

Lin Pi-Luan L v Citibank, N.A.
2016 NY Slip Op 30963(U)
May 24, 2016
Supreme Court, New York County
Docket Number: 155963/13
Judge: Jennifer G. Schechter
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**HON. JENNIFER G. SCHECTER
J.S.C.**

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 05 and 06 are consolidated for disposition.

Motion Sequence Number 05

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 The CD was for a six-month term but renewed automatically unless the funds were withdrawn. Lin has the original CD in her possession.

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.

In June 2013, Lin commenced this action against Citibank, seeking recovery of approximately \$71,000 based on the applicable interest rates.

Lin moved for summary judgment. While that motion was pending, Citibank made this motion for summary judgment.

In June 2015, this court denied Lin's motion, explaining that in "light of the applicable presumption [of payment], plaintiff's evidence [was] 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" (June 15, 2015 Decision and Order at 2-3). The Court further ordered that discovery proceed notwithstanding the pendency of Citibank's motion (*id.* at 4). After discovery concluded, the Court allowed supplemental submissions related to Citibank's pending summary-judgment motion.

Analysis

Summary Judgment is a drastic remedy that should not be granted if there is any doubt as to the existence of material triable issues (see *Glick & Dolleck v Tri-Pac Export Corp*, 22 NY2d 439, 441 [1968] [denial of summary judgment appropriate where an issue is "arguable"]; *Sosa v 46th Street Develop. LLC*, 101 AD3d 490, 493 [1st Dept 2012]). The burden is on the movant to make a *prima facie* showing of entitlement to judgment as a matter of law by presenting evidence in admissible form demonstrating the absence of any disputed material facts. Once the movant has made this showing, the burden then shifts to the opponent to establish, through

competent evidence, that there is a material issue of fact that warrants a trial (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

Citibank urges that it is entitled to summary judgment based on the presumption-of-payment doctrine¹ because it established that more than 20 years passed from plaintiff's right to enforce the CD and circumstances making it impossible for plaintiff to rebut the presumption by clear and convincing evidence. Citibank points out, for example, that plaintiff's limited income over the years tends to fortify the presumption as do the facts that (1) plaintiff provided conflicting accounts of how she found the CD, (2) she has no evidence of interest income from the CD over the decades (including lack of any 1099-INT statements), (3) she has forgotten a lot of details and (4) her testimony about her financial circumstances is contradicted by her children's testimony (see

¹ 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]). "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).

Supplemental Reply Memorandum [Citi Reply] at 1-2, 8-10). According to Citibank, these factors, considered along with Citibank's understandable lack of records after the passage of over three decades and the lack of any proof that the funds were turned over to the New York State Office of Unclaimed Funds, compel an award of summary judgment in its favor.

In opposition, plaintiff relies on the original CD that is in her possession and her sworn testimony that neither she, nor her children, nor anyone on her behalf presented the CD to Citibank for payment. She further affirms that she has not been paid any of the funds due nor has she assigned the right to payment pursuant to the CD (Luan Affidavit at ¶¶ 5, 8-9).

Although the law recognizes a presumption of payment, Ms. Lin's testimony that the CD was never redeemed along with the original CD constitutes proof sufficient to potentially overcome the presumption. Contrary to Citibank's argument (Citibank Reply at 8), since the inception of this action Ms. Lin has consistently maintained that she never redeemed the CD (see e.g. Affirmation in Support, Exs. 3 and 4 ## 11-12). If jurors believe Ms. Lin, it is possible that they could conclude that it is highly probable that what she claims is what actually happened. Citibank asks that the case not be presented to a jury because the aggregate of inconsistencies and contradictions "raise enough doubts about [Ms. Lin's]

credibility, memory or both, [allowing the Court] to conclude that plaintiff's opposition" fails as a matter of law to present the requisite clear and convincing evidence (Citi Reply at 10). It is not for the Court, however, to weigh the evidence or assess credibility. In the end, it is up to the jury to determine whether it is highly probable that Ms. Lin's account is accurate, taking into account the applicable presumption, the parties' evidence and their arguments.

Motion Sequence Number 06

In motion sequence number 06, Ms. Lin, who is over 70 years old, moves for a trial preference based on her age (see CPLR 3403[a][4]). Citibank does not substantively dispute Ms. Lin's entitlement to a trial preference; rather, it points out that the motion was made belatedly. The motion is granted despite the fact that it did not accompany the note of issue. Citibank's motion for summary judgment has been pending until this Decision resolved it; therefore, the case was not ready for trial until now and there has been no prejudice whatsoever as a result of the delay in moving for relief to which Ms. Lin is absolutely entitled.

Accordingly, it is

ORDERED that defendant's motion for summary judgment (seq. no. 05) is DENIED; it is further

ORDERED that plaintiff's motion for a trial preference (sequence number 06) is GRANTED; and it is further

ORDERED that, as soon as possible (to ensure that the preference is expeditiously processed), counsel for the plaintiff shall serve a copy of this Order upon the Clerk of the Trial Support Office (60 Centre Street, Room 158), who is hereby directed to place this case on the trial calendar at the head of said calendar except for actions in which a preference was previously granted.

This constitutes the Decision and Order of the Court.

Dated: May 24, 2016



HON. JENNIFER G. SCHECTER