

Pentagon Fed. Credit Union v AMC Taxi Inc.
2022 NY Slip Op 30461(U)
February 8, 2022
Supreme Court, New York County
Docket Number: Index No. 652448/2021
Judge: Nancy M. Bannon
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. NANCY BANNON PART 42

Justice

-----X

PENTAGON FEDERAL CREDIT UNION, AS SUCCESSOR
BY MERGER TO PROGRESSIVE CREDIT UNION,

Plaintiff,

INDEX NO. 652448/2021

MOTION DATE 11/03/2022

MOTION SEQ. NO. 001

- v -

AMC TAXI INC., DENALI HACKING LLC, NATINAT
TRANSIT INC., HEART TRANSIT INC., JENNIFER
HACKING LLC, KING VICTOR TAXI CORP., MISIDA
TRANS CORP., NEROS HACKING LLC, NITI HACKING
LLC, RA HACKING LLC, RV HACKING LLC, REGIS CAB
CORP., CHUOXER LLC, and VICTOR FALLEK,

Defendants.

**DECISION + ORDER ON
MOTION**

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 72, 73, 74, 75, 76,
77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88

were read on this motion to/for DISMISS.

The plaintiff Pentagon Federal Credit Union, as Successor by Merger to Progressive Credit Union, (Pentagon) commenced this action against the defendants to recover damages for breach of certain promissory notes and guaranty agreements and replevin of the taxi medallions pledged as collateral for the notes. In their amended answer filed on July 22, 2021, the defendants interpose twelve affirmative defenses to the allegations in the complaint and four counterclaims sounding in (1) declaratory judgment declaring that the defendants are not in default under the subject loans and that the defendants' obligations thereunder are discharged as a result of the COVID-19 pandemic, (2) negligent misrepresentation, (3) breach of the duty of good faith and fair dealing, and (4) violation of General Business Law § 349. The plaintiff now moves pursuant to CPLR 3211(a)(1), (5), and (7) to dismiss the counterclaims based on defenses founded on documentary evidence, release, and for failure to state a cause of action. The defendants oppose the motion. The motion is granted.

Beginning in 2011, the plaintiff made a series of thirteen loans (the loans) to defendant Victor Fallek (Fallek) in the aggregate sum of \$12,200,00.00 to finance or refinance the purchase of certain New York City taxi medallions. The loans were guaranteed by the owners of the medallions, named as defendants herein, and secured by interests in the medallions. The promissory notes pursuant to which each of the thirteen loans were made were subsequently amended and/or extended on multiple occasions pursuant to various written

instruments that, together with the original notes, guaranties, security agreements, and related documents, comprise the loan documents (the Loan Documents).

In or around 2017, Fallek and his co-defendants executed letter agreements in connection with each loan (the Letter Extensions) wherein the defendants, *inter alia*, (1) acknowledged the outstanding balance due on each loan “without offset, defense, claim or counterclaim of any kind or nature whatsoever” and (2) agreed to “knowingly, voluntarily, intentionally, unconditionally and irrevocably waive, release and forever discharge [the plaintiff]...from all actions, causes of action, suits,...claims and demands whatsoever, in law, admiralty or equity against [the plaintiff] that [the defendants]...ever had, now have, or hereafter can, shall or may have for, upon by reason of any matter, cause or thing whatsoever from the beginning of the world to the date of this letter agreement, including any such actions, causes of action, suits,...claims and demands arising out of, relating to, or in connection with the Loan, the Loan Documents, or any security interest...in connection therewith...”

Additionally, in or around 2018, the defendants executed loan modification and extension agreements (the Modification Agreements) with respect to each loan. Within the meaning of the Modification Agreements, “Loan Obligors” are defined to include the defendants. “Lender” is defined as Progressive Credit Union. The Modification Agreements provide, in relevant part, as follows:

14. **Waiver and Release.**

a. Loan Obligors each acknowledge[], confirm[] and agree[] that no Loan Obligor has any offsets, defenses, claims or counterclaims against the Lender with respect to any of its/their respective liabilities and obligations under this Agreement or any other Loan Documents, and, to the extent that any Loan Obligor has any such claims under this Agreement or any other Loan Documents, said Loan Obligor affirmatively WAIVES and RENOUNCES such claims.

b. Further, each Loan Obligor hereby knowingly, voluntary, intentionally, unconditionally and irrevocably RELEASES and DISCHARGES the Lender and the Lender’s agents, servants, employees, officers, directors, members, shareholders, representatives, attorneys, participants, subsidiaries, parents, affiliates, or their respective successors and/or assigns (collectively, the “Lender Parties”) from all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, admiralty or equity against Lender or any Lender Parties that the Loan Obligors and/or its agents, servants, employees, officers, directors, members, shareholders, representatives, attorneys, participants, subsidiaries, parents, affiliates, or their respective successors and/or assigns ever had, now have, or hereafter can, shall or may have for, upon by reason of any matter, cause or thing whatsoever from the beginning of the world to the date of this Agreement, including any such actions, causes of action, suits, debts,

dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands arising out of, relating to, or in connection with the Loan, the Indebtedness, Collateral (or any security interest, lien or collateral granted to the Lender), the Loan Documents, this Agreement, or the transactions contemplated hereunder or thereunder, whether known or unknown as of the date hereof.

“Generally, ‘a valid release constitutes a complete bar to an action on a claim which is the subject of the release.’” Centro Empresarial Cempresa S.A. v America Movil, S.A.B. de C.V., 17 NY3d 269, 276 (2011) (quoting Global Mins. & Metals Corp. v. Holme, 35 AD3d 93, 98 [1st Dept. 2006]). Although the party against whom a claim is being asserted has the initial burden of establishing that it has been released from such claim pursuant to a clear and unambiguous agreement, “a signed release ‘shifts the burden of going forward ... to the [claimant] to show that there has been fraud, duress or some other fact which will be sufficient to void the release.’” Centro Empresarial Cempresa S.A. v América Móvil, S.A.B. de C.V., supra at 276 (quoting Fleming v Ponziani, 24 NY 2d 105, 111 [1969]).

Here, there is no dispute that the executed Letter Extensions and Modification Agreements contain language expressly releasing the defendants’ counterclaims against the plaintiff. However, the defendants aver that “the intentions of the parties were not reflected in the general terms of the release[s]” and that the releases, as applied, violate public policy. Specifically, the defendants aver that when they agreed to execute the releases, their expectation was that they would also receive future loan modifications because it is “routine and customary practice within the taxicab industry” and because it was “the common practice between the parties.” The defendants also cite to public press releases in which Pentagon, in the context of its 2019 merger with Progressive Credit Union, and after the defendants executed the Letter Extensions and Modification Agreements, purportedly suggested that it would give taxi drivers additional time to pay their loans.

The defendants’ allegations are devoid of any indication that fraud or duress was used by the plaintiff to secure the defendants’ releases. To be sure, no cause of action for fraud is even stated in the defendants’ amended answer. Moreover, the defendants identify no specific, material misrepresentation or omission made by the plaintiff or its predecessor to induce the defendants’ execution of any of the Letter Extensions or Modification Agreements. The defendants’ claim that they understood based on “custom” that they would receive subsequent modifications on the loans is belied by the Modification Agreements’ explicit provisions, in capital letters, that “LENDER IS UNDER NO OBLIGATION TO FURTHER MODIFY, EXTEND OR REFINANCE THE LOAN ON THE EXTENDED MATURITY DATE.”

As to the defendants’ general statements regarding public policy, New York courts have consistently held that broad releases such as the ones identified herein are enforceable to foreclose all claims, known or unknown, at the time of execution. See e.g., Centro Empresarial Cempresa S.A. v America Movil, S.A.B. de C.V., supra at 276 (“[A] release may encompass

unknown claims, including fraud claims, if the parties so intend and the agreement is fairly and knowingly made.” [internal quotation marks and citation omitted]; Friedman v Capital One Taxi Medallion Finance, 154 AD3d 498, 498-99 (1st Dept. 2017) (releases in loan extension agreement were enforceable against plaintiff taxi fleet operator); Graubard Mollen Dannel & Horowitz v Edelstein, 173 AD2d 230, 231 (1st Dept. 1991) (waiver of alleged fraud claim enforceable where defendants had “solicit[ed] and accept[ed] an extension of time to fulfill their obligations” under a loan and guaranty). In the absence of any allegation of fraud or other plausible indication that the defendants did not fairly and knowingly agree to release their claims, the defendants, who accepted the benefit of the plaintiff’s forbearance and extension of time to repay the loans, present no reason why the broad releases they executed in exchange for such benefit should not be enforced to bar their counterclaims.

For the foregoing reasons, the defendants’ counterclaims are subject to dismissal on the grounds of release, pursuant to CPLR 3211(a)(5). The court does not reach the plaintiff’s remaining contentions in support of dismissal.

Accordingly, it is

ORDERED that the plaintiff’s motion to dismiss the defendants’ counterclaims is granted, and the counterclaims are dismissed pursuant to CPLR 3211(a)(5); and it is further

ORDERED that the parties shall commence discovery and appear for a remote preliminary conference via Microsoft Teams on April 7, 2022, at 12:00 p.m.

This constitutes the Decision and Order of the court.


NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

2/8/2022
DATE

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