

Brooks v City of New York

2023 NY Slip Op 31227(U)

April 17, 2023

Supreme Court, New York County

Docket Number: Index No. 159711/2016

Judge: Adam Silvera

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ADAM SILVERA PART 40

Justice

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DORCAS BROOKS,

Plaintiff,

- v -

THE CITY OF NEW YORK, THE NEW YORK CITY HOUSING AUTHORITY,

Defendant.

-----X

INDEX NO. 159711/2016

MOTION DATE N/A, N/A

MOTION SEQ. NO. 004 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 96, 98 were read on this motion to/for MISCELLANEOUS

The following e-filed documents, listed by NYSCEF document number (Motion 004) 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 96, 98 were read on this motion to/for PARTIES - ADD/SUBSTITUTE/INTERVENE

Upon the foregoing documents, it is ordered that non-party BH Fast Funding LLC's motion to intervene in the instant action, and plaintiff's cross-motion seeking to invalidate the funding loan at issue herein, are both decided as indicated below.

Here, non-party BH Fast Funding seeks intervention pursuant to CPLR §§1012 and 1013, and to compel plaintiff to deposit the settlement funds into the court. Moving non-party argues that it entered into an agreement with plaintiff in which plaintiff assigned a portion of the potential proceeds of the instant claim to non-party BH Fast Funding in exchange for a monetary advance. According to moving non-party, plaintiff's counsel agreed to be a stakeholder and distribute any proceeds from this action. Thereafter, a payoff balance was negotiated and agreed upon on December 17, 2021 for ten thousand dollars (\$10,000.00) to be paid in ninety (90) days.

Non-party BH Fast Funding contends that the payoff amount was paid almost two weeks late, and, thus, rejected. Moving non-party argues that it is entitled to intervene herein and states that as of May 12, 2022, the payoff amount was \$52,916.40.

Plaintiff opposes the instant motion and cross-moves to invalidate the subject funding loan as unconscionable and usury, or alternatively to issue a finding that non-party BH Fast Funding is entitled to only the \$10,000.00 agreed upon payoff amount. Plaintiff also seeks attorneys' fees and sanctions. Plaintiff argues that the amount of interest charged on the original loan was unconscionable in that plaintiff's five thousand dollar (\$5,000.00) loan, plus a four hundred ninety five dollar (\$495.00) processing fee and a one thousand dollar (\$1,000.00) originating fee, totaling six thousand four hundred ninety five dollars (\$6,495.00), was charged 6% monthly compound interest for a total annual interest of 101.22%. Plaintiff alternatively argues that non-party BH Fast Funding verbally agreed that it would not be an issue to push out the date for the payoff letter amount. Plaintiff further argues that, based upon the language of the payout letter, she had until April 1, 2022 to make the payment. Plaintiff asserts that non-party BH Fast Funding intentionally contacted defense counsel to request that the settlement payment be withheld in an attempt to delay the resolution of the instant action.

Non-party BH Fast Funding opposes plaintiff's cross-motion and replies. According to moving non-party, plaintiff does not oppose its application for intervention or to compel. Rather, non-party BH Fast Funding contends that plaintiff's application to invalidate the funding loan is premature as non-party BH Fast Funding is not yet a party to this action and no discovery regarding the funding loan has been exchanged. Non-party BH Fast Funding further argues that it did not loan money rather it advanced money, and contends that the language of the payoff letter was clear that the payment must be made in 90 days. Plaintiff replies to the cross-motion

arguing, *inter alia*, that there are material misstatements in the moving papers warranting sanctions.

Preliminarily, the Court notes that non-party BH Fast Funding failed to comply with the CPLR in moving to intervene such that its instant motion is denied. CPLR §1014 explicitly states that “[a] motion to intervene shall be accompanied by a proposed pleading setting forth the claim or defense for which intervention is sought.” No such pleadings are included in the motion papers, and, thus, non-party BH Fast Funding’s motion to intervene is hereby denied.

As to plaintiff’s cross-motion, the Court finds that a reading of the payoff letter reveals that plaintiff and non-party BH Fast Funding agreed upon \$10,000.00 as the payoff amount as of December 17, 2021, with a payment to be made within 90 days which would have been on or before March 17, 2022. The payoff letter explicitly states that “[i]f the payment will be made later than fourteen (14) days following that date, please contact BH Fast Funding for a revised payoff amount.” Notice of Motion, Exh. B, payoff letter dated December 17, 2021. Thus, the plain language of the payoff letter states that the \$10,000.00 was to be paid on or before March 17, 2022, or if the payment had to be made more than 14 days later on April 1, 2022 or thereafter, plaintiff would have to agree upon a new payoff amount with BH Fast Funding. Here, plaintiff proffered proof of payment of the \$10,000.00 as per the payoff letter on March 31, 2022, prior to the April 1, 2022 deadline for renegotiation of the payoff amount. Thus, the Court finds that non-party BH Fast Funding is entitled to, and shall receive a payoff amount of \$10,000.00, to be paid by plaintiff as ordered below. The remainder of the motion has been considered and is denied. This action, having been settled, and the instant motion and cross-motion decided, the settlement amount shall be paid out by defendants to plaintiff as per CPLR and thereafter plaintiff shall pay non-party BH Fast Funding as ordered below.

Accordingly, it is

ORDERED that the instant motion to intervene is denied in its entirety; and it is further

ORDERED that the cross-motion is granted only to the extent that the Court determines that non-party BH Fast Funding is entitled to \$10,000.00 in full payment of the funding loan signed by plaintiff on or about June 21, 2019; and it is further

ORDERED that defendant shall pay the agreed upon settlement amount to plaintiff as per CPLR; and it is further

ORDERED that within 21 days following receipt of payment from defendant, plaintiff shall pay to non-party BH Fast Funding \$10,000.00 in full payment of plaintiff's funding loan; and it is further

ORDERED that within 30 days of entry, plaintiff shall serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

4/17/2023

DATE



ADAM SILVERA, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE