part by bonuses earned. *Id.* at 53.

Contrary to Defendant’s assertion here, the *Tradition* court did not hold that CPLR 3213 was unavailing simply due to the fact that defendant had the option to apply his bonuses toward his loan payments. Instead, the court stated: “That it is necessary to resort to extrinsic material to establish the amounts payable on the notes at issue is a reflection of the fact that they are not instruments for the payment of money only and are, therefore, inappropriate for accelerated judgment pursuant to CPLR 3213.” *Id.*

Defendant’s citation to *Ian Woodner Family Collection, Inc. v. Abaris Books, Ltd.*, 284

A.D.2d 163, 164 (1st Dep't 2001), fails for the same reason. *See id.* at 164

(“Furthermore, extrinsic evidence is required to determine the amount of each quarterly installment due, if any, and thus whether defendants defaulted according to the terms of the note. This exceeds the permissible role of extrinsic proof on a CPLR 3213 motion and raises triable issues of material fact that would also bar summary judgment.”). There is no such extrinsic material for the Court to consider here. The terms of the Note are clear and the amount due and owing by Defendant is set forth in the Note. These facts are uncontested by Defendant in his opposition papers. Accordingly, *Tradition* provides no basis to reject Plaintiffs’ motion.

The Court notes Defendant’s descriptions of his familial relationship with Plaintiffs and his alleged prior loans to Shayna Saide. *See Barry Saide Aff.* ¶¶ 4-8. Such issues, however, “are extrinsic to the uncontested evidence of the loan[] and do not raise any material issues of fact.” *Skilled Investors, Inc. v. Bank Julius Baer & Co., Inc.*, 62 A.D.3d 424, 425 (1st Dep’t 2009).

Thus, for the reasons set forth above, Plaintiff’s motion for summary judgment is granted. Plaintiffs are awarded judgment on the principal amount of the loan, plus interest at the rate of 5% per annum until April 2, 2012 and thereafter at the statutory rate of 9% per annum. *See Levy, King & White Adver., Inc. v. Gallery of Homes, Inc.*, 177 A.D.2d 967, 967 (4th Dep’t 1991) (awarding prejudgment interest at the statutory rate

from the date of claim accrual through the date of judgment where the parties' contract did not specify an interest rate to be applied to overdue payments); *see also Brady v. Zambrana*, 221 A.D.2d 171, 172 (1st Dep't 1995) (same). In addition, Plaintiffs' request for attorney's fees is severed and the issue of the amount of reasonable attorney's fees referred to the Special Referees Part.

III. Conclusion


Accordingly, it is

ORDERED that Plaintiffs' motion for summary judgment in lieu of complaint is granted, and the Clerk is directed to enter judgment in favor of Plaintiffs Shia Saide LaBeouf and Shayna Saide and against Defendant Barry Saide in the sum of \$800,000, with interest at the rate of 5% per annum from January 2, 2011 until April 2, 2012, and thereafter at the statutory rate, as calculated by the Clerk, together with costs and disbursements, as taxed by the Clerk; and it is further

ORDERED that the portion of Plaintiffs' action that seeks the recovery of attorney's fees is severed and the issue of the amount of reasonable attorney's fees that Plaintiffs may recover against Defendant Barry Saide is referred to a Special Referee to hear and report; and it is further

ORDERED that counsel for the Plaintiffs shall, within 30 days from the date of this order, serve a copy of this order with notice of entry, together with a completed Information Sheet,¹ upon the Special Referee Clerk in the Motion Support Office (Room 119M), who is directed to place this matter on the calendar of the Special Referees Part for the earliest convenient date.

Dated: New York, New York
February 24, 2014



Hon. Eileen Bransten, J.S.C.

¹ Copies are available in Room 119M at 60 Centre Street and on the Court's website at http://www.nycourts.gov/courts/ljd/supctmanh/Courthouse_Procedures_menu.shtml under the "References" link.