

**Reifer v Venturine**

2019 NY Slip Op 32718(U)

September 12, 2019

Supreme Court, New York County

Docket Number: 657341/2017

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM

*Justice*

-----X

DANIEL REIFER

Plaintiff,

- v -

NANCY VENTURINE,

Defendant.

-----X

INDEX NO. 657341/2017

MOTION DATE 09/12/2019

MOTION SEQ. NO. 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65 were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER

The issue before the court on defendant Nancy Venturine’s motion for summary judgment is whether a certain check issued to Ms. Venturine by the plaintiff, Daniel Reifer, was intended to be a loan or an additional payment for the sale of Ms. Venturine’s interest in a partnership and other compensation to which she alleges she was entitled. Because there are issues of fact regarding the purpose for which the check was given, the motion for summary judgment is denied.

**FACTS RELEVANT TO THE MOTION**

On or about July 1, 2015, Mr. Reifer issued a check in the amount of \$500,000 to Ms. Venturine (Complaint, ¶ 5; Livingstone Aff, Exhibit C). The memo section contained the notation “Metro Gardens Buyout” crossed out with the words “loan SR” written above (Livingston Aff, Exhibit C). Ms. Venturine endorsed the check and deposited it into her bank account on July 21, 2015 (Complaint, ¶ 7). By letter dated November 15, 2017, Mr. Reifer demanded repayment in full of

the entire \$500,000, which he alleges was intended to be a loan (*id.*, ¶ 9). Ms. Venturina has not made any payments to Mr. Reifer toward the balance allegedly due and owing (*id.*, ¶ 10).

Mr. Reifer alleges that he gave the check to Ms. Venturine pursuant to an oral agreement for an interest-free loan of \$500,000 (Complaint, ¶ 5). He alleges that the loan had an open-ended term and no set time or schedule for repayment, and that it was agreed that the loan was to be repaid “promptly after the loan was issued” (*id.*). That is, Mr. Reifer clarifies that the money was originally intended as payment for the purchase of a portion of Ms. Venturine’s interest in Metro Gardens Associates, L.P. (**Metro Gardens**), and that the check was converted to a loan after Ms. Venturine informed Stanley Reifer that she did not want to sell her interest in Metro Gardens (Pl. Mem. in Opp., at 5).

Ms. Venturine tells a very different story. The check, she contends, was not a loan at all, but payment for her interest in a certain real estate partnership known as 2 Macon Street Associates, L.P. (**2 Macon**) (Def.’s Mem. in Support, at 4). Ms. Venturine alleges that Mr. Reifer and his father, Stanley Reifer, were formerly partners with Ms. Venturine in several real estate partnerships, including 2 Macon (*id.*). She states that she sold her interest in 2 Macon to Mr. Reifer for \$750,000 without appraisal, but soon thereafter, she contacted Stanley Reifer and expressed her dissatisfaction with the amount of the payment (*id.*). Ms. Venturine alleges that Daniel and Stanley Reifer agreed that she should be given an additional \$250,000 for her interest (*id.*). Ms. Venturine states that Stanley Reifer also owed her \$325,000 out of a total distribution of \$650,000 from Metro Gardens, of which Ms. Venturine was a 50% partner (*id.*). According to Ms. Venturine, Stanley Reifer asked Daniel Reifer to loan him \$500,000 (*id.*). She alleges that

Daniel Reifer then gave Stanley Reifer a check for \$500,000 made payable to Ms. Venturine, reflecting the additional \$250,000 for the sale of her interest in 2 Macon and \$250,000 toward her half of the Metro Gardens distribution (*id.*, at 4-5).

Mr. Reifer commenced this action against Ms. Venturine for breach of contract seeking judgment in the amount of \$500,000, with interest. Ms. Venturine now moves for summary judgment dismissing the complaint in its entirety.

### DISCUSSION

Summary judgment will be granted only when the movant presents evidentiary proof in admissible form that there are no triable issues of material fact and that there is either no defense to the cause of action or that the cause of action or defense has no merit (CPLR § 3212 [b]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The proponent of a summary judgment motion carries the initial burden to make a *prima facie* showing of entitlement to judgment as a matter of law (*Alvarez*, 68 NY2d at 324). Failure to make such a showing requires denial of the motion (*id.*, citing *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). Once this showing is made, the burden shifts to the opposing party to produce evidence in admissible form sufficient to establish the existence of a triable issue of fact (*Alvarez*, 68 NY2d at 324).

The complaint alleges breach of an oral contract. To prevail on a cause of action for breach of contract, a plaintiff must allege (i) the existence of a valid contract, (ii) the plaintiff's performance, (iii) the defendant's breach, and (iv) resulting damages (*Second Source Funding, LLC v Yellowstone Capital, LLC*, 144 AD3d 445, 445-46 [1st Dept 2016]). In the case of a

purported oral agreement, the complaint must specifically allege that the plaintiff is relying on an oral agreement and must set forth all of the relevant terms (*Bomser v. Moyle*, 89 A.D.2d 202, 205, 455 N.Y.S.2d 12, 14 [1st Dept 1982]).

In support of her motion for summary judgment, Ms. Venturine submits a Closing Statement, dated October 22, 2018, between Metro Gardens as seller and 105 Realty 2018 LLC and Lukie 105 as purchasers (the **Metro Gardens Closing Statement**), which sets forth the purchase price and adjustments in connection with the sale of the premises known as 334-348 East 1105th Street, New York, NY LLC (NYSCEF Doc. No. 61), and a Distribution Sheet for Metro Gardens indicating a distribution to Ms. Venturine in the amount of \$2.5 million (the **Metro Gardens Distribution Sheet**) (NYSCEF Doc. No. 62). Ms. Venturine also submits a Closing Statement for a Second Mortgage, dated June 23, 2015, between Metro Gardens and Signature Bank (the **Second Mortgage Closing Sheet**), which sets forth the terms and conditions of the partnership's second mortgage with Signature Bank and sets forth the disbursements of the proceeds of the second mortgage (NYSCEF Doc. No. 3). A statement from signature bank (the **Signature Bank Statement**) for the bank account of Metro Gardens for the statement period from June 01, 2015 to June 30, 2015 illustrates that the sum of \$650,000 was wired from the account of Metro Gardens to an account of Stanley Reifer at JP Morgan Chase on June 24, 2015 (NYSCEF Doc. No. 64).

Based on this evidence, Ms. Venturine asserts that even if Mr. Reifer intended to buy a 4% interest in Metro Gardens, this interest would be valued at \$100,000, not \$500,000, and the check therefore could not have been for this purpose as the complaint alleges. However, the Closing

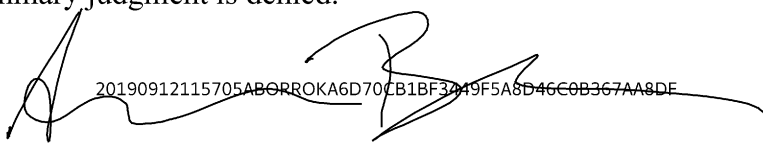
Statements, Distribution Sheet, and Bank Statement submitted by Ms. Venturine in support of her motion do not establish the purpose for which the check was given to her by Mr. Reifer. This evidence does not shed any light on whether there was a valid oral agreement for a loan in the amount of \$500,000 made by Mr. Reifer to Ms. Venturine to be repaid “promptly.”

In opposition to Ms. Venturine’s motion for summary judgment, Mr. Reifer submits an Assignment Agreement, dated January 1, 2015, by and among Ms. Venturine, Daniel Reifer, and Stanley Reifer (the **2 Macon Assignment**), to show that Ms. Venturine was entitled to payment of \$750,000 for her interest in 2 Macon (NYSCEF Doc. No. 52), and two checks from Daniel Reifer to Ms. Venturine totaling \$750,000 (the **2 Macon Checks**) (NYSCEF Doc. No. 53). Mr. Reifer also submits Ms. Venturine’s deposition testimony in which she admits to receiving payment in full for her interest in 2 Macon (Venturine Tr. at 41:21-23). The 2 Macon Assignment, 2 Macon Checks, and excerpt from Ms. Venturine’s deposition testimony merely establish that Ms. Venturine was paid in full for her interest in 2 Macon at the originally-agreed price of \$750,000. This is irrelevant, however, because Ms. Venturine does not dispute that she received the \$750,000. Rather, she alleges that Daniel and Stanley Reifer agreed that she had been underpaid for her interest in 2 Macon and \$250,000 of the \$500,000 check at issue was intended as additional compensation for her interest in 2 Macon above and beyond the \$750,000 already paid. In any event, and most significantly, the \$500,000 check with the memo “loan” was endorsed by Ms. Venturine and deposited in her account.

There are issues of fact as to whether the parties had an oral agreement for a \$500,000 loan or whether the check was intended as additional compensation to Ms. Venturine for her interest in 2 Macon and partial payment of her share of a distribution from Metro Gardens.

Accordingly, it is

ORDERED that the defendant's motion for summary judgment is denied.

  
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9/12/2019  
DATE

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ANDREW BORROK, J.S.C.

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	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
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