

<b>Hotelco Intl. Acquirements, LLC, v Tenriero</b>
2019 NY Slip Op 32033(U)
June 27, 2019
Supreme Court, New York County
Docket Number: 652831/18
Judge: Arthur F. Engoron
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 37

-----X  
HOTELCO INTERNATIONAL ACQUIREMENTS, LLC,  
A Delaware Limited Liability Company,

DECISION &  
ORDER

Plaintiff,

Index No.  
652831/18

- against -

TENRIERO, DANIEL,

Motion Seq.  
001

Defendant.  
-----X

**HON. ARTHUR ENGORON, J.S.C.**

In motion sequence 001, plaintiff Hotelco International Acquirements, LLC (Hotelco) moves pursuant to CPLR 3213 for summary judgment in lieu of complaint against defendant Daniel Tenriero (Tenriero).

CPLR 3213 provides that “[w]hen an action is based upon an instrument for the payment of money only or upon any judgment, the plaintiff may serve with the summons a notice of motion for summary judgment and the supporting papers in lieu of a complaint”. A plaintiff is prima facie entitled to summary judgment by “establishing the existence of an instrument for the payment of a sum certain and the defendant's failure to make the payments called for by the terms of that instrument” (*US Premium Fin. v Sage Equip. Leasing Corp.*, 122 AD3d 919, 920 [2d Dept 2014]). “Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986] [citation omitted]).

Hotelco is a business owned and operated by Walter Stipa Sprecase (Stipa) and his family, including his son-in-law, Luiz Hernandez (Hernandez) (Tenriero aff, ¶ 3). Hotelco, is the purchasing arm for Desarrollos Hotelco Aruba NV (Hotelco Aruba) and is allegedly a subsidiary

or affiliate of Hotelco Aruba (*id.* at ¶ 4). Hotelco Aruba is in the business of acquiring, developing, and operating hotels and other real estate properties in the Caribbean and Venezuela (*id.*).

Pursuant to a promissory note, dated February 10, 2016, Tenriero borrowed \$50,000 from Hotelco and agreed to repay Hotelco the principal plus 5% annual interest on or before August 10, 2016 (the Note) (Hernandez aff, exhibit A). The Note is an instrument for sum certain of money only and does not contain additional obligations between the parties (*id.*). In addition, Hotelco submits a cashed check, notated as for a “Personal Loan” as evidence that the funds were received by Tenriero (Hernandez reply aff, exhibit 3).

Tenriero, in his affidavit, does not dispute signing the Note or receiving \$50,000 after its execution. He also does not contend that he made any repayment on the Note (NYSCEF Doc. No. 10). Instead, Tenriero argues that no consideration was given for the Note and that he was fraudulently induced into executing the Note, by Hernandez, who represented that the Note “was not going to be used for any purpose but book keeping...” (*id.* at ¶ 24). Tenriero alleges that on February 10, 2016, when he met with Hernandez at the Hotelco offices, his understanding was that he was accepting \$50,000 in satisfaction of an outstanding invoice from 2013 and not as a personal loan (*id.* at ¶ 22). He alleges he only signed the Note “as a favor to a trusted relative” (*id.* at ¶ 24).

Tenriero contends that the \$50,000 was payment for services he rendered for Hotelco Aruba and invoiced on November 8, 2013 (*id.* at ¶¶ 11-17). Under their working relationship, Tenriero would procure certain fittings, fixtures, and furnishings for Hotelco Aruba and its affiliate companies for use in luxury renovations and would be compensated 20% of the cost of the items obtained (*id.* at ¶ 18). Pursuant to the invoice, Tenriero obtained items totaling \$253,496.55 resulting in a fee of \$50,695.31 (*id.* exhibit C). He alleges that although Hotelco

Aruba did not object to the invoice, it nonetheless refused to pay him until two years later, on February 10, 2016 (*id.* at ¶ 22).

Tenriero fails to raise a triable issue of fact that would defeat Hotelco's entitlement to summary judgment pursuant to CPLR 3213. Hotelco has established that the Note is an instrument for the payment of money only and that Tenriero failed to repay the loan pursuant to the terms of the Note. In addition, pursuant to the Section 9 of the Note, Hotelco is entitled to attorney's fees and costs (Hernandez aff, exhibit A, § 9). In addition, the invoice that is the subject of Tenriero's defense is addressed to Hotelco Aruba and not Hotelco (Tenriero aff, exhibit C).

On October 10, 2018, Tenriero submitted an email, dated November 11, 2013, from Stipa, the alleged owner of Hotelco Aruba, acknowledging the unpaid invoice after the motion's return date. Tenriero seeks to be excused for the delay on the basis that he did not have enough time to review his emails prior to the return date to include it with his opposition to the motion (NYSCEF Doc. No. 22, ¶ 3). Tenriero does not allege that he sought an adjournment or was denied an adjournment to submit his opposition.

This court finds that the letter is an impermissible sur-reply that this court cannot accept without a demonstration of good cause, which is absent here. As a result, the court cannot consider the letter in rendering its determination (*Traders Co. v AST Sportswear, Inc.*, 31 AD3d 276, 277 [1st 2006] ["Defendants also belatedly submitted papers containing a security deposit argument without demonstrating good cause which was improperly relied upon by the IAS court" [internal citation omitted]). Notwithstanding this decision, Tenriero may commence an action against Hotelco Aruba seeking payment of the invoice, if so advised.

Accordingly it is,

ORDERED that the motion is granted and the Clerk is directed to enter judgment in favor of plaintiff Hotelco International Acquirements, LLC against defendant Daniel Tenriero in the amount of \$50,000 together with 5% interest from February 10, 2013 until the date of entry of judgment, as calculated by the Clerk, and thereafter at the statutory rate, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs, and it is further

ORDERED that that portion of the plaintiff's action that seeks the recovery of attorney's fees is severed and the issue of the amount of reasonable attorney's fees that plaintiff may recover against the defendant Daniel Tenriero is referred to a Special Referee to hear and report; and it is further

ORDERED that counsel for the plaintiff shall, within 30 days from the date of this order, serve a copy of this order with notice of entry, together with a completed Information Sheet, upon the Special Referee Clerk in the General Clerk's Office (Room 119), who is directed to place this matter on the calendar of the Special Referee's Part for the earliest convenient date; and it is further

ORDERED that such service upon the Special Referee Clerk shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)).

Dated: 6/27/19

ENTER:



**HON. ARTHUR F. ENGORON**  
J.S.C.