

<b>Young Chung v Xie</b>
2022 NY Slip Op 32085(U)
July 1, 2022
Supreme Court, New York County
Docket Number: Index No. 650870/2020
Judge: Laurence Love
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. LAURENCE LOVE PART 63M

*Justice*

-----X

YOUNG CHUNG

Plaintiff,

- v -

COLIN XIE,

Defendant.

-----X

INDEX NO. 650870/2020

MOTION DATE 03/28/2022

MOTION SEQ. NO. 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65

were read on this motion to/for SUMMARY JUDGMENT(BEFORE JOIND).

Upon the foregoing documents, defendant's motion seeking an Order granting defendant summary judgment, dismissing the instant action is decided as follows:

Plaintiff commenced the instant action by filing its motion for summary judgment in lieu of complaint on January 17, 2020. In an Order dated October 22, 2020, this Court denied said motion as although the affidavit of Young S. Chung alleged that "Mr. Xie executed a promissory note in my favor in the amount of \$1,250,000 on June 15, 2017," the submitted four page Note did not have any signatures between the parties it did not appear on the face of said document that an agreement was reached. Thereafter, plaintiff moved to reargue said decision, which was likewise denied as *inter alia*, defendant Colin K. Xie submitted an affidavit stating: "In 2017, I was in the process of purchasing a home from the Plaintiff. As we discussed the price and the details of the transaction, the Plaintiff offered to provide me with a mortgage in the amount of \$1,150,000 to assist with the purchase price. Ultimately, I was able to consummate the transaction without assistance from the Plaintiff. To be clear, I never received the money referenced in the promissory note: Mr. Chung did not pay me that money, and I do not owe him anything under this note.

Additionally, the Plaintiff claims that I made eight payment of \$21,701.92 in 2017. That is not true. On information and belief, Mr. Chung took that amount of money out of a business we co-own and claimed that it was payments on this note. I have never authorized any payment whatsoever on this note, since I never received the loan proceeds.” Based upon same, defendant established “Substantial factual disputes, including whether the money was ever provided or owed.”

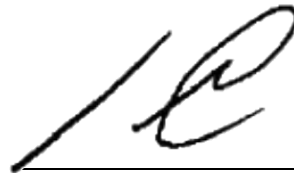
Defendant now moves for summary judgment, dismissing the instant action. Summary Judgment should not be granted where there is any doubt as to the existence of a material issue of fact. *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562, 427 N.Y.S.2d 595 (1980). The function of the court when presented with a motion for Summary Judgment is one of issue finding, not issue determination. *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 165 N.Y.S.2d 498 (1957); *Weiner v. Ga-Ro Die Cutting, Inc.*, 104 A.D.2d331, 479 N.Y.S.2d 35 (1<sup>st</sup> Dept., 1984) *aff'd* 65 N.Y.2d 732, 429 N.Y.S.2d 29 (1985). The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law. *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320 (1986); *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 (1985). Summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to the non-moving party. *Assaf v. Ropog Cab Corp.*, 153 A.D.2d 520 (1st Dep't 1989). Summary judgment will only be granted if there are no material, triable issues of fact *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395 (1957).

In support of the instant motion, defendant submits the affidavit of Colin K. Xie, submitted in opposition to motion sequence 002 together with the relevant closing packet for the sale of 7 Fieldstone Lane, Great Neck, NY 11020, plaintiff's responses to defendant's Notice to Admit, answers to interrogatories and document production. In this action, plaintiff alleges that the actual purchase price of 7 Fieldstone Lane when said property transferred between the parties in 2017 was \$2,500,000.00 consisting of a \$100,000.00 down payment, the Note that is the subject of this action in the amount of \$1,150,000.00 and a mortgage in the amount of \$1,250,000.00. Defendant argues that when the parties closed on the transaction on June 15, 2017, the purchase price reflected in all of the closing documents and the Real Property Transfer Report was \$1,350,000 and the Note that is the subject of this action is a nullity as plaintiff is estopped from claiming that the purchase price for the residence was higher than \$1,350,000, because he signed an RPT tax form under penalty of perjury reciting the lower price, *See, Amalfi, Inc. v. 428 Co., Inc.*, 153 A.D.3d 1610 (4th Dep't 2017) as a party may not take a position in litigation contrary to declarations made under penalty of perjury in tax returns, *See, Mahoney-Buntzman v. Buntzman*, 12 N.Y.3d 415 (2009). However, the RPT and transfer documents list Soyoung Chung as the seller and the Note at issue in this case was allegedly entered into between Young S. Chung and Colin K. Xie. Further, documents submitted by defendant to Bethpage Federal Credit Union when he sought to refinance the mortgage on the house clearly indicate the sales price of \$2,500,000.00 and the side deal allegedly entered into between the parties at issue here. As such, the same issues of fact which necessitated the denial of the prior motions exist here.

Further pursuant to Uniform Rule 202.8-g(a), the failure to file a Statement of Material Facts is a substantive defect in a motion for summary judgment warranting that the motion for summary judgment be denied, *See, Amos Fin. LLC v. Crapanzano*, 154 N.Y.S.3d at 670.

As such it is ORDERED that the instant motion is DENIED in its entirety.

7/1/2022  
DATE



LAURENCE LOVE, J.S.C.

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