

**Hofmann Family Living Trust v HVN Travel Group
Inc.**

2023 NY Slip Op 33837(U)

October 25, 2023

Supreme Court, New York County

Docket Number: Index No. 651421/2023

Judge: Louis L. Nock

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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. LOUIS L. NOCK **PART** **38M**

Justice

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THE HOFMANN FAMILY LIVING TRUST, JUDY B
CODDING, and RICHARD J. CODDING,

Plaintiffs,

- v -

HVN TRAVEL GROUP INC.,

Defendant.

-----X

INDEX NO. 651421/2023

MOTION DATE 03/20/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 2, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19

were read on this motion for SUMMARY JUDGMENT IN LIEU OF COMPLAINT.

Upon the foregoing documents, the motion is granted for the reasons set forth in the moving and reply papers (NYSCEF Doc. Nos. 3-6, 18) and the exhibits attached thereto, in which the court concurs, as summarized herein.

Plaintiffs Hofmann Family Living Trust (“Hofmann”) and Judy and Richard Coddling (collectively, “Coddling”) are the holders of two convertible promissory notes issued by defendant HVN Travel Group Inc. (“HVN”) in the amount of \$50,000¹ each (the “Hofmann note” and “Coddling note,” respectively). The terms of the notes are, for all intents and purposes, identical. The notes provide for repayment of principal and interest three years after issuance, provided that the principal has been converted, under one of three scenarios, into equity in HVN (Hofmann note, NYSCEF Doc. No. 14, ¶ 3; Coddling note, NYSCEF Doc. No. 15, ¶ 2).

Relevant to the instant motion, the notes provide that unpaid principal and interest will

¹ The parties agree that while the face amount of the Hofmann note is \$100,000, Hofmann’s actual investment was \$50,000 (NYSCEF Doc. No. 3, ¶ 8; NYSCEF Doc. No. 11, ¶ 10).

automatically convert into shares of HVN upon the closing of the “Qualified Financing” (Hofmann note, ¶ 6[b]; Codding note, ¶ 5[b]). “Qualified Financing” is defined as “following the date of issuance of [the notes] and prior to the Maturity Date, the first sale and issuance by [HVN] in one or more offers . . . of its capital stock in a bona fide equity financing that results in aggregate proceeds paid to [HVN] by investors of more than \$3,000,000” (Hofmann note, ¶ 6[a][ix]; Codding note, ¶ 5[a][ix]).

Following maturity of the notes, plaintiffs demanded repayment of the principal and interest. HVN responded that the funds had been converted into equity following closing of the Qualified Financing. No notice of the conversion was given, nor have plaintiffs received any documentation of such conversion (NYSCEF Doc. No. 3, ¶ 19; NYSCEF Doc. No. 4, ¶¶ 12-14).

A grant of summary judgment under CPLR 3213 is available on “an instrument for the payment of money only or upon any judgment” (CPLR 3213). A plaintiff makes out a prima facie case for summary judgment where he can show that the instrument is a valid instrument for the payment of money only and that the defendant has failed to pay (*Nordea Bank Finland PLC v. Holten*, 84 AD3d 589 [1st Dept 2011]). Once plaintiff establishes a prima facie case, defendant must show a triable issue of fact to defeat summary judgment (*Banco Popular N. Am. v. Victory Taxi Mgt., Inc.*, 1 NY3d 381, 383 [2004]). A convertible promissory note is a proper subject for a motion pursuant to CPLR 3213 (*Simon v Indus. City Distillery, Inc.*, 159 AD3d 505 [1st Dept 2018]).

Here, the notes have reached maturity, and HVN has refused to repay the principal and accrued interest as of the maturity date, which plaintiffs assert totals \$56,000 on each of the notes. HVN argues that the notes have converted following a Qualified Financing, but fails to raise a triable issue of fact in this regard. Isaac Cohen, HVN’s President, avers in his affidavit

that HVN raised over \$4,000,000 between issuance of the notes and their Maturity Dates (Cohen aff., NYSCEF Doc. No. 11, ¶ 18). However, the Notice of Exempt Offering of Securities, or Form D, that HVN filed with the Securities and Exchange Commission, identifies these transactions as sales of debt rather than equity (Form D, NYSCEF Doc. No. 16, § 9). The conversion option in the notes applies by its terms only to a sale of equity in the specified amount (Hofmann note, ¶ 6[a][ix]; Codding note, ¶ 5[a][ix]). To the extent HVN argues that the sale of convertible debt is sufficient, convertible promissory notes such as the ones at issue in this case do not qualify as “equity securities” (Hofmann note, ¶ 6[a][vi]; Codding note, ¶ 5[a][vi]). As no Qualified Financing conversion has taken place, and HVN does not argue that any of the other grounds for conversion exist, plaintiffs are entitled to repayment.

Accordingly, it is hereby

ORDERED that the motion is granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff the Hofmann Family Living Trust and against defendant in the amount of \$56,000, with interest thereon at the statutory rate from September 9, 2022, through entry of judgment, as calculated by the Clerk, and continuing to accrue thereafter through satisfaction of judgement; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiffs Judy and Richard Codding and against defendant in the amount of \$56,000, with interest thereon at the statutory rate from September 10, 2022, through entry of judgment, as calculated by the Clerk, and continuing to accrue thereafter through satisfaction of judgement; and it is further

ORDERED that plaintiffs are entitled to their costs and disbursements, as taxed by the Clerk, upon submission of one bill of costs; and it is further

ORDERED that plaintiffs are entitled to their reasonable attorneys' fees pursuant to the terms of the notes (Hofmann note, ¶ 7; Coddington note, ¶ 6), and the issue of the amount of such fees is severed and set down for a further hearing before the undersigned; and it is further

ORDERED that the parties shall appear for said hearing in Room 1166, 111 Centre Street, New York, New York, on November 28, 2023, at 10:00 AM.

This constitutes the decision and order of the court.



<u>10/25/2023</u>			<u>LOUIS L. NOCK, J.S.C.</u>	
DATE				
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	DENIED