

Lin Pi-Luan L. v Citibank, N.A.
2015 NY Slip Op 31025(U)
June 15, 2015
Supreme Court, New York County
Docket Number: 155963/13
Judge: Jennifer G. Schechter
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 57

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LIN PI-LUAN L, a.k.a. PILUAN LIN,

Plaintiff,

DECISION AND ORDER

-against-

Index No. 155963/13

CITIBANK, N.A.,

Defendant.

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JENNIFER G. SCHECTER, J.:

Motion sequence numbers 03 and 04 are consolidated for disposition.

In her complaint, plaintiff Lin Pi-Luan L (Lin) alleges that on August 17, 1979, she purchased a \$12,596.18 certificate of deposit (CD) at a North Flushing branch of defendant Citibank N.A. (Citibank). The CD was for a six-month term but renewed automatically unless the funds were withdrawn (Affirmation in Support of Summary Judgment [Supp], Ex A). Lin has the original CD in her possession (Supp, Ex A, Ex D at ¶ 9).

More than 33 years later, in November 2012, Lin asked her son to redeem the CD. In March 2013, Citibank informed Lin's son that, based on the presumption-of-payment principle, it would not honor the CD (Affirmation in Opposition to Summary Judgment [Opp], Ex B).

In June 2013, Lin commenced this action against Citibank, seeking recovery of approximately \$71,000 based on the applicable interest rates (Supp, Ex D at ¶ 14; see also Affidavit of Thomas Bonville at ¶ 6).

Motion for Summary Judgment

(Seq. No. 03)

Lin moves for summary judgment, urging that based on New York Uniform Commercial Code provisions, she is entitled to payment on demand. In opposition, Citibank argues that the presumption-of-payment doctrine requires denial of the motion. The Court agrees with Citibank.

The passage of 20 years from the right to enforce an obligation gives rise to a legal presumption of its payment (see *Bean v Tonnele*, 94 NY 381 [1884]; see also *Krawitt v Key Bank*, 23 Misc 3d 297, 299-300 [Sup Ct, Ulster County 2008]; *Matter of Wood*, 7 Misc 2d 410, 411 [Sur Ct, Queens County 1957]; *Boscowitz v Chase Nat. Bank of City of New York*, 202 Misc 1016, 1019-1020 [NY Mun Ct 1952]; cf. *Warford v Union Bank of Benton*, 2010 Ark. App., 378 SW3d 239 [2010] [less than 20 years lapsed; CD purchaser's testimony and possession of CD precluded summary judgment in bank's favor]). "The presumption of payment from a great lapse of time is founded upon the rational ground that a person naturally desires to possess and enjoy his own, and that an unexplained neglect to enforce an alleged right, for a long period, casts suspicion on the existence of the right itself" (*Bean*, 94 NY 381).

In light of the applicable presumption, plaintiff's evidence is insufficient to warrant an award of summary

judgment without the benefit of a trial at which all of the evidence could be weighed and credibility could be assessed.

Motion to Strike Note of Issue and Obtain Disclosure
(Seq. No. 04)

Citibank's motion to vacate the note of issue is granted. It is abundantly clear that there was outstanding discovery when the note of issue was filed (see e.g. Attorney's Statement in Support, Ex E). Additionally, it is clear that evidence of Lin's financial circumstances during the period in which she may have redeemed the CD is "material and necessary" in defense of this action (see *Bean*, 94 NY 381 [indigence tends to fortify that demand has been paid or otherwise satisfied]; CPLR 3101[a]). Therefore, Lin must respond to Citibank's interrogatories concerning her income and finances or move for a protective order based on any specific exception(s) within 20 days.

The Court will not compel compliance with the non-party subpoena or issue a commission on this record simply because of procedural impediments to such relief. For example, it does not appear that Grace Lin, plaintiff's daughter, was served with this motion and the Court will not order a non-party to comply absent proper notice. Nor, in this motion, is

there sufficient information about Mr. Lin's address for purposes of issuance of a commission. It does appear, however, that these non-parties could well have information that is subject to disclosure and, in the interests of efficiency and expedition, the Court urges plaintiff's counsel to consider facilitating their production to avoid motion practice and additional delay. Therefore, the Court Orders plaintiff's counsel to inform defense counsel by letter within 15 days whether it is possible to arrange for the non-parties to appear voluntarily.

Disclosure is to proceed notwithstanding the pendency of defendant's motion for summary judgment (see CPLR 3214[b]).

Accordingly, it is

ORDERED that plaintiff's motion for summary judgment is DENIED; it is further

ORDERED that the note of issue is vacated; it is further

ORDERED that disclosure is to proceed in accordance with this Decision and Order; and it is further

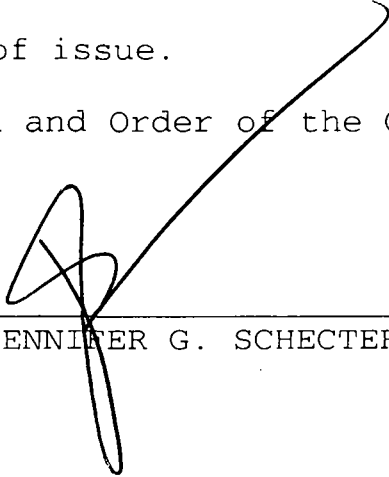
ORDERED that the parties are to appear for a status conference to address outstanding disclosure on July 22, 2015 at 9:30 a.m. unless by July 20, 2015 a stipulation is e-filed, which addresses and resolves all outstanding discovery issues.

Plaintiff may be entitled to a trial preference pursuant to CPLR 3403(a)(4).

If the Court is satisfied with the stipulation, it will so order it and direct the parties about any future appearance and the filing date for the note of issue.

This constitutes the Decision and Order of the Court.

Dated: June 15, 2015



HON. JENNIFER G. SCHECTER