

<b>Dabah v Global Sec.Tech., LL</b>
2020 NY Slip Op 31206(U)
April 24, 2020
Supreme Court, Kings County
Docket Number: 517245/2018
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: CIVIL TERM: COMMERCIAL PART 8

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VICTOR DABAH,

Plaintiff,

Decision and Order

-against-

April 24, 2020

Index #517245/2018

GLOBAL SECURITY TECHNOLOGIES, LL, & VICTOR  
FRANCO,

Defendants,

-----X

PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved seeking partial summary judgement pursuant to CPLR §3212. The defendants have opposed the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court makes the following determination.

There is no dispute that the plaintiff loaned the defendant \$270,000 from April 2011 through May 2012 and that the defendants have only repaid \$20,000. Thus, the plaintiff claims he is owed \$250,000 and has instituted this lawsuit seeking, essentially, repayment of the loan. The plaintiff has now moved seeking summary judgement arguing there are no questions of fact the money is owed and that the defendants have defaulted. The defendants argue there are questions of fact concerning all the terms of the loan and the motion should be denied.

Conclusions of Law

Summary judgement may be granted where the movant establishes sufficient evidence which would compel the court to grant judgement in his or her favor as a matter of law (Zuckerman v. City of New York, 49 NY2d 557, 427 NYS2d 595 [1980]). Summary judgement would thus be appropriate where no right of action exists foreclosing the continuation of the lawsuit.

The defendants do not deny they owe \$250,000 to the plaintiff. They rather argue that the loan is not yet in default thus no interest can accrue and summary judgement is inappropriate at this time. Indeed, Victor Franco, the managing member of defendant Global Security Technologies LLC stated in an affidavit that the plaintiff was a ten percent owner of the defendant company and that "at the time that the loans were made, it was understood by all parties that the loans were made without interest" and that it was understood by all parties that GST, did not have the ability to pay back loans at the time and that repayment would be made when the company had the financial ability to do so" (see, Affidavit of Victor Franco, dated February 7, 2020, ¶¶7,8). Even if such an understanding implies a reasonable time as argued by the plaintiff and that such reasonable time can be decided as a matter of law that is only true when the facts are undisputed. In this case

considering the relationship between the parties and the fact the plaintiff and his family members are owners of the defendant corporation there are questions whether a reasonable time has elapsed making the defendant in default under the loan agreement. It is true the funds were loaned eight years ago, however, no evidence has been introduced whether the repayment was ever sought at any point in the past eight years. The complaint does state that the money was requested in May 2014, December 2014 and December 2016 (see, Verified Complaint, ¶¶18, 19, 21) however, there is no evidence corroborating those allegations. A motion for summary judgement requires an affidavit from a party with facts, the pleadings and other available proof (S.J. Capelin Associates Inc., v. Globe Manufacturing Corp., 34 NY2d 338, 357 NYS2d 478 [1974]). Therefore, the Verified Complaint without any other proof is insufficient to eliminate all questions of fact.

Therefore, the nature of the relationship between the parties must be explored to determine whether the failure to pay over the past eight years was not reasonable and thus constituted a default. At this juncture the court cannot conclude as a matter of law that the plaintiff's failure to pay was not reasonable and that consequently a default has occurred.

Therefore, the motion seeking partial summary judgement is denied.

So ordered.

ENTER:

Dated: April 24, 2020  
Brooklyn, N.Y.

  
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Hon. Leon Ruchelsman  
JSC