

<b>Knote Holding Corp. v Simon</b>
2020 NY Slip Op 31235(U)
April 22, 2020
Supreme Court, Kings County
Docket Number: 523542/2019
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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KNOTE HOLDING CORP.,

Plaintiff,

Decision and Order  
April 22, 2020  
Index #523542/2019

-against-

JONATHAN SIMON & MATTHEW BARON,

Defendants,

-----X  
PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved pursuant to CPLR §3213 seeking summary judgement in lieu of a complaint. The defendant has opposed the motion. Papers were submitted by the plaintiff and arguments held. After reviewing all the arguments this court now makes the following determination.

On May 14, 2018 the plaintiff and the defendants entered into an agreement whereby the defendants agreed to pay the plaintiff \$1,145,122 if the plaintiff agreed to vacate premises located at 12 Franklin Street in Kings County. The defendants executed a promissory note to the plaintiff requiring full payment by April 12, 2019. As of October 28, 2019 the defendants have not paid pursuant to the promissory note and this lawsuit and this motion has been filed. The plaintiff argues they are entitled to summary judgement since there are no issues of fact they are entitled to the amount, plus interest, pursuant to the promissory note. The defendants oppose the

motion arguing that indeed there are questions of fact which foreclose a summary determination at this time.

Conclusions of Law

It is well settled that in order to be entitled to judgement as a matter of law pursuant to CPLR §3213 the movant must demonstrate that the other party executed an instrument that contains an unequivocal and unconditional promise to repay the party upon demand or at a definite time and the party failed to pay according to the terms of the instrument (Mirham v. Awad, 131 AD3d 1211, 17 NYS3d 473 [2d Dept., 2015]). A promissory note is an instrument for the payment of money only and when sufficient evidence is presented concerning the circumstances upon which it was given then a §3213 motion is appropriate (Kim v. Il Yeon Kwon, 144 AD3d 754, 41 NYS3d 68 [2d Dept., 2016]). Thus, the movant must establish the instrument is "facially incontestable" (J. Juhn Associates, Inc., v. 3625 Oxford Avenue Associates L.P., 8 Misc3d 1009(A), 801 NYS2d 778 [Supreme Court Nassau County 2005]). Therefore, where a defendant can raise questions of fact the notes were not instruments for the payment of money only then summary judgement must be denied (Farca v. Farca, 216 AD2d 520, 628 NYS2d 782 [2d Dept., 1995]).

In this case the defendants argue the plaintiff never maintained a certificate of occupancy as required by the lease. That breach, argues the defendants, further constituted a breach under a separate termination agreement whereby the plaintiff promised to vacate the premises by a certain date in return for payment by the defendants. That agreement states that "in the event that Tenant shall default under any material terms and conditions of the Lease, Tenant acknowledges and agrees that Tenant shall forfeit any rights to the Vacate Payment" (see, Confidential Termination and Surrender Agreement, dated May 14, 2018, ¶8). The defendants assert that agreement was "inextricably linked with the Promissory Note" (see, Memorandum of Law in Opposition, page 6). Consequently, the defendants argue they have raised a bona fide defense and the motion must be denied.

The case of Kim v. II Yeon Kwon, 144 AD3d 754, 41 NYS3d 68 [2d Dept., 2016] is instructive. In that case a party, the defendant there, executed a promissory note and failed to pay pursuant to its terms. The defendant argued it maintained a defense, namely the plaintiff's breach of a partnership agreement. The court rejected that argument finding that was an invalid defense. Specifically, the court noted the mere breach of a separate agreement without presenting any evidence

challenging the validity of the agreement or without evidence of fraud was an insufficient basis to raise any questions of fact regarding the promissory note's unconditional obligation to pay. Again, in Mehta v. Mehta, 168 AD3d 716, 90 NYS3d 306 [2d Dept., 2019] the court held that "extrinsic matters predating the execution of the note were not relevant to the issue" of liability on the note. Further, in Margarella v. Ullian, 164 AD3d 898, 83 NYS3d 569 [2d Dept., 2018]) the court held that "the promissory note was not 'inextricably intertwined' with certain other allegedly related agreements the parties entered into, such that any breach of the allegedly related agreements by the plaintiffs may create a defense to payment on the promissory note" (id). The court explained this was true because the obligations under the note were "absolute and unconditional" therefore the promissory note was enforceable regardless of any other agreements that were entered into between the parties.

In this case the plaintiff has surely presented prima facie evidence it is entitled to summary judgement since it has presented uncontroverted evidence of the note, an obligation to pay and evidence of non-payment (Loewenberg v. Basnight, 172 AD3d 1356, 99 NYS3d 661 [2d Dept., 2019]). As noted, the opposition that plaintiff breached an extrinsic agreement fails

to raise any question of fact since the breach of any other agreement does not provide a defense of non-payment based upon the specific provisions of the promissory note (see, Porat v. Rybina, 177 AD3d 632, 111 NYS3d 625 [2d Dept., 2019]).

Therefore, based on the foregoing the motion seeking summary judgement is consequently granted.

So ordered.

ENTER:

Dated: April 22, 2020  
Brooklyn, N.Y.

  
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Hon. Leon Ruchelstein  
JSC