SMG Auto. Holdings, LLC v Kings Auto. Holdings, LLC
2024 NY Slip Op 30573(U)
February 15, 2024
Supreme Court, Kings County
Docket Number: Index No. 502949/2021
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

SMG AUTOMOTIVE HOLDINGS LLC,
Interpleader Plaintiffs, Decision and order

- against - Index No. 502949/2021

KINGS AUTOMOTIVE HOLDINGS, LLC, D/B/A KINGS COUNTY CHRYSLER, DODGE, JEEP & RAM, JPMORGAN CHASE BANK, N.A., SVITLANA FLOM, GARY FLOM, VENIAMIN NILVA, AND 2316 FLATBUSH AVE LLC, February 15, 2024
Interpleader Defendants,

PRESENT: HON. LEON RUCHELSMAN Motion Seq. #4

The interpleader defendant JPMorgan Chase Bank N.A. [hereinafter 'Chase'] has moved seeking summary judgement pursuant to CPLR §3212. The Intervenor Defendant Aboyoun Dobbs LLC and 2316 Flatbush Ave LLC oppose the motion. The interpleader plaintiff partially opposes the motion. Papers were submitted by the parties and after reviewing all the arguments, this court now makes the following determination.

On November 20, 2014 Chase entered into a line of credit agreement with Kings Automotive Holdings LLC d/b/a Kings County Chrysler, Dodge, Jeep, & Ram [hereinafter 'Kings'] a car dealership located in Kings County. Pursuant to that agreement Chase extended a line of credit not to exceed $17.5 million. Chase also entered into two similar agreements with affiliates of Kings, namely BICOM NY, LLC and Bay Ridge Automotive Company, LLC. Kings entered into two agreements guarantying the loans made to BICOM and Bay Ridge. The next day Chase filed UCC

statements indicating Chase maintained a security interest in the assets of Kings. On December 11, 2015 Chase executed new documents with the three entities noted as well as two other entities, Iscom NY LLC and IFC NY LLC providing a line of credit not to exceed $82 million. The interpleader defendants Nilva and Flom executed personal guaranties. Thus, on January 6, 2016 Chase filed amended UCC statements. The borrows defaulted and on June 23, 2016 the parties entered into a forbearance agreement. One of the conditions of the forbearance agreement was that Kings agreed to sell the car dealership and forward the proceeds to Chase. On September 15, 2016 the parties entered into a modification and waiver agreement which was amended on December 22, 2016. On February 7, 2017 Kings sold the dealership to SMG and executed a note wherein SMG promised to pay Kings $2.5 million by February 2021. 2316 Flatbush Realty LLC assigned the note to Chase pursuant to an assignment agreement. Chase has now moved seeking summary judgement they are entitled to the $2.5 million. As noted, the motion is opposed.

Conclusions of Law

Where the material facts at issue in a case are in dispute summary judgment cannot be granted (Zuckerman v. City of New York, 49 NYS2d 557, 427 NYS2d 595 [1980]). Generally, it is for the jury, the trier of fact to determine the legal cause of any

injury, however, where only one conclusion may be drawn from the facts then the question of legal cause may be decided by the trial court as a matter of law (Marino v. Jamison, 189 AD3d 1021, 136 NYS3d 324 [2d Dept., 2021).

It is well settled that an assignee stands in the shoes of an assignor and may pursue all claims to which the assignor could have pursued (Warberg Opportunistic Trading Fund L.P., v. GeoResources Inc., 151 AD3d 465, 58 NYS3d 1 [1st Dept., 2017]). Thus, Chase may pursue any and all claims that could have been pursued by Kings. There can be little dispute that Kings would be entitled to the payment pursuant to the note from SMG without interference from Kings' counsel. Without obtaining a judgement, counsel that is owed fees by Kings, could not seize upon any funds due and owing to Kings whether in the form of a promissory note, profits from the sale of vehicles or from any other source. Further, there is no discovery necessary that could alter that conclusion. Aboyoun Dobbs LLC, counsel for Kings that is owed money for fees, argues that they received a collateral assignment of the same promissory note in September 2018, almost two years after the note was assigned to Chase. Of course, once the note was assigned to Chase, upon notice, it could not thereafter be assigned to Aboyoun Dobbs, LLC. As the Supreme Court observed in Salem Trust Company v. Manufacturer's Finance Company, 264 US 162, 44 S.Ct 266[1924] "a subsequent assignee takes nothing by

his assignment, because the assignor has nothing to give" (id). Aboyoun Dobbs LLC argues the assignment to Chase was not unconditional because the assignment itself states that "upon the full and indefeasible payment of all of the Obligations and the passage of the applicable bankruptcy preference period, provided Lender has not been required to disgorge or return any payments to Assignor or Obligors during such bankruptcy reference period, this Assignment shall automatically terminate and Lender shall return to Assignor the original Note delivered to Lender in connection with this Assignment" (see, Collateral Assignment of Promissory Note, ¶2(g) dated February 7, 2017 [NYSCEF Doc. No. 135]). However, that clause does not mean there was anything left for Kings to further assign after assigning the note to Chase. Rather, the clause simply means the assignment terminates upon the full payment of the note.

Aboyoun Dobbs LLC argues that allowing Chase to collect the full amount of the note without evidence demonstrating the actual amount Chase is still owed, may permit Chase to collect more than it is owed, an obvious impropriety. First, there is no evidence that Aboyoun Dobbs LLC even maintains standing to challenge Chase's pursuit of payment of the note. Aboyoun Dobbs LLC maintains no ability to receive any of the proceeds of that note and thus is barred from challenging Chase's rights. Moreover, there is no evidence Chase has already been made whole, reducing

its entitlement to the full value of the note. Indeed, Chase has asserted it is still owed $4,788,090.24. That amount has not been disputed by any party and thus Chase will not be recovering more than it's fair share upon satisfaction of the note in full.

Therefore, the motion of Aboyoun Dobbs LLC seeking to oppose summary judgement on the grounds further discovery must be furnished is denied.

Turning to the opposition filed by 2316 Flatbush Ave LLC, they also oppose summary judgement on the grounds the parties must engage in discovery. Specifically, 2316 Flatbush Ave LLC seeks to probe the business relationship between Kings and the surrounding facts regarding the assignment from Kings to Chase. 2316 Flatbush Avenue LLC seeks background information regarding the evidence that Kings agreed to assign the note to Chase. They assert this is important because "discovery on this issue would lead to relevant evidence because it would elucidate whether or not Chase and Kings contemplated that the Note would be eventually assigned to Chase" (see, Memorandum of Law in Opposition, page 7 [NYSCEF Doc. No. 205]). 2316 Flatbush Avenue LLC further insists it should be afforded an opportunity to discover the intent of the guaranties Kings executed in 2014 and whether they contemplated an eventual promissory note. They argue that "2316 Flatbush is entitled to discovery regarding whether or not something like the Note was meant to be included

in Kings' Guaranties to Chase back in 2014" (id., at page 8]). However, 2316 Flatbush Ave LLC does not explain why that information is relevant at all. This is particularly true, as conceded by 2316 Flatbush Ave LLC, that the note did not come into existence until years after these documents were executed. Thus, while defaults are always contemplated, and precautions taken if such defaults occur, it is not relevant whether the parties thought, in 2014, that at some future date, a sale of the automotive business might be necessary and a promissory note from the purchaser may be assigned to Chase. There is no discovery possible that could undermine the plain language of the assignment allowing Chase to collect the note when due. Indeed, further discovery sought by 2316 Flatbush Ave LLC regarding documents that pre-date the assignment are simply not relevant. Therefore, there is no relevance whether the UCC financing statements or the security agreements or the forbearance agreement filed years before the existence of the note were intended to include a possible note.

Next, 2316 Flatbush Ave LLC seeks discovery concerning the "process by which the note was purportedly assigned to Chase" (see, Memorandum of Law in Opposition, page 12 [NYSCEF Doc. No. 205]). Specifically, they seek to discover whether a 2016 amendment between the parties contemplated assignment of the note or merely afforded Chase a security interest in the note, why an

allonge was executed and why a collateral assignment agreement was necessary. However, none of the information sought has any bearing on the assignment of the note. Thus, the assignment is clear and unambiguous and permits Chase to receive any payments pursuant to that note. Whether the note was contemplated in prior documents is entirely irrelevant. Equally irrelevant is whether there was duplicative references to the assignment. Even if the assignment was referenced multiple times, further probing that issue will not yield any relevant information whether Chase is entitled to collect the proceeds from the note.

2316 Flatbush Ave LLC seeks all this information to determine whether in fact Chase is entitled to the proceeds of the note. However, any past history between the parties is irrelevant since that history and the subjective beliefs of the parties who entered into those past agreements do not raise any pertinent questions concerning the note. The assignment to Chase and Chase's entitlement to the proceeds of the note could never be undermined by beliefs of the parties years earlier. All the discovery sought is simply not relevant.

Lastly, there are no questions of fact that require any discovery, as noted, whether Chase will recovery more than it is owed. Of course, Chase is prohibited from taking any money that rightfully belongs to another, yet there are no questions raised that Chase is attempting that course of action. As already

noted, Chase has provided unrefuted evidence to the contrary.

The, interpleader plaintiff has opposed the motion to the extent that the actual amount to which Chase is entitled is $2,186,000. Chase does not dispute that amount for purposes of seeking summary judgement at this time.

Therefore, based on the foregoing, the motion seeking summary judgement is granted in the amount of $2,186,000.

So ordered.

ENTER:

DATED: February 15, 2024
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC

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KINGS COUNTY CLERK
FILED