

Golden Nugget Atl. City LLC v Chan

2021 NY Slip Op 32396(U)

October 27, 2021

Supreme Court, New York County

Docket Number: Index No. 656657/2020

Judge: Arlene P. Bluth

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE BLUTH PART 14

Justice

-----X

GOLDEN NUGGET ATLANTIC CITY LLC

Plaintiff,

- v -

WAYNE CHAN,

Defendant.

-----X

INDEX NO. 656657/2020

MOTION DATE 10/25/2021

MOTION SEQ. NO. 001 002 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 19, 20, 21, 22, 23, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 48, 49, 50, 51, 52, 53

were read on this motion to/for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 24, 25, 46

were read on this motion to/for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 26, 27, 30, 31, 33, 47

were read on this motion to/for SUMMARY JUDGMENT.

Motion Sequence Numbers 001, 002, and 003 are consolidated for disposition.¹

The motion by plaintiff for summary judgment is granted as to liability.

Background

Plaintiff contends this case is an ordinary collection case. It insists that defendant applied for a credit line in order to gamble at plaintiff's casino. Plaintiff argues that this agreement required defendant to be responsible for paying all credits, chips and cash extended by plaintiff to defendant. It insists that defendant issued a counter check to pay his balance but the check was

¹ It appears that when plaintiff filed amended notices of motion, it (for some reason) created new sequence numbers all of which seek the same thing. Therefore, the Court will assume there is a single motion before the Court for summary judgment rather than three separate motions for the same relief.

dishonored by defendant's bank. Plaintiff now seeks to recover the \$200,000 it claims it is owed.

In opposition, defendant claims that plaintiff has brought this case prematurely and points out that there is a pending federal court case (commenced by defendant). Defendant claims that plaintiff violated a host of New Jersey statutes by scribing dice used by defendant to play craps and by using non-transparent dice. Defendant asserts that his affirmative defenses are currently before a federal court in New Jersey and therefore plaintiff's motion should be denied.

Defendant claims that plaintiff cannot recover because it did not satisfy its obligations under the credit agreement and so plaintiff is not entitled to relief on its breach of contract claim. He also argues that plaintiff did not attach copies of the bad checks despite mentioning they were attached to the motion.

In reply, plaintiff insists that defendant's answer does not contain a counterclaim and instead consists of 14 affirmative defenses. Plaintiff admits it forgot to attach the checks in its moving papers but claims that it is entitled to submit them in reply.

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 a 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 grants the motion. As an initial matter, the Court observes that plaintiff's moving papers are a complete mess. Plaintiff filed three separate motions for the same relief. And the affidavit of Mr. Capozzi (the collection manager) in support contends that he attached the agreement and the bad checks, but he did neither (NYSCEF Doc. No. 21). However, the Court can overlook this sloppy legal work because the agreement was uploaded under NYSCEF Doc. No. 7 and defendant does not contest the fact that he signed the agreement. Moreover, the checks were also included in NYSCEF Doc. No. 7 (even though plaintiff belatedly tried to upload them again in reply). Defendant does not deny issuing these checks or sufficiently challenge plaintiff's claims that they were bad checks. In fact, defendant did not submit an affidavit at all.

Instead, defendant's argument appears to be that plaintiff engaged in some sort of illegal conduct. But defendant did not adequately explain what that has to do with the fact that he owed plaintiff \$200,000 and then issued two bad checks to plaintiff. Moreover, the federal litigation cited by defendant seems to be against a different casino (NYSCEF Doc. Nos. 39 and 40). And,

as plaintiff points out, the answer does not contain any counterclaims. It merely includes fourteen affirmative defenses, none of which provide an adequate defense to the claim that defendant owes plaintiff \$200,000.

Simply put, defendant did not raise a material issue of fact in opposition. Defendant did not submit an affidavit in opposition denying that he signed the subject agreement, that he owes plaintiff \$200,000 or that he issued the bad checks. Therefore, plaintiff is entitled to summary judgment. However, the Court observes that all three causes of action (breach of contract, issuance of bad checks and unjust enrichment) seek the same amount: \$200,000. So plaintiff is entitled to that amount. Contrary to plaintiff's request, there is no need to hold a hearing as to the second and third causes of action.

The Court also denies plaintiff's request for legal fees as plaintiff did not submit any invoices or demand a specific amount of fees.

Accordingly, it is hereby

ORDERED that the motion by plaintiff for summary judgment is granted to the extent that defendant's affirmative defenses are severed and dismissed, and the Clerk is directed to enter judgment in favor of plaintiff and against defendant in the amount of \$200,000 plus interest from December 1, 2020 along with costs and disbursements upon presentation of proper papers therefor; and it is further

ORDERED that the request for legal fees is denied.



10/27/2021
DATE

ARLENE BLUTH, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
			<input type="checkbox"/>	OTHER	<input type="checkbox"/>
				REFERENCE	<input type="checkbox"/>