

SLM Private Credit Student Loan Trust 2004-A v Bonet
2018 NY Slip Op 31507(U)
July 10, 2018
Supreme Court, Bronx County
Docket Number: CV-1651-14/BX
Judge: Sabrina B. Kraus
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: PART 32-C

SLM PRIVATE CREDIT STUDENT LOAN
TRUST 2004-A

Plaintiff,

HON. SABRINA B. KRAUS

-against-

DECISION & ORDER
Index No.: CV-1651-14/BX

SHEILA BONET

Defendant

X

BACKGROUND

This action was commenced by Plaintiff against seeking a judgment in the amount of \$9,405.14, based on the allegation that Defendant failed to repay a student loan.¹

The summons and complaint were filed on January 29, 2014. Defendant appeared *pro se* on March 7, 2014, and filed an answer asserting financial hardship and that her sole source of income was SSI.

An initial court date was set for April 3, 2014. Defendant was represented on a number of court appearances by New York Legal Assistance Group (NYLAG) through the Volunteer Lawyer for the Day (VLFD), Consumer Credit Project.

On May 8, 2014, Defendant's motion for leave to serve an amended answer was granted on consent. The amended answer asserts a general denial, disputes the amount of the debt, lack of standing, breach of contract, and other defenses.

¹ The court notes that four separate actions were filed by Plaintiff against Defendant in Bronx County Civil Court in 2014 under Index Numbers CV-1655-14, CV-1651-14, CV 1666-14, and CV 1656-14.

On December 4, 2014, Plaintiff moved for summary judgment. The motion was denied by the court (McShan, J) on September 15, 2015, pursuant to a twelve page typed decision [49 Misc3d 1209(A)] that addressed both parties contentions regarding the issues of standing, and statute of limitations. Judge McShan held that Plaintiff failed to meet its *prima facie* burden in establishing judgment as a matter of law, and that there were questions of fact which had to be resolved at trial pertaining to the issues of standing, capacity to sue and statute of limitations. The court held that Defendant waived the affirmative defense of lack of capacity to sue because it was not raised in either of her answers.

As to the issue of statute of limitations, the court held in pertinent part:

.... Plaintiff did not address the Defendant's statute of limitations arguments. The Court notes that if the Plaintiff establishes its standing as disputed above, Delaware's statute of limitation of three years will be applicable. It will be the Plaintiff's burden to establish that this proceeding is not barred by the statute of limitations as the Defendant preserved the affirmative defense in her answer. The court is unable to determine if the activities included on the Plaintiff's ledger after the charge off date tolled the statute of limitations. Accordingly, the Court reserves decision on dismissing this matter pursuant to CPLR 3212(b) until after the Plaintiff presents its case-in-chief at the trial in this matter.

On October 5, 2015, NYLAG filed a formal notice of appearance on behalf of Defendant. A trial date had been set for September 17, 2015, and was adjourned for trial to November 9, 2015.

On November 9, 2015, all four pending actions between the parties, including the case at bar, were marked off calendar for Plaintiff to file a notice of trial, as both parties were now formally represented by counsel.

Notwithstanding Judge McShan's prior holding in the September 15, 2015 order that Defendant was not entitled to summary judgment on the statute of limitations defense, on

October 26, 2015, Defendant moved for summary judgment based on its claim that the statute of limitations had expired.

Judge McShan issued an order dated September 15, 2017, denying the motion, which held in pertinent part “(a)lthough this Court cannot determine the applicable statute of limitations as previously held in its Decision dated September 14, 2015, should the trial court determine that Plaintiff has standing to maintain the instant action and that Delaware’s statute of limitations applies, the Court finds that Delaware’s applicable statute of limitations for promissory notes is six years.”

THE PENDING MOTION

On July 10, 2018, Defendant moved for a second time for summary judgment, as well as for relief pursuant to CPLR § 3126(3) and CPLR § 3124 based on her claim that Plaintiff has not complied with outstanding discovery. On the return date, the parties appeared and submitted opposition and reply papers and the court reserved decision.

DEFENDANT’S SECOND MOTION FOR SUMMARY JUDGMENT IS DENIED

It is well settled that parties may not make successive motions for summary judgment absent a showing of sufficient cause.

Parties will not be permitted to make successive fragmentary attacks upon a cause of action but must assert all available grounds when moving for summary judgment. There can be no reservation of any issue to be used upon any subsequent motion for summary judgment. A court, upon a motion for summary judgment, must examine all of the facts presented by the affidavits, pleadings and documents and decide whether a triable issue is raised. Once having done so, a court may not on a subsequent motion consider matter which a party has withheld or failed to urge as a ground for granting summary judgment theretofore denied. The denial of the original motion for summary judgment established the law of the case and required the denial of the subsequent motion in the circumstances herein.

[*Levitz v. Robbins Music Corp.*, 17 A.D.2d 801, 801 (1962)]. No such cause or new evidence is asserted by Defendant herein, in fact Defendant acknowledges that “(t)he instant motion is based entirely on the documentary evidence Plaintiff provided in support of its motion for summary judgment (Rosenthal, 6/19/18 *Aff in Support*, Par 32).” Additionally, Judge McShan’s prior decision held that the issue of standing raised material issues of fact which must be determined at trial. This is now law of the case.

Based on the foregoing, Defendant’s second motion for summary judgment is denied.

DEFENDANTS MOTION FOR RELIEF PURSUANT TO CPLR 3126 IS DENIED

Defendant moves pursuant to CPLR § 3126(3), seeking to strike Plaintiff’s pleading for failure to comply with discovery. Specifically, Defendant asserts the responses provided by Plaintiff to Defendant’s interrogatories are “patently insufficient” and demonstrate Plaintiff’s “unwillingness and inability to provide information that is necessary and relevant to this case.”

CPLR §3126(3) provides that where a party wilfully fails to disclose information which the court finds ought to have been disclosed, the court may grant appropriate relief including the striking of a pleading. However, striking a pleading is a drastic remedy and Defendant has failed to demonstrate Plaintiff’s answers were willfully insufficient, or that their conduct was contumacious. Rather the appropriate relief under the circumstances is a motion to compel pursuant to CPLR § 3124 (*JR Stevenson Corp v Dormitory Authority of State of NY* 112 AD2d 113).

DEFENDANT’S MOTION TO COMPEL PLAINTIFF TO PROPERLY AND FULLY ANSWER INTERROGATORIES IS GRANTED

CPLR § 3101 provides for “.... full disclosure of all matter material and necessary in prosecution or defense of an action.”

CPLR §3124 provides that where a party fails to respond to interrogatories, the party seeking disclosure may move to compel compliance or a response.

The court agrees that Plaintiff has failed to completely answer the interrogatories and therefore Defendant’s motion to compel complete responses pursuant to CPLR § 3124 is granted.

Defendant’s request for more detailed responses to 7 out of the 25 interrogatories is reasonable. Plaintiff is hereby ordered to respond to Defendant’s December 4, 2017, request for complete responses to interrogatories 5, 7, 11, 15, 18, 19, and 23. Plaintiff is directed to comply with this request within 45 days of receipt of this order.

CONCLUSION

Based on the foregoing, Defendant’s motion to compel is granted to the extent provided above and all other relief sought in the motion is denied.

This constitutes the decision and order of the court.

Dated: Bronx, New York
July 10, 2018

Hon. Sabrina B. Kraus, JCC

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