

Valley Natl. Bank v Paige One LLC

2021 NY Slip Op 32426(U)

June 11, 2021

Supreme Court, New York County

Docket Number: 657354/2017

Judge: Barry Ostrager

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. BARRY R. OSTRAGER PART IAS 61EFM

Justice

Form containing case details: VALLEY NATIONAL BANK, Plaintiff, - v - PAIGE ONE LLC, Defendant. Includes fields for INDEX NO. (657354/2017), MOTION DATE, MOTION SEQ. NO., and DECISION AFTER TRIAL.

HON. BARRY R. OSTRAGER

The trial of this 2017 case took place on June 10, 2021 on Microsoft Teams. Direct testimony was submitted by affidavit and each of the four witnesses who submitted detailed and comprehensive direct testimony affidavits presented themselves for cross-examination. For the reasons that follow the Court is entering judgment for the defendant dismissing the complaint.

The facts are largely undisputed. This action concerns plaintiff Valley National Bank's ("VNB") claim that defendant Paige One LLC ("Paige") is obligated to repurchase a defaulted loan to non-party Muspass Cab Corp. ("Muspass"), a fractional interest in which was transferred to VNB in an agreement dated May 24, 2017. The parties were previously bound by a Joint Participation Agreement dated June 28, 2016 pursuant to which Paige sold and assigned VNB an 88.461538% interest in the loan subject to an obligation by Paige to buyback VNB's interest in the Muspass loan if Muspass was in default for more than 90 days. Paige also was responsible for servicing the loan.

Commencing in December of 2016 the parties entered into negotiations for the sale by Paige to VNB of a portfolio of 17 fractional interests in loans representing a face value to Paige of \$250,000 for the nominal sum of \$1. The negotiations also included a pre-payment by Paige's

owner, Neil Greenbaum, of 50% of a \$13+ million-dollar collateralized loan for which Greenbaum was personally responsible. Paige's objective in the negotiations, clearly expressed in a December 22, 2016 email to Maria Gugliuzza of VNB was to sell Paige's interests in all of the loans for a nominal sum, eliminate any buyback provision Paige was subject to in any of the loans, and continue to service the loans for a negotiated fee. These objectives were clearly communicated to Ms. Gugliuzza and two of Ms. Gugliuzza's superiors at VNB. In connection with the negotiations, Ms. Gugliuzza requested certain financial information from Paige which was never entirely provided by Paige to VNB. Thus, on January 17, 2017 Ms. Gugliuzza advised Mr. Greenbaum and one of her superiors at VNB that "We are in the process of better analyzing those participation loans that have the buyback provision to finalize terms of any servicing agreement as pertains to assigning all loans to Valley." Ms. Gugliuzza concluded her January 17, 2017 email with a request for specific information relating to three loans that contained buyback provisions, including the Muspass loan. The requested financial information was not sent by Paige. Nevertheless, on February 2, 2017 Ms. Gugliuzza proposed to her superiors -- with a supporting analysis -- that

Given that Mr. Greenbaum is interested in stepping up on his loans and paying down the loans to 50%, it would be beneficial to the bank if we worked with Mr. Greenbaum on restructuring his loans now, as opposed to waiting for maturity in November 2019. Restructuring Mr. Greenberg's direct loans now would result in a large principal paydown, accelerating amortization (current loans are interest only until 11/20/19), and improve LTV [loan to value]. VNB's total Taxi Medallion portfolio would decrease by approximately \$6.6 MM. In return we would agree to the release of the buyback provision on the three participation loans, as we will seek credit enhancements to those loans at maturity.

Thereafter, Ms. Gugliuzza advised Mr. Greenbaum that she was seeking to secure "buy in from upper management on releasing the puts [buyback provisions]" but needed credit enhancements on the medallion loans. The parties and their attorneys continued a dialogue on all

aspects of the proposed transaction during the months of March, April, and early May of 2017. The testimonial and documentary evidence adduced at trial established that at no time during this period prior to May 24, 2017 did either party waiver from their internally discussed positions. Paige was desirous of eliminating the buyback provision and the senior management of VNB signed off on a memo from Ms. Gugliuzza, stating in part:

We have been approached by Neil Greenbaum with an offer to sell their participation shares in loans we participate in for a nominal fee of \$1 and replace the participation agreement with a servicing agreement. Borrower notes will be assigned to VNB for the full loan amount and the participation agreements terminated. It should be noted that there is a buyback provision on 3 of the 17 loans in our portfolio. This provision would require Paige One to buyback the loan if said loan remains in default for a period greater than 90 days. Notwithstanding the assignment and termination, we will retain the option to enforce the buyback provision for these loans.

Messrs. Greenbaum and Romoff of Paige testified creditably that “[a]t no point between the initial emails exchanged in December 2016 and January and February 2017 and the closing of Transaction on May 24, 2017...was there any indication, much less an acknowledgment or any Binding agreement, by Defendant that it had changed its position on requiring a release of the Buyback Obligation as a requirement of the transaction”.

Ms. Gugliuzza conceded on cross-examination that no one from Paige ever told her that Paige would proceed with the transaction without a release of the buyback provision. And, it is undisputed that Mr. Greenbaum paid down his outstanding loan by \$6.6 million which he had no obligation to do. In short, prior to May 24, 2017 the parties had not reached a meeting of the minds as to the terms of any transaction and each of the respective parties was proceeding toward documenting a transaction with a different set of expectations.

In early May, attorneys for the parties commenced the memorialization of the transaction for execution at a scheduled May 24, 2017 closing. Paige was represented by its in-house counsel Benjamin Fink, who testified at trial, and VNB was represented by its own attorney. The principals of both parties participated in the negotiations and it was agreed pre-closing that Paige's Sale and Assignment of the fractional interests in 17 loans would be reflected on a Schedule A. Critically, it was expressly agreed in a letter from Mr. Greenbaum to Eileen Sackman of VNB dated May 1, 2017 that:

Upon the execution of the Sale and Assignment Agreement, the Participation Agreements will be terminated with the mutual consent of the Parties, which the Parties acknowledge below. Notwithstanding the foregoing, *Valley shall retain the option to enforce the buyback provision of the Participation Agreement for those Loans designated as "Buyback Loans" in "Schedule A"*. The Participation Agreement for a Buyback Loan shall be reinstated only to the extent that Paige shall repurchase the Buyback Loan from Valley. (Emphasis added.)

On May 22, 2017 Barry Romoff of Paige forwarded the Schedule A to, among others, Neil G. Greenbaum, Maria Gugliuzza, Eileen Sackman, and Michael Riley. The attached Schedule A did not designate any of the 17 loans on Schedule A as "Buyback Loans". Thereafter, the closing of the Sale and Assignment took place on May 24, 2017 at which VNB was represented by Ms. Gugliuzza, Eileen Sackman, and Michael Riley. Also attending and signing the closing documents was Neil Greenbaum. Others from Paige attended the closing as well.

The day after the closing Ms Gugliuzza, realizing that the Schedule A did not designate any loans for repurchase, wrote Mr. Romoff requesting a "corrected" Schedule A. Mr. Romoff

eventually sent Ms. Gugliuzza an email attaching “what we have that was signed at closing”. Subsequent to the closing, the Muspass loan defaulted and VNB initiated this lawsuit after unsuccessfully requesting Paige to repurchase the loan.

The Sale and Purchase Agreement expressly states that the parties agreed that Paige “will irrevocably without recourse sell, transfer, and assign” Paige’s fractional interests in the 17 loans. The notarized Sale and Purchase Agreement was executed by Neil Greenbum on behalf of Paige and Eileen Sackman on behalf of VNB. VNB is bound by the clear and unambiguous provisions of its agreement with Paige. The intentions and expectations VNB had that are not reflected in the transactional documents executed by the parties cannot be enforced. VNB is a sophisticated party that had every opportunity to review and understand the agreement it executed. VNB’s complaint is dismissed with prejudice.

The Court wishes to again commend the counsel for both parties for their excellent oral and written advocacy. It was a pleasure for the Court to have such able and well-prepared counsel conducting this trial in an efficient and professional manner.

The above constitutes the Court’s findings of fact and conclusions of law.

Dated: June 11, 2021


BARRY R. OSTRAGER, J.S.C.