Medallion Bank v Abes Serv. Corp.
2020 NY Slip Op 33215(U)
September 30, 2020
Supreme Court, New York County
Docket Number: 653004/2019
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **IAS MOTION 14**

Justice

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MEDALLION BANK, MEDALLION FINANCIAL CORP., TAXI MEDALLION LOAN TRUST III,

Plaintiff,

- v -

ABES SERVICE CORP., ABI CAB CORP., ABRALO SERVICE CORP., AMALO SERVICE CORP., AVILIE SERVICE INC.,AVISAR HACKING CORP., CALANIT SERVICE CO., INC.,CHARLIE HACKING CORP., JUMP SERVICE CO., INC.,LOMON HACKING CORP., RUCKMAN HACKING CORP., SAVILO SERVICE CORP., SAVION SERVICE CO., INC.,SONNET SERVICE CO., INC.,WILD FLOWER CAB CORP., ABRAHAM ISRAEL, SALOMON ISRAEL, SHALOM ISRAEL

Defendant.

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INDEX NO. 653004/2019

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 188, 189, 190, 191, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230

were read on this motion to/for JUDGMENT - SUMMARY.

The motion for *inter alia* summary judgment and for a default judgment against the non-answering defendants is granted. The cross-motion by the answering defendants ("defendants") is denied. All claims against defendant Salomon Israel are stayed in this Court, as he has declared bankruptcy.

Background

Plaintiffs bring this case for a money judgment against defendants based on defendants' breach of loan and guaranty agreements related to taxi medallions. Plaintiffs also seek recovery of the medallions. Plaintiffs argue that defendants failed to pay the full amount due on the maturity date of March 1, 2019.

In opposition and in support of their cross-motion to compel, defendant Abraham Israel notes that defendants have had a longstanding business relationship with plaintiffs. He observes that the loans with plaintiffs were structured as short-term loans with low interest payments amortized over many years and had a large balloon payment on the maturity date. Mr. Israel contends that, in the past, as each maturity date approached, plaintiffs would always agree to refinance the loan and enter into a new agreement and plaintiffs would generate substantial fees from the refinancing.

He admits that the loans were refinanced to have a maturity date of March 1, 2019. Mr. Israel insists that as this maturity date approached, he spoke with plaintiffs about a new agreement and argues that the maturity date was supposed to be extended to March 1, 2022. He observes that defendants continued to make payments to plaintiffs even after the March 1, 2019 maturity date despite the fact that there was no formal documentation of the revised loan agreement. Mr. Israel claims that plaintiffs' promises to restructure the agreement were a fraud, no new loan agreement was entered into and this lawsuit was then commenced.

In reply, plaintiffs explain that they didn't enter into another loan agreement because defendant procured a loan with a separate credit union for $5 million and this encumbered a significant portion of potential collateral for the loans. Plaintiffs state that they were unable identify sufficient collateral to modify the loans again and made a business decision to not

renegotiate the loans. They also note that defendants had liabilities to other entities and plaintiffs ultimately decided that they would declare a default when defendants failed to make the payments on the maturity date.

Discussion

To be entitled to the remedy of summary judgment, the moving party "must make 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 from the case" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*id.*). When deciding a summary judgment motion, the court views the alleged facts in the light most favorable to the non-moving party (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492, 955 NYS2d 589 [1st Dept 2012]).

Once a movant meets its initial burden, the burden shifts to the opponent, who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 560, 427 NYS2d 595 [1980]). The court's task in deciding a summary judgment motion is to determine whether there are bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505, 942 NYS2d 13 [2012]). If the court is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied (*Tronlone v Lac d'Amiante Du Quebec, Ltee*, 297 AD2d 528, 528-29, 747 NYS2d 79 [1st Dept 2002], *affd* 99 NY2d 647, 760 NYS2d 96 [2003]).

As an initial matter, as plaintiffs point out, defendants do not dispute the fact that they entered into the loan agreements that are the subject of this lawsuit nor do they deny failing to

make the required payment upon maturity of the loans. Instead, defendants spend the majority of their memo of law in opposition decrying the unfortunate state of taxi medallions in New York City. Defendants claim that plaintiffs have fraudulently induced owners and drivers by artificially inflating medallion prices and entering into "exploitative loans." Defendants point to a purported investigation into taxi medallion loan practices and characterize themselves as victims.

The Court recognizes that the taxi medallion industry is in a downward spiral as the availability of for-hire and ride sharing options abound. But the collapse of an industry does not, by itself, provide a defense to a clear contractual agreement. As defendants admit, they have done business with plaintiffs for over a decade and the loan agreements were always the same: small monthly interest payments that included a substantial payment due upon the maturity date. And on every previous occasion, plaintiffs agreed to refinance the loan and put off the maturity date. But on this occasion, plaintiffs decided not to modify. Defendants' shock and disagreement with that decision is not a defense to their failure to make the required payments under the loans.

The Court rejects defendant's conclusory assertions that the loans were based on fraud and bad faith. Both sides agree that the monthly payments were low. The fact that plaintiffs may have continued to accept these monthly payments after the maturity date is not a basis to invalidate the agreement when considering that the language of the loans expressly required that a modification of the loan must be in writing (*see* Section 10 of the Note Modification Agreement for the loans in plaintiffs' exhibits 1, 6, 11, 16, 21, 26, 31, 36, 41, 46, 51, 56, 61, 66, 71). There was no automatic renewal if a monthly payment was made after the loan became due; certainly, defendants would be entitled to a credit for all payments made toward the balloon

amount due. Defendants do not indicate the dates of these alleged payments or offer their own calculation of the amount due. And, of course, there is no evidence that the full balloon payments were made.

While defendants insist that they could have sought other refinancing if they knew plaintiffs were going to decline to modify the loans, that is mere speculation. Defendants were well aware of the maturity date. They chose to take a calculated risk to continue operating as if the loans would be modified again after the maturity date had passed instead of getting other financing prior to the maturity date.

Claiming that plaintiffs prevented them from seeking out other options is not a sufficient defense; under that theory, plaintiffs' willingness to consider a modification would constitute an oral modification. The Court cannot inject such a provision into the parties' contracts that does not exist. Plus, General Obligations Law §5-1103 requires a writing signed by the parties in order to modify an obligation without consideration.

The Court also observes that the maturity date was March 1, 2019 and this case was commenced on May 20, 2019. This is not a case where plaintiffs sat on their right to declare the loans due for years; a claim of waiver or partial performance is meritless under these circumstances.

Plaintiffs attach the affidavit of Thomas J. Munson in reply, who asserts that the parties were engaged in discussions about refinancing the loans at issue and claims that while these negotiations were ongoing, defendants got a loan that encumbered a property owned by one of the limited liability companies of which certain defendants were owners (NSYCEF Doc. No. 228, ¶ 4). Mr. Munson claims that plaintiffs assumed the existing mortgage on this property

back in 2010 (*id*.). He claims that plaintiffs decided against another loan modification in part because the property was no longer available as sufficient collateral to modify the loans (*id*. ¶ 5).

In other words, plaintiffs made a business decision not to modify loans, where millions of dollars in balloon payments were due, because they thought there was not enough collateral – the collateral they expected was pledged to someone else. It is not this Court's role to assess the wisdom of that decision or to deny the motion because it may disagree with plaintiffs' negotiation tactics. The Court can only consider the facts presented on this motion. And the undisputed facts here are that the loans came due, defendants did not make the balloon payments as required and plaintiffs offered a reasonable justification for why it decided not to modify loans that it had previously refinanced on many previous occasions.

The Court cannot make plaintiffs a party to an agreement that they never signed despite the fact that they may have been in negotiations to extend the maturity date to 2022. As discussed above, the doctrines of waiver or partial performance are inapplicable here. Plaintiffs did not forfeit their right to seek the millions they are owed because a few small monthly payments were made while the parties explored a potential loan modification.

And while defendants may be correct that plaintiffs' refusal to "roll these loans over" could throw the entire taxicab industry into chaos, this Court is not a legislative body. It cannot rewrite contracts sua sponte because it may harm an industry. The Court must enforce a clear and unambiguous contract entered into between sophisticated parties that had worked together on numerous prior agreements.

The Court denies the cross-motion because no discovery is necessary. Plaintiffs clearly established that there was a valid loan agreement and that defendants breached it; defendants, having admitted that they signed the agreements and that they failed to pay the amounts due,

failed to raise an issue of fact in opposition. There is no need for discovery when plaintiffs have demonstrated their entitlement to the relief requested.

The Court observes that contrary to defendants' assertions, plaintiff admits it is not seeking any right to default interest (NYSCEF Doc. No. 221 at 15) and is merely seeking to collect at the contractual rate of 4.5 percent. The Court also finds that plaintiffs have established their standing to bring this case (*see* plaintiff's exhibits 3-5, 13-15, 18-20, 23-25, 58-60).

With respect to attorneys' fees, the Court finds that a hearing must be held to determine the reasonable amount of fees to be awarded to plaintiffs. However, the Court finds that plaintiffs are not entitled to recover legal fees for the bankruptcy case from this Court. There is no basis cited for how plaintiffs could recover legal fees from another proceeding in the instant case. The portions of the promissory note cited in the memorandum of law in reply (NYSCEF Doc. No. 221 at 16-17) support a claim for reasonable attorneys' fees as part of the "costs of collection." Plaintiffs do not explain how a bankruptcy proceeding purportedly involving defendant Salomon Israel is part of the costs of collection related to these loans. Nothing herein prevents plaintiffs from seeking those fees from the bankruptcy court.

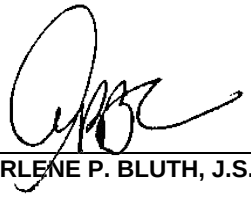
Accordingly, it is hereby

ORDERED that the motion for summary judgment against defendants Abes Service Corp. Abralo Service Corp., Amalo Service Corp., Avilie Service Inc., Savilo Service Corp., Abraham Israel and Shalom Israel and for a default judgment against ABI Cab Corp., Avisar Hacking Corp., Calanit Service Co., Inc., Charlie Hacking Corp., Jump Service Co., Inc., Lomon Hacking Corp., Ruckman Hacking Corp., Savion Service Co., Inc., Sonnet Service Co., Inc., and Wild Flower Cab Corp., is granted; and it is further

ORDERED that the claims against Salomon Israel are stayed in this Court; if they are resolved in the bankruptcy court, then plaintiffs may move in this Court for a hearing to determine attorneys' fees. If the claims against Salomon Israel return to this Court, then the hearing for attorneys' fees will be held after everything is resolved; and it is further

ORDERED that plaintiff is directed to upload a new proposed order and judgment in accordance with this decision within 7 days (to be in place of the proposed order submitted along with the moving papers).

Remote Conference: March 16, 2021.



9/30/2020
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
	X	GRANTED	DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER		X	SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE