

Regions Bank v Moore
2018 NY Slip Op 31710(U)
March 26, 2018
Supreme Court, New York County
Docket Number: 156532/2017
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 32

-----X
REGIONS BANK,

Plaintiff,

-against-

DONALD E. MOORE,

Defendant.

----- X

The motion to dismiss the counterclaims is granted.

Index No. 156532/2017
Motion Seq: 001

DECISION & ORDER

HON. ARLENE P. BLUTH

Background

On September 4, 2007, defendant, Dr. Donald E. Moore and his son, Kwame Moore obtained a home equity line of credit, secured by Kwame’s home, from plaintiff, Regions Bank (“Regions”). The loan was in the principal amount of \$40,000.00. Dr. Moore now claims he believed it to be a business loan for his son. Dr. Moore and his son signed a “Credit Agreement and Disclosure” contract which reflected that loan. In 2011, monthly payments ceased being made and the loan went into default.

On July 20, 2017, Regions filed this action against Dr. Moore to recover the total amount of \$41,204.21 due and owing based on the alleged breach of contract. Dr. Moore does not deny that he is a signatory to the contract, he does not deny that the money was lent and he does not deny that the loan has not been repaid.

Dr. Moore contends that he was defrauded by Regions and characterizes the contract as “unfair” and “unconscionable”. Dr. Moore claims that Regions committed misconduct including: 1) recording him as the principal borrower of the loan without his knowledge (as he

claims he believed he was a co-signor), 2) securing the loan against Florida real estate in which Dr. Moore holds no interest (the home of his son, another borrower), 3) allowing its loan officer to submit a false affidavit which swore that Dr. Moore was present for the contract closing in Florida (when he claims he was in New York) and 4) using a loan disbursement document that contains Dr. Moore's forged signature. Dr. Moore also asserts the challenged counterclaims:

- a. [Dr. Moore's] credit was damaged since 2011
- b. [Dr. Moore] is a Medical Doctor with his own private practice and has lost several opportunities for business since 2007 because of a poor credit score.
- c. [Dr. Moore's] loss consist[s] of opportunities to better his medical practice/personal gains by obtaining credit were denied
- d. [Dr. Moore] was lied about, treated unfair and unjust. [Regions Bank] created a contract out of deceit and fraud
- e. Regions Bank recovery department has pursued this debt with great force pestering [Dr. Moore] with calls to his medical practice since 2011"

(answer at 6 ¶ A). Dr. Moore also sought relief of \$100,000.00 and court costs.

Regions now moves to dismiss the counterclaims. In an effort to reasonably frame its response, Regions construes the unclear counterclaims as asserting four causes of action: 1) violation of the FCRA, 2) tortious interference with prospective economic advantage, 3) fraud and 4) violations of the FDCPA and/or undefined New York State consumer protection laws. Regions argues dismissal is proper because of Dr. Moore's failure to articulate material facts in support of the legal elements to each counterclaim and for otherwise being time-barred.

In his opposition papers, Dr. Moore basically incorporates the allegations contained in his answer. In support of his contention that Regions partook in fraudulent misconduct, Dr. Moore submits a "Disbursement Request and Authorization" document containing his alleged forged signature (*see* affidavit in opposition, exh "G"). Dr. Moore also submits a computerized print out of his "Appointments Detail Report" and a hand written prescription he issued to his patient (*id.*

at exhs “D” and “E”) as proof that he was in his New York medical office on the day the loan closing was held – and not Florida.

Discussion

“On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction. We accept the facts as alleged in the [pleading] as true, accord [the proponent of the pleading] the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*Leon v Martinez*, 84 NY2d 83, 87-88, 614 NYS2d 972 [1994] [citations omitted]). “At the same time, however, allegations consisting of bare legal conclusions . . . are not entitled to any such consideration” (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 141, 75 NE3d 1159 [2017] [citation and internal quotations omitted]).

Here, none of Dr. Moore’s counterclaims state a claim. Even when liberally construing Dr. Moore’s counterclaims, accepting the facts alleged in support of his counterclaims as true, and according Dr. Moore the benefit of every possible inference, his allegations do not support any cognizable cause of action.

For instance, if this Court were to treat Dr. Moore’s allegations as serving as a basis for a fraud counterclaim, it fails because he did not allege the essential elements of fraud; “a material misrepresentation of a fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the [proponent] and damages” (*Eurycleia Partners, LP v Seward & Kissel, LLP*, 12 NY3d 553, 559, 910 NE2d 976, 979 [2009] [citations omitted]) and fails to articulate the circumstances underlying his fraud counterclaim with requisite particularity (*id.*). Even taking

into consideration any additional submissions in Dr. Moore's affidavit in opposition to the motion (*see Big Apple Car, Inc. v City of New York*, 204 AD2d 109, 111, 611 NYS2d 533, 534 [1st Dept 1994]), he does not adequately plead fraud. Dr. Moore merely alleges that Regions committed fraud in that there are "discrepancies" surrounding the contract — that Dr. Moore was unaware of his role in the agreement and loan documents contain untrue information.

Dr. Moore does not expressly allege that Regions was aware of these "discrepancies" at the time of the execution of the contract and hid them from him before or at the time of execution.¹ Nor does Dr. Moore explicitly claim that he was induced to enter into the contract because of such concealment. In addition, it is not clear upon what factual grounds Dr. Moore is premising his claim for damages. Dr. Moore contends "Regions Bank caused foreclosure to appear on Dr. Moore's credit reports for many years despite knowing that this [foreclosed Florida property] was not his . . ." (affidavit in opposition at 3). However, he does not show how his credit suffered if, as he claims, someone else's property secured the loan. Moreover, Dr. Moore does not specify what damages arose from this alleged fraud that are separate and apart from the consequences of not honoring his alleged obligations and paying back the loan. He simply alleges that he has sustained an "unusually low" credit score and lost "several" business opportunities. But a low credit score and missed opportunities happen when people default and fail to repay their loans, a default to which Dr. Moore admits.

As to Regions' argument that Dr. Moore's counterclaims are time-barred, this Court cannot discern what Dr. Moore's counterclaims are and thus it is impossible to know which dates

¹ This court notes that Dr. Moore asserts "Regions bank has purposely concealed the details of these fraudulent activities for the past 10 years" as a defense to Regions' argument that his claims are time-barred (*see* affidavit in opposition at 7), not as part of his argument in proving fraud.

are intended to support which claims. The counterclaims are dismissed because they do not state a claim, not because they are stated too late.

Summary

As set forth above, this Court grants Regions' motion and dismisses Dr. Moore's counterclaims. Dr. Moore's contention that he was only a co-signor does not preclude Regions' right to collect from him because as a co-signor, he undertook the responsibility to pay the loan (see e.g. *McGoldrick v Family Fin. Corp.*, 287 NY 535, 538, 41 NE2d 86, 88 [1942]). Likewise, Dr. Moore's acknowledgment that he signed the contract for the purpose of enabling his son to get the loan undercuts his allegation that he never received any loan disbursements from Regions— of course the monies would go to his son and not to him.

Accordingly, it is hereby

ORDERED that the motion is granted and defendant's counterclaims are dismissed.

Preliminary Conference July 17, 2018, room 432 at 2:15 PM.

This is the Decision and Order of the Court.

Dated: March 26, 2018
New York, New York



ARLENE P. BLUTH, JSC

ARLENE P. BLUTH
J.S.C.