Medallion Bank v Makridis
2021 NY Slip Op 30033(U)
January 6, 2021
Supreme Court, New York County
Docket Number: 657581/2019
Judge: Arlene P. Bluth

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

Plaintiff,

- v -

PETER MAKRIDIS, aka PANAGIOTIS MAKRIDIS,

Defendant.

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INDEX NO. 657581/2019

MOTION DATE 12/18/2020

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33

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

The motion for summary judgment by plaintiff is granted.

Background

Plaintiff seeks recovery based on the breach of a loan agreement by defendant. It claims that defendant failed to pay the amount due on the maturity date, June 9, 2019, and it is entitled to $577,038.50, plus attorneys' fees as well as a taxi medallion which was pledged as collateral for the loan. Plaintiff explains why each of defendant's twenty affirmative defenses should be rejected.

In opposition, defendant asserts that there are numerous issues of fact that require discovery. He insists that plaintiff made "unsustainable loans" in an effort to obtain a sizeable portion of the taxicab medallion market, which led to the collapse of the medallion market. Defendant claims that this unexpected collapse in the value of taxi medallions and the ongoing pandemic renders it impossible for defendant and others like him to repay their loans. He claims that he should have the opportunity to review the records upon which plaintiff has calculated the

amount due. Defendant asserts that plaintiff is seeking a windfall—all the money due under the note and "the valuable medallion."

With respect to the numerous affirmative defenses, defendant claims that there is a viable equitable estoppel claim (sixth affirmative defense). He also maintains that there are triable issues of fact with respect to whether plaintiff's own action decimated the value of the medallion (fourteenth affirmative defense) and that this same issue relates to the seventh, eighth, ninth, eleventh and twelfth affirmative defenses.

Defendant also insists that the impossibility doctrine (the tenth affirmative defense) compels denial of the motion because of the collapse of the taxicab industry. Similarly, this doctrine relates to the fourteenth affirmative defense concerning the inability of defendant and other similar borrowers to repay loans. Defendant's argument is that his performance under the note should be discharged because he could not have anticipated the sharp decline in the taxicab market.

In reply, plaintiff explains how it calculated the amount it seeks and agrees to waive its right to unpaid late fees and miscellaneous fees. Also attached is a payment history setting forth the amount due (NYSCEF Doc. No. 33).

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]).

The Court observes that defendant does not dispute the fact that he entered into the loan, accepted the money, made some payments and then defaulted. Instead, his broader claim is that he should not have to pay back the money he borrowed because of the collapse of the taxicab medallion industry. Defendant's affidavit admits he borrowed $600,000 and that the term of the note was extended for two years but blames plaintiff for not agreeing to another extension (NYSCEF Doc. No. 28).

As an initial matter, the Court is unable to find an issue of fact with respect to plaintiff's conduct as it relates to the taxicab medallion market. Defendant's assertions are unsupported and, even if true, are belied by his other claims. On the one hand, defendant asserts that plaintiff manipulated the market by refusing to extend his loan and the loans of other borrowers. At the same time, however, defendant blames the rise of rideshare apps such as Uber and the ongoing pandemic as reasons for why the medallion industry has plummeted. If all those forces reduced

the value of a medallion, then the Court is unable to find that defendant has raised an issue of fact with respect to whether he should be excused from the loan because of plaintiff's conduct.

Also ignored by defendant's theory is the fact that plaintiff was entitled to recover on the loan. It may be industry practice to regularly extend the life of a loan. But the refusal to do so is not a basis to deny plaintiff's motion. The fact is that defendant defaulted on the loan and plaintiff was permitted to bring this case.

While the Court understands that the value of taxi medallions has been decimated for various reasons, that does not excuse defendant of his obligation. Under that theory, the recipient of a loan could simply walk away if the business he or she works in experiences a dramatic downturn. Such a rule would insert a provision into every loan that it need not be repaid if the borrower faces financial difficulties. That contravenes centuries of contract jurisprudence. Sometimes industries struggle or even disappear altogether. Those unfortunate events do not absolve a borrower from repaying loans simply because he or she intended to repay the loans with proceeds from working in that industry.

The Court also rejects defendant's reliance on the impossibility doctrine. "Impossibility excuses a party's performance only when the destruction of the subject matter of the contract or the means of performance makes performance objectively impossible. Moreover, the impossibility must be produced by an unanticipated event that could not have been foreseen or guarded against in the contract" (*Kel Kim Corp. v Cent. Markets, Inc.*, 70 NY2d 900, 902, 524 NYS2d 384 [1987]).

Here, there is no basis to find that the subject matter of the contract was destroyed. Plaintiff loaned money and defendant has not paid it back. That defendant may have counted on the continued viability of the taxicab market to repay the loan is not a viable affirmative defense

nor is it an issue of fact. It is an unfortunate circumstance, but people borrow money all the time with the expectation that their business will be able to generate the funds to repay the loan and sometimes it does not work out. And specifically with respect to taxicabs, which remain omnipresent in New York City, the Court recognizes that rideshare apps have infused significant competition into the market. But while the value of medallions has certainly plummeted, they do have value. Even according to defendant, the medallion is still "valuable" (NYSCEF Doc. No. 27 at 2). In fact, defendant claims it would be a windfall if plaintiff were permitted to recover both the amount due and the medallion.

With respect to the pandemic, the Court finds that it is irrelevant to this case. Plaintiff alleges that the default occurred in June 2019, long before the ongoing pandemic ravaged the United States.

Finally, the Court rejects defendant's claims that the amount plaintiff seeks is unsupported. After defendant argued that plaintiff's moving papers did not make clear how plaintiff calculated the amount due, plaintiff attached the payment history in reply (NYSCEF Doc. No. 33). Plaintiff was entitled to do so in reply after defendant raised this objection. The payment history clearly supports the amount due.

The Court also awards plaintiff reasonable attorneys' fees in the amount of $4,556.00. Although a hearing is generally held to determine the amount of reasonable legal fees, plaintiff attached the invoices (NYSCEF Doc. No. 18), defendant did not object to the amount and the amount sought is inherently reasonable.

Accordingly, it is hereby

ORDERED that the motion for summary judgment by plaintiff is granted, the affirmative defenses asserted by defendants are severed and dismissed and the Clerk is directed to enter

judgment in favor of plaintiff in the amount of $547,243.55 plus interest from September 9, 2020, $4,556.00 in reasonable legal fees along with costs and disbursements upon presentation of proper papers therefor; and it is further

ORDERED that plaintiff shall have immediate and permanent possession of the New York City Taxi Medallion No. 5F80 from defendant and defendant shall deliver the medallion to plaintiff or assist plaintiff in obtaining the medallion within 14 days; and it is further

ORDERED that if defendant fails to deliver the medallion to plaintiff within 14 days, the sheriff or other authorized official of any county where the medallion is located shall seize the medallion and deliver it to plaintiff without bond and the sheriff or other authorized official may enter and search for the medallion at 28-40 210th Place, Bayside, New York, 11360.

01/06/2021
DATE

ARLENE P. BLUTH, J.S.C.

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