

Papadimitriou v Pappas

2023 NY Slip Op 34510(U)

December 19, 2023

Supreme Court, Kings County

Docket Number: Index No. 502739/2016

Judge: Larry Martin

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS
PART COMM 10**

-----X
GUS PAPADIMITRIOU

Plaintiff(s)

Index: 502739/2016

-against-

Motion Sequence 2

DECISION/ORDER

**STEVEN PAPPAS, HELEN PAPPAS,
VANESSA HOIRIS**

Defendant(s)

-----X
The following e-filed papers read herein:

NYSCEF Doc Nos.

MS #2

**54-57, 60-65, 67, 69,
74-76, 81, 84, 90**

Plaintiff Gus Papadimitriou brings this action to recover the alleged balance due on a promissory note executed between himself and defendants Steven Pappas, Helen Pappas, and Vanessa Houris. Plaintiff alleges that the defendants defaulted on the promissory note and seeks an order pursuant to CPLR 3212 granting him partial summary judgment on liability and dismissal of defendants' counterclaims.

On January 12, 2010, the parties executed a promissory note ("Note") with a principal of \$1,000,000 at an interest rate of 9% per year for the duration of 24 months. Defendants were obligated to make interest payments of \$7,500 on the first of each month with the \$1,000,000 principal due in full at the end of the 24-month period. Defendants held the right to prepayment of the Note in whole or part prior to maturity of the Note. Plaintiff held the right to accelerate the principal and earned interest in the event of defendants' default. The Note was secured by the

interests held by the defendants in the partnerships GMP Associates (“GMP”) and Pappas & Pappas, which hold assets in Brooklyn, New York. See NYSCEF Doc No. 2

This litigation centers around the treatment of a subsequent agreement wherein defendant Helen Pappas transferred her 10% interest in GMP to plaintiff for the sum of \$600,000 on August 1, 2010. See NYSEF Doc No. 60. Plaintiff asserts that the transfer is a payment on the Note with the \$600,000 split up as \$500,000 prepayment of the principal, \$50,000 for past due interest from the period spanning February to August, and the remaining \$50,000 to Helen Pappas. See NYSCEF Doc No. 55 ¶25.

In contrast, defendants assert that the transfer of the GMP interest was in connection with an oral modification of the Note, arguing that the transfer of Helen Pappas’ interest in GMP was consideration for plaintiff to reduce the principal amount as well as forbear collection of the principal and interest due on the Note until liquidation of GMP’s principal asset. Defendants allege that the proceeds from the liquidation of GMP’s principal asset were to satisfy the balance of the Note. Moreover, they allege that the net proceeds remaining after the balance of the Note was satisfied were to be divided between plaintiff and defendants equally. See NYSCEF Doc No. 62 ¶ 12

On a summary judgment motion, courts determine whether triable issues of fact exist or whether a party can be granted judgment as a matter of law on the proof submitted (see *Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). Movant 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 issue of fact (see *Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]). Only when movant presents a prima facie case does the burden shift to the nonmoving party to produce evidentiary proof in admissible form sufficiently establishing the existence of a material factual

issue (see *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Further, the party opposing summary judgment is entitled to the benefit of every favorable inference that may be drawn from the pleadings, affidavits, and competing contentions of the parties (see *Sayed v Aviles*, 72 AD3d 1061, 1062 [2d Dept 2010]; see also *Nicklas v Tedlen Realty Corp.*, 305 AD2d 385, 386 [2d Dept 2003], citing *Myers v Fir Cab Corp.*, 64 NY2d 806, 808 [1985]). Accordingly, issue-finding rather than issue-determination is the key in deciding a summary judgment motion (see *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404, [1957], rearg denied 3 NY2d 941 [1957]). The court's function on a summary judgment motion is to determine whether material factual issues exist, not resolve such issues (*Ruiz v Griffin*, 71 AD3d 1112, 1115 [2010] [internal quotation marks omitted]).

Here, plaintiff does not meet his prima facie burden entitling him to summary judgement on the alleged balance due on the promissory note. Plaintiff's reliance upon the Bill of Sale regarding Helen Pappas' transfer of her 10% interest in GMP ("GMP Bill of Sale") does not sufficiently indicate how the GMP interest is to be treated with regard to the Note. The GMP Bill of Sale is indicative only to an extent that a transfer of Helen Pappa's 10% interest occurred. However, The GMP Bill of Sale lacks any express terms as to whether the transfer of the GMP interest is an installment payment or a modification of the Note. In fact, plaintiff's own version of how the \$600,000 sale price is to be allocated is not reflected in the GMP Bill of Sale. The Appellate Division has denied summary judgment in similar disputes where the parties disagree on the treatment and application of an oral modification with consideration.

For example, in *Wright v. Cetek Techs*, 289 AD2d 569, 570 [2d Dept 2001], a contract for the sale of assets executed by the parties was orally modified. The oral modification provided that the price of the assets was to be paid from the proceeds following the auction of certain assets. *Id.* However, the parties disputed what the proceeds were as well as how the oral modification was to be applied. The court held that “the existence of sharply disputed issues of fact between the plaintiffs and the appellant warranted denial of the plaintiffs’ motion for summary judgment.” *Id.* Similarly, the plaintiff and defendants in the case at hand dispute how the sale of the GMP interest is to be applied with respect to the Note. Both parties allege conflicting applications of the sale of the GMP interest under the Note and thus create an issue of fact regarding defendants’ default or satisfaction of obligations on the Note.

Based on the foregoing, the court finds there are material issues of fact concerning the oral agreement in connection with the transfer of the GMP interest, and potentially the treatment of the sale of the GMP asset.

Plaintiff’s motion for summary judgement is denied.

Dated: 12/19/23



HON. LARRY MARTIN
J.S.C

HON. LARRY MARTIN
JUSTICE OF THE SUPREME COURT