SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 14

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ARCADIS U.S., INC.

Plaintiff,

- v -

JOSEPH LAURIA,

Defendant.

INDEX NO. 652834/2019

MOTION DATE 03/04/2022

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

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HON. ARLENE BLUTH:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79 were read on this motion to/for JUDGMENT - SUMMARY.

Plaintiff's motion for summary judgment is granted.

Background

Plaintiff initially brought this case as a motion for summary judgment in lieu of complaint to collect on a promissory note, signed by defendant, in the amount of $250,000. The motion was denied by the judge previously assigned to the case on the grounds that alleged oral modifications made to the promissory note constituted issues of fact (disqualifying it from CPLR 3213 treatment) and the case was converted to a plenary action. In prior motion practice before this Court, plaintiff was barred by the statute of limitations from collecting $150,000 of the $250,000 (NYSCEF Doc. No. 53). Now, plaintiff moves for summary judgment on the remaining $100,000.

It is undisputed that in 2004, defendant received $250,000 from his employer at the time, Malcolm Pirnie, Inc., and signed a promissory note for that amount (NYSCEF Doc. No. 60). It is also undisputed that the promissory note indicated that defendant would pay back the money

in 5 annual installments of $50,000, starting in May 2010. Where the parties differ is whether the money was a loan, as indicated by the promissory note, or whether the money was a bonus incentive for defendant to move from New York to California to establish a branch of the company and to remain employed for a minimum of five years. In 2009, plaintiff Arcadis U.S. Inc., acquired Malcolm Pirnie and its subsidiaries. Defendant's promissory note was assigned to Arcadis U.S. Inc. on July 9, 2009 (NYSCEF Doc. No. 61).

In the instant motion, plaintiff argues that the promissory note was a loan that defendant has not yet paid back. Plaintiff contends that discovery has confirmed that defendant has no defense to the enforcement of the promissory note because he unequivocally testified during his deposition that he had no conversation with any executive of Arcadis, or its predecessor, in which he claims that the promissory note was forgiven. Plaintiff argues that that it is entitled to summary judgment because the promissory note was signed by defendant, the note provided that defendant would repay the money, and the money was not repaid.

In opposition, defendant argues that in 2004 he was approached by Jerry Frieling, the then-chairman of Malcom Prime, and that he was offered the $250,000 as incentive to move from New York to California, establish an office, and remain with the company for five years. Defendant argues that he was told that he was under no obligation to repay the promissory note unless he left the company prematurely. Defendant argues that there are other employees who were offered similar incentives, structured as promissory notes, and were never obligated to repay the money. Defendant argues that this case is barred by laches because the promissory note was executed in 2004 and, according to the note, the first payment was supposed to be made in 2010. Plaintiff waited until 2019 to bring this action, which defendant argues is too long an amount of time to seek repayment. Defendant provided an affidavit from Mr. Kenneth Spiker,

senior vice president of Malcolm Pirnie, explaining that the promissory note was intended to ensure that defendant remained with the company for a reasonable time after relocating and defendant has fulfilled that obligation (NYSCEF Doc. No. 72).

In reply, plaintiff argues that any oral promises were subsumed by the promissory note. Plaintiff further argues that defendant has failed to raise a defense and that there is no evidence of a relocation agreement, in the promissory note or elsewhere. There is also no evidence in the record that defendant's obligation to repay the promissory note was forgiven. Instead, there is documentary evidence confirming that the promissory note was never forgiven. Plaintiff points out that the alleged oral conditions of forgiveness (that no money would be owed if defendant moved to California and stayed five years) is not enforceable as it conflicts with the written terms of the agreement. Defendant's reliance on laches is misplaced because the action is at law, not equity, and this action was brought timely. Plaintiff also argues that defendant's testimony regarding whether he had to repay the promissory note is contradictory. Defendant argues that Mr. Frieling told him that he would not have to repay the promissory note. However, at his deposition, defendant testified that he "did not discuss a promissory note with Mr. Frieling during this alleged conversation" (NYSCEF Doc. No. 67 at 4).

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 bona fide 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]).

"[A] contract is to be construed in accordance with the parties' intent, which is generally discerned from the four corners of the document itself. Consequently, 'a written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms'" (*MHR Capital Partners LP v Presstek, Inc.*, 12 NY3d 640, 645, 884 NYS2d 211, 215 [2009]).

"Extrinsic evidence of the parties' intent may be considered only if the agreement is ambiguous, which is an issue of law for the courts to decide. A contract is unambiguous if the language it uses has a definite and precise meaning, unattended by danger of misconception in the purport of the agreement itself, and concerning which there is no reasonable basis for a difference of opinion. Thus, if the agreement on its face is reasonably susceptible of only one meaning, a court is not free to alter the contract to reflect its personal notions of fairness and

equity" (*Greenfield v Philles Records*, 98 NY2d 562, 569-570, 750 NYS2d 565, 570 [2002] [internal quotations and citations omitted).

The Promissory Note

Plaintiff has established a prima facie case by submitting proof of the agreement between the parties and failure to make payments. It is undisputed that the promissory note was signed by defendant and that the note provides that defendant would repay the money by a date certain. And defendant did not raise a material issue of fact in opposition. Instead, defendant argues that the terms of the signed contract are not the actual terms of the agreement. He insists that he had an undocumented, off the record oral agreement with Mr. Frieling which contradicted the written agreement and provided that he would not have to repay the money if he relocated from New York to California and stayed with the company for an additional five years. However, defendant has failed to show any evidence of a modification to the promissory note or that the note would be forgiven. Defendant's affidavits do not compel the Court to modify an unambiguous written contract.

With respect to the affidavit from Mr. Spiker, he insists that Malcolm Pirnie provided defendant with a "relocation bonus" to move from New York to California (NYSCEF Doc. No. 72). Mr. Spiker further maintains that the promissory note was to "ensure that Mr. Lauria remained with MP for a reasonable time period after relocating," that "Mr. Lauria remained with MP … for approximately ten years after relocating" and "my recollection was that the note was to be forgiven." He also claims that this practice of forgiving promissory notes was not uncommon for Malcolm Pirnie.

Mr. Spiker's affidavit is simultaneously confusing and vague, and it does not create an issue of fact. Mr. Spiker offers no documentation to support his claim and only suggests what he thinks the additional (and unstated) terms of the agreement were. He does not claim that he had the power to make these assurances and bind Malcolm Pirnie to such an agreement or that he made a promise to forgive the debt at issue in this case. And, at his deposition, Mr. Spiker testified that it was his understanding that the promissory note would be repaid (NYSCEF Doc. No. 68 at 31).

With respect to Charles Wolf's testimony, it is clear that Mr. Wolf signed a promissory note similar to defendant's note in 2009 (NYSCEF Doc. No. 71). However, Mr. Wolf also testified that he signed a debt forgiveness agreement in 2013 when he left the company (NYSCEF Doc. No. 56 at 4). There has been no such debt forgiveness agreement produced for defendant. Additionally, what happened with Mr. Wolf's promissory note is not binding on plaintiff. Simply because his debt was ultimately forgiven does not mean that defendant's debt or any other Malcolm Pirnie employee's debt must also be forgiven. Again, it is undisputed that the promissory note provided that defendant would be loaned $250,000, that the debt would be repaid, and that defendant has not yet repaid the debt. Defendant has not offered any evidence to the contrary.

As held by the Court of Appeals, if an agreement "on its face is reasonably susceptible of only one meaning, a court is not free to alter the contract to reflect its personal notions of fairness and equity" (*Greenfield,* 98 NY2d at 570).

Here, the promissory note is susceptible of only one meaning. The note clearly provides that defendant would be loaned $250,000 and would pay the money back in five installments over five years (NYSCEF Doc. No. 60). Therefore, this court is not free to alter the contract

simply because defendant now claims that he was under the self-serving impression that it would be forgiven.

Defendant has not presented any documentary evidence from the time indicating that the loan would be, should be, or was forgiven; he only submits self-serving affidavits which at best suggest that his story is theoretically plausible. Because that is not enough to counter an unambiguous written agreement, defendant's legal theories are unpersuasive. Therefore, this Court finds that there is no issue of fact with respect to the promissory note.

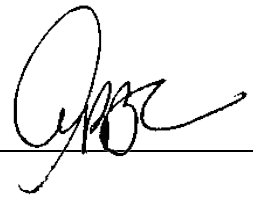
Laches

"The defense of laches is unavailable in an action at law commenced within the period of limitation" *Matter of American Druggists' Inc. Co*., 15 AD3d 268, 789 NYS2d 483 [1st Dept 2005]. In *Matter of American Druggists' Inc*., the First Department held that the second cause of action was not barred by the statute of limitations and so the defense of laches was unavailable (*id*.). The Court further held that "by contrast, the statute of limitations on the first cause of action, for breach of the obligations of the notes, began to run in 1984 when defendant first defaulted, and that cause is thus time-barred" (*id.*).

In opposition to plaintiff's motion for summary judgment in lieu of complaint, defendant raised the statute of limitations as a defense. This Court has already held that the statute of limitations bars plaintiff from recovering the first three payments scheduled on the promissory note for the years 2010, 2011, and 2012 (NYSCEF Doc. No. 53). However, the instant action was timely filed for plaintiff to recover the 2013 and 2014. Therefore, the defense of laches is not applicable and is not a sufficient defense to plaintiff's motion

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment is granted and the Clerk is directed to enter judgment in favor of plaintiff and against defendant in the amount of $100,000 plus interest from June 1, 2014, along with costs and disbursements upon presentation of proper papers therefor.



3/18/2022
DATE

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