

Red Pine Hospitality Partners LLC v Shtromandel
2021 NY Slip Op 31352(U)
April 9, 2021
Supreme Court, Kings County
Docket Number: 501521/21
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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RED PINE HOSPITALITY PARTNERS LLC,
Plaintiff, Decision and order

- against - Index No. 501521/21

ALEC SHTROMANDEL,
Defendant, April 9, 2021

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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 parties and arguments held. After reviewing all the arguments this court now makes the following determination.

The defendant, Alec Shtromandel executed a promissory note to the plaintiff for \$788,250 on January 19, 2019. Thus, the language of the note states that "FOR VALUE RECEIVED, as of the date of this Note (the "Funding Date"), the undersigned, ALEC SHTROMANDEL, an individual, having an address 611 Degraw Street, Brooklyn, NY ("Maker") promises to pay to the order of RED PINE HOSPITALITY PARTNERS LLC, a Delaware limited liability company...the principal sum of SEVEN HUNDRED EIGHTY EIGHT THOUSAND TWO HUNDRED FIFTY AND NO/100 DOLLARS" (see, Promissory Note, page 1). The note required interest only payments through July 31, 2020 with principal and interest payments thereafter until July 31, 2025. The plaintiff made payments through July 2020 and some payments through October 2020 but has not made any

payments since. Thus, in total the plaintiff seeks summary judgement concerning the amount owed plus interest pursuant to the terms of the note.

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 efforts to raise questions of fact the defendant presents

numerous arguments. First, he contends there is no evidence any money was ever loaned to him and in fact argues that indeed no money was ever loaned to him. Further, he argues there was no consideration regarding the note and that no notice was given concerning the acceleration of the note.

First, the defendant does not dispute that he signed the note, rather, he disputes the funds were never delivered to him following such execution. However, the plaintiff has presented evidence the defendant actually made payments pursuant to the loan. Thus, there can be no question of fact whether the funds were made available to the defendant. Likewise, there can be no question of consideration since, as noted, there is no question of fact the defendant was given the amount contained in the note.

Further, there is no merit to the argument there are questions whether the defendant was ever notified of the acceleration. The note specifically states that the "holder shall the right, at Holder's option to accelerate the loan" (see, Promissory Note, ¶ 8). There is no requirement the holder must notify the maker prior to acceleration. Thus, any failure to so notify the defendant does not raise any question of fact concerning the fact there has been a default.

The defendant further argues he only signed the note under duress. First, as noted, the defendant made significant interest only payments prior to defaulting undermining any claim of duress. More importantly, the defense raised was only supported by the defendant's conclusory allegations which are insufficient to defeat the plaintiff's motion for summary judgement (Quest Commercial LLC v.

Rovner, 35 AD3d 576, 825 NYS2d 766 [2d Dept., 2006])).

Lastly, the defendant argues the note is not an instrument for the payment of money only since the note contains a conversion to equity option whereby the maker had the option to sell his interest in a certain LLC in exchange for amounts owed. Thus, where the maker expresses interest in such conversion the "holder shall have the right to elect to convert the then outstanding principal balance of this Note to an equity interest in 611 Degraw LLC, in lieu of demanding repayment, at an equity valuation of 611 Degraw LLC" to be determined pursuant to further terms (see, Promissory Note, ¶ 13). However, that option does not mean the note is an instrument other than for the payment of money. Moreover, the defendant merges that argument with further arguments there are questions of fact about the loan since the plaintiff is owned by defendant's attorney and also is a part owner of 611 Degraw LLC which created a conflict of interest. However, the note itself expressly waives "any conflict of interest in connection with the negotiation of this Promissory Note whether apparent, actual or potential and...waives, releases and surrenders any and all claims or defenses pertaining to the enforcement of this Promissory Note that a conflict of interest exists or that it was not represented by counsel in connection with the execution of this Promissory Note or it entered the Promissory Note without understanding its legal terms or binding effect" (Promissory Note, ¶ 11(c)).

Consequently, there are no issues that exist regarding any conflict of interest regarding counsel. Moreover, these issues have nothing to do with the express terms of the note which clearly demonstrate a requirement for the payment of money.

Therefore, based on the foregoing the motion seeking summary judgement in lieu of a complaint is granted. The precise amount owed including interest might require further analysis. If the parties cannot agree upon the precise amount owed the parties may reach out to the court without the need for further motion practice.

So ordered.

ENTER:

DATED: April 9, 2021
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC