

Medallion Fin. Corp. v Ohene

2023 NY Slip Op 31536(U)

May 5, 2023

Supreme Court, New York County

Docket Number: Index No. 656498/2021

Judge: Lyle E. Frank

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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. LYLE FRANK **PART** **11M**

Justice

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MEDALLION FINANCIAL CORP.

Plaintiff,

- v -

JORDAN OHENE,

Defendant.

-----X

INDEX NO. 656498/2021

MOTION DATE 03/07/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, plaintiff’s motion for summary judgment on its first cause of action is denied for the reasons stated below.

Facts

Plaintiff Medallion Financial Corp. (Medallion) issued a promissory note secured by a Security Agreement to defendant taxi driver Jordan Ohene. Plaintiff alleged that defendant defaulted on the note on April 8, 2019, and the outstanding principal stays at \$509,363.59 after the deduction of the sale proceeds of the taxi medallion allegedly relinquished by defendant. Plaintiff brought this suit against defendant, claiming breach of contract, account stated and unjust enrichment, etc. After defendant filed his answer to the complaint, plaintiff filed the motion for summary judgment on the breach of contract claim. Defendant disputed, demanding the production of the security agreement and questioning the integrity of the medallion auction. Based on the following analysis, the court believes the pre-discovery summary judgment motion is premature.

Motion for summary judgment general standard

The proponent of a summary judgment motion must make 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. *Failure to make such prima facie showing requires a denial of the motion*, regardless of the sufficiency of the opposing papers. Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action. *Alvarez v Prospect Hosp.*, 68 NY2d 320, 322 [1986].

Breach of contract (The first cause of action)

To state a claim for breach of contract, a plaintiff must allege: (1) the parties entered into a valid agreement, (2) plaintiff performed, (3) defendant failed to perform, and (4) damages. *VisionChina Media Inc. v Shareholder Representative Servs., LLC*, 109 A.D.3d 49, 58 [1st Dept 2013].

Here, plaintiff failed to establish a prima-facie case for breach of contract in this summary judgment motion. The contract in dispute is the promissory note, which is issued by plaintiff and signed by defendant. See NYSCEF Doc. No. 2. Under the note, plaintiff performed its duty, which is to lend defendant \$ 584,936.08. According to the complaint, defendant allegedly defaulted on the note on April 8, 2019, and had been so ever since by failing to remit the monthly payment. NYSCEF Doc. No. 1, ¶ 8.

Plaintiff claimed, after deducting the auction proceeds from the outstanding principal balance, defendant still owed plaintiff \$ 509,363.59 in principal, plus the ever-growing interest from the date of April 8, 2019. But plaintiff has not tendered sufficient evidence to back up the number and its right to auction off defendant's medallion. The deficiency creates several issues and prevents the court from granting the summary judgment motion.

First, plaintiff failed to produce the security agreement. The promissory note “is secured by a Security Agreement...affecting property more particularly describe therein, and all of the covenants, conditions and agreements contained in the Security Agreement are by this reference *incorporated herein* and made *a part hereof*.” NYSCEF Doc. No. 2, page 3. The provision says three things here. First, the note is secured by collateral, which is described in the Security Agreement. Second, the Security Agreement is part of the note, thus composes the entire contract. Third, the Security Agreement contains covenants and conditions affecting the collateral.

Plaintiff needs to produce the Security Agreement because the “cardinal principle governing the construction of contracts is that the *entire contract* must be considered... That interpretation is favored which will make every part of a contract effective.” *Rentways, Inc. v. O’Neill Milk & Cream Co.*, 308 N.Y. 342, 345 [1955].

Second, plaintiff failed to produce the record of remittance and official papers documenting the auction process. The former can prove how much debt has been paid off by defendant and the latter can prove how much the medallion was sold for. Each piece of evidence concerns the amount of debt that is still outstanding. The payment history proffered by plaintiff failed on both fronts. NYSCEF Doc. No. 15.

Plaintiff claimed that the first default happened on April 8, 2019, meaning defendant paid his dues from September 8, 2018, the first due date, to March 8, 2019. NYSCEF Doc. No. 2, page 2 (the due date falls on the same day of each month). But the payment history fails to reflect this. Only three payments were credited to the principal balance on September 17, 2018, November 9, 2018, and December 11, 2018, respectively. See NYSCEF Doc. No. 15, page 1. There is no entry of the other four supposedly existent remittances. Failure to provide a precise account of

defendant’s remittance history directly frustrates the truthfulness of the outstanding principal balance, thus creating a triable issue of fact at this point in the litigation.

The same rationale goes for the auction proceeds, which were allegedly entered on August 23, 2021, in the amount of \$74,370.44. *Id* at page 2. But the court cannot tell from the title of the entry “cash sale” whether this is the proceeds from the auction. Nothing in plaintiff’s submissions corroborate the nature or the amount of the proceeds. NYSCEF Doc. No. 13. Official papers documenting the auction process can not only prove the actual amount received by plaintiff, but the integrity of the auction. The auctioneer must reveal how many bids were received by plaintiff and whether the medallion was sold to the highest bidder. This critical information goes to the heart of the disputed damages and its absence makes the actual damages unidentifiable, hence necessitating the discovery. Based on the foregoing, it is hereby

ADJUDGED that the plaintiff’s motion for summary judgment on the first cause of action is denied.

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LYLE E. FRANK, J.S.C.

5/5/2023
DATE

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