JP Morgan Chase Funding Inc. v Hehman
2019 NY Slip Op 30543(U)
March 4, 2019
Supreme Court, New York County
Docket Number: 653040/2016
Judge: Carol R. Edmead
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

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JP MORGAN CHASE FUNDING INC.,

Plaintiff,

-against-

RICHARD ALLEN HEHMAN,

Defendant.

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DECISION AND ORDER
Index No.: 653040/2016
Motion Sequence 004

CAROL R. EDMEAD, J.S.C.:

MEMORANDUM DECISION

This is an action for, *inter alia*, breach of contract.

In motion sequence 004, plaintiff JP Morgan Chase Funding Inc. ("JPMC Funding"), moves pursuant to CPLR 3212 for summary judgment on the second, third, and fourth causes of action in its Complaint. In reply, defendant Richard Allen Hehman ("Hehman") opposes the motion. For the reasons set forth below, the Court grants JPMC Funding's motion in its entirety.

BACKGROUND FACTS

In June 2000, Hehmen, an employee of JP Morgan Chase & Co. ("JPMC"), entered as a partner into a private equity investment program known as the 2000 MD Investment Program ("Investment Program"). The offer to participate in the Investment Program was made pursuant to the terms of an offering memorandum ("Offering Memorandum"). Participation in the Investment Program was established by purchasing a limited partner interest in Sixty Wall Street Fund, L.P. ("Partnership") (NYSCEF doc No. 65 at 3-4). In December 2000, JPMC Funding, the designated lender for the Investment program, extended to Hehman a Full Recourse Loan totaling $16,949.76 (*id.* at 9). Based on the performance of the investments in the annual

program, Hehman's share of the program's investment proceeds proved insufficient to repay his Full Recourse Loan, and thus, he became obligated to repay the loan. Hehman's Full Recourse Loan matured on June 9, 2010 and accordingly, the full amount ($16,949.76, plus interest of $9,386.20) became due and payable (*id.* at 10).

When Hehman failed to make any payment despite demands made, JPMC Funding commenced this action alleging: (1) breach of contract; (2) breach of implied contract; (3) money lent; (4) unjust enrichment; and (5) account stated. Hehman filed his answer ("Answer") asserting affirmative defenses and counterclaims against JPMC Funding, including breach of contract, unjust enrichment, harassment, fraud, and indemnification, as well as a third-party complaint against JPMC.

On May 31, 2017, this Court issued an order dismissing Hehman's counterclaims and affirmative defenses against JPMC Funding, as well as the-third party complaint against JPMC (NYSCEF doc No. 46). In his counterclaims, Hehman had argued that the execution of a Separation Agreement when he left JPMC's employment released him from liability for the Full Recourse Loan. However, this Court found that the agreement only encompassed claims and causes of action existing at the time of the agreement, and as Hehman's loan became due after the agreement was signed, the agreement did not pertain to the Full Recourse Loan.

On December 4, 2018, JPMC Funding moved for summary judgment on its second, third, and fourth claims against Hehman, which respectively are breach of implied contract, money lent, and unjust enrichment.[1] JPMC Funding contends it is owed the principal amount of $16,949.76, plus interest that accrued prior to June 10, 2010 totaling $9,386.20, as well as

[1] Per its memorandum in support of its motion, JPMC Funding does not move for summary judgment on its causes of action for breach of contract and account stated, as it is unable to locate the exact loan note that would form the basis of a breach of contract claim, and there are issues of fact regarding whether Hehman received all notices for demand of payment.

interest that has continued to accrue since then at the statutory rate of 9%, which as of the date of its motion totaled $20,142.28 (NYSCEF doc No. 65 at 11).

DISCUSSION

Summary judgment is granted when "the proponent makes 'a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact,' and the opponent fails to rebut that showing" (*Brandy B. v Eden Cent. School Dist.*, 15 NY3d 297, 302 [2010], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Once the proponent has made a prima facie showing, the burden then shifts to the motion's opponent to "present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact" (*Mazurek v Metropolitan Museum of Art*, 27 AD3d 227, 228 [1st Dept 2006], citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *see also, DeRosa v City of New York*, 30 AD3d 323, 325 [1st Dept 2006]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]; *Grossman v Amalgamated Hous. Corp.*, 298 AD2d 224, 226 [1st Dept 2002]). When the proponent fails to make a *prima facie* showing, the court must deny the motion, *"'regardless of the sufficiency of the opposing papers'"* (*Smalls v AJI Indus., Inc.*, 10 NY3d 733, 735 [2008], quoting *Alvarez,* 68 NY2d at 324).

Regarding its cause of action for breach of implied contract, JPMC Funding argues that an implied contract in fact can be definitively established by its course of dealing with Hehman. The elements of an implied-in-fact contract are the same as the elements of an express contract: "consideration, mutual assent, legal capacity and legal subject matter" (*Maas v Cornell Univ.*, 94 NY2d 87, 93–94 [1999]). Conduct of the parties may manifest assent, and "a promise may be implied when a court may justifiably infer that the promise would have been explicitly made, had

attention been drawn to it" (*id.* at 94). A contract implied in fact is just as binding on parties as an express contract, since "in the law there is no distinction between agreements made by words and those by conduct." (*Jemzura v Jemzura*, 36 NY2d 496, 503-04 [1975]). Here, there is ample undisputed documentary evidence that JPMC Funding offered Hehman a Full Recourse Loan under the Investment Agreement, thereby creating an implied contract in fact between the parties (NYSCEF doc No. 65 at 13-14). While an explicit written contract has not been produced, the clear course of dealing between the parties indicates that the Full Recourse Loan was meant to function as a contract (*See A & S Welding & Boiler Repair, Inc. v Seigel*, 93 AD2d 712, 712, [1st Dep't 1983]). As Hehman, by his own admission, refused to repay the loan due to the Separation Agreement, he is necessarily in breach of the implied contract. JPMC Funding's showing of entitlement under its cause of action for money lent is thus simultaneously satisfied, as all a plaintiff must prove in such an action is that "defendant owes a sum of money lent" (*Manufacturers Hanover Trust Company* v *Chemical Bank*, 160 AD2d 113, 124 [1st Dept 1990]).

JPMC Funding also moves for summary judgment on its claim for unjust enrichment. A cause of action for unjust enrichment arises when one party possesses money or obtains a benefit that in equity and good conscience they should not have obtained or possessed because it rightfully belongs to another *(see Parsa v State of New York,* 64 NY2d 143, 148 [1984]). In order to state a claim of unjust enrichment, a plaintiff must allege that he or she "conferred a benefit upon the defendant, and that the defendant will obtain such benefit without adequately compensating plaintiff therefor" (*Nakamura v Fuji*, 253 AD2d 387, 390 [1st Dept 1998]). The essential inquiry in any action for unjust enrichment or restitution is whether it is against equity and good conscience to permit the defendant to retain what is sought to be recovered (*Mandarin Trading Ltd. v Wildenstein*, 65 AD3d 448 [1st Dept 2009].

Here, JPMC Funding has unequivocally demonstrated that Hehman was enriched through his participation in the voluntary Investment Program. The failure of Hehman to repay his Full Recourse loan satisfies the elements of an unjust enrichment claim, as "the essence of unjust enrichment is that one party has received money or a benefit at the expense of another which, in good conscience, ought to be returned" (*Carriafielio-Diehl & Assocs., Inc. v. D & M Elec. Contracting, Inc.*, 12 A.D.3d 478, 479, [2004], citing *Wolf v National Council of Young Israel,* 264 AD2d 416 [1999]; *Fandy Corp. v Chang,* 272 AD2d 369 [2000]; *Bugarsky v Marcantonio,* 254 AD2d 384 [1998]). It is true that unjust enrichment is a quasi-contractual remedy that cannot be enforced when there is "a valid and enforceable written contract governing [the] particular subject matter" *(Clark- Fitzpatrick, Inc. v. Long Island R.R. Co.*, 70 NY2d 382, 388 [1987]. However, as JPMC Funding is only moving for summary judgment on its breach of implied contract claim and has not submitted the original loan agreement as a written contract, the unjust enrichment claim may still be granted.

While Hehman has submitted an opposition to this motion, his arguments are unpersuasive. Hehman argues that he was released from his obligation to repay the Recourse Loan under the Separation Agreement when he left JPMC's employment, and that there is a question of fact regarding whether JPMC Funding was a party to the agreement (NYSCEF doc No. 93 at 4). However, this Court has already addressed those claims in its dismissal of Hehman's affirmative defenses and counterclaims. There, this Court held that "when the Separation Agreement was executed, JPMC Funding did not have an existing claim or cause of action against Hehman for the Full Recourse Loan. Since the Release Provision only encompasses claims and causes of action existing at any time *prior* to the execution of the Separation Agreement, the Release Provision does not encompass the Full Recourse Loan"

(NYSCEF doc No. 57 at 13). This Court further noted that even if the Separation Agreement did somehow include the Full Recourse Loan, the agreement "unambiguously" identified only JPMC as a party, not any subsidiaries or affiliates (*id.* at 14). This Court therefore determined as a matter of law that JPMC Funding was not bound by the agreement. Hehman also argues that enforcement of the agreement in JPMC Funding's favor is inequitable, citing to *Johnson v Lebanese Am. Univ.* for the proposition that a release agreement cannot be used against an employee who has a "take-it-or-leave-it" choice of signing the document or not receiving previously earned benefits and wages (84 AD3d 427, 431 [1st Dept 2011]. However, this Court already determined that *Johnson* is inapplicable, as the payments here do not constitute prior wages and benefits.

JPMC Funding is thus correct that Hehman's argument in opposition must be disregarded under the "Law of the Case" doctrine. "The doctrine of law of the case contemplates that the parties had a full and fair opportunity to litigate when the initial determination was made" (*Chanice v Federal Exp. Corp.*, 118 AD3d 634, 2014 N.Y. Slip Op. 04853 *citing People v Evans*, 94 NY2d 499, 502 [2000]). "When applied, the doctrine precludes parties or their privies from relitigating an issue that has already been decided" (*see Chanice, supra, citing Carmona v Mathisson*, 92 AD3d 492, 493 [1st Dept. 2012]). The doctrine also precludes a party from resurrecting claims to oppose a summary judgment motion when they were already litigated as affirmative defenses and counterclaims in a prior motion (*see Evans* at 504; *RPG Consulting, Inc. v Zormati,* 82 AD3d 739, 740 [2d Dept. 2011] ("The doctrine 'applies only to legal determinations that were necessarily resolved on the merits in the prior decision' [...] and to the same questions presented in the same case") (internal citations omitted). As Hehman's

arguments have already been determined as a matter of law by this Court, his opposition does not introduce a cognizable claim against JPMC Funding's motion.

Hehman additionally argues that his previous counsel was negligent while representing him in the negotiation of the Separation Agreement. However, this is a non-sequitur of an argument that is wholly irrelevant to JPMC Funding's motion. As Hehman has not raised a single triable issue of fact regarding the motion, JPMC Funding's motion for summary judgment on its claims for breach of implied contract in fact, money lent, and unjust enrichment is granted.

CONCLUSION

Based on the foregoing, it is hereby

ORDERED that Plaintiff JP Morgan Chase Funding Inc.'s motion for summary judgment is granted in its entirety; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of Plaintiff JP Morgan Chase Funding Inc., and as against Defendant Richard Allen Hehman, in the amount of $26,335.96, plus pre-judgment interest at the statutory rate of 9% from June 9, 2010 together with costs, upon a submission of an appropriate bill of costs, and that Plaintiff has execution therefor; and it is further

ORDERED that counsel for Plaintiff shall serve a copy of this decision, along with notice of entry, on all parties within 10 days of entry.

Dated: March 4, 2019

HON. CAROL R. EDMEAD
J.S.C.