

**Manna Capital Solutions LLC v W & D Consultants Corp**

2024 NY Slip Op 32061(U)

June 17, 2024

Supreme Court, Kings County

Docket Number: Index No. 501427/2024

Judge: Leon Ruchelsman

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

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MANNA CAPITAL SOLUTIONS LLC,

Plaintiff, Decision and order

- against -

Index No. 501427/2024

W & D CONSULTANTS CORP; STEPHANE  
ASSOUMOU; AND SCHELTON ASSOUMOU  
and DAWN DAVIS,

Defendants, June 17, 2024

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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #1

The plaintiff has moved pursuant to CPLR §3213 seeking summary judgement in lieu of a complaint. The defendant has opposed the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

On July 31, 2023 the defendant W & D Consultants Corp., executed a promissory note to the plaintiff in interest in the amount of \$1,000,000. The defendants Stephane Assoumou, Schelton Assoumou and Dawn Davis guaranteed the debt. The defendant failed to make any payments at all. The plaintiff now moves seeking summary judgement concerning the note in the amount of \$100,000 plus interest at a rate of 18% per annum from August 1, 2023 until judgement is entered plus costs and attorney fees in the amount of \$2,975.43. The motion is opposed on the grounds the loan was usurious and that another agreement modified the promissory note. Consequently, the issues cannot be summarily decided.

Conclusions of Law

It is well settled that in order to be entitled to judgement as a matter of law pursuant to CPLR §3213 the movant must demonstrate that the other party executed an instrument that contains an unequivocal and unconditional promise to repay the party upon demand or at a definite time and the party failed to pay according to the terms of the instrument (Mirham v. Awad, 131 AD3d 1211, 17 NYS3d 473 [2d Dept., 2015]). A promissory note is an instrument for the payment of money only and when sufficient evidence is presented concerning the circumstances upon which it was given then a §3213 motion is appropriate (Kim v. Il Yeon Kwon, 144 AD3d 754, 41 NYS3d 68 [2d Dept., 2016]). Thus, the movant must establish the instrument is "facially incontestable" (J. Juhn Associates, Inc., v. 3625 Oxford Avenue Associates L.P., 8 Misc3d 1009(A), 801 NYS2d 778 [Supreme Court Nassau County 2005]). Therefore, where a defendant can raise questions of fact the notes were not instruments for the payment of money only then summary judgement must be denied (Farca v. Farca, 216 AD2d 520, 628 NYS2d 782 [2d Dept., 1995]).

Therefore, where a party introduces evidence of the existence of a loan, personal guarantees and the defendant's failure to make payments according to the terms of the instruments then summary judgement is proper (see, JPMorgan Chase Bank N.A., v. Bauer, 92 AD3d 641, 938 NYS2d 190 [2d Dept.,

2012]).

In this case there is no dispute that any payments were made. Rather, the defendants argue the loan was usurious and unlawful and is therefore void.

To assert claims the debt owed is unlawful it must be established that (1) the debt was unenforceable in whole or in part because of state or federal laws relating to illegal usury, (2) the debt was incurred in connection with "the business of lending money ... at a [usurious] rate," (3) the usurious rate was at least twice the enforceable rate, and (4) as a result of all the above factors the plaintiff was injured in his or her business or property (Durante Bros. & Sons Inc., v. Flushing National Bank, 755 F2d 239 [2d Cir. 1985]).

A side letter agreement was entered into between the parties whereby the plaintiff Manna Capital Solutions LLC was given a twenty-five percent share of defendant W & D Consultants Corp., on condition it provide the loan for one million dollars. Further, Manna, as partial owner was not required to pay back any of the funds. The defendants assert that additional ownership interest renders the amount of interest to which the plaintiff will receive greater than twenty-five percent rendering the loan illegal usury.

In Nile Capital Management LLC v. Knox Lawrence International LLC, 2011 WL 11166380 [Supreme Court New York

County 2011] the court rejected that argument in a case with almost identical facts. In that case the plaintiff filed a motion for summary judgement in lieu of a complaint based upon a promissory note not paid back. The court held the plaintiff had met its prima facie burden. In attempting to create a question of fact the defendant argued the ownership interest given the plaintiff increased the rate of interest to a usurious rate. The court rejected that argument pointing out that ownership interests in any company is not "interest" for the purpose of calculating the applicable interest rates" (id). The court held that was a "novel and unsupported argument regarding calculation of the interest rate" (id).

Thus, any ownership interest given to the plaintiff was not an "interest rate" which could thereby be added to increase the legal interest rate of eighteen percent and somehow render the rate usurious.

Therefore, the promissory note was not usurious as a matter of law and these arguments provide no basis upon which to deny summary judgement.

Further, there is no merit to the argument the side agreement altered the terms of the note. In HCG Mezzanine Development Fund, LP v. Jreck Holdings LLC, 37 Misc3d 1217(A), 964 NYS2d 59 [Supreme Court New York County 2012] the court explained that "so long as an instrument creates an unambiguous

and unconditional obligation to pay a specified sum, such instrument can serve as the basis for invoking CPLR 3213" (id). Further, in Margarella v. Ullian, 164 AD3d 898, 83 NYS3d 569 [2d Dept., 2018]) the court held that "the promissory note was not 'inextricably intertwined' with certain other allegedly related agreements the parties entered into, such that any breach of the allegedly related agreements by the plaintiffs may create a defense to payment on the promissory note" (id). The court explained this was true because the obligations under the note were "absolute and unconditional" therefore the promissory note was enforceable regardless of any other agreements that were entered into between the parties.

In this case the plaintiff has surely presented prima facie evidence it is entitled to summary judgement since it has presented uncontroverted evidence of the note, an obligation to pay and evidence of non-payment (Loewenberg v. Basnight, 172 AD3d 1356, 99 NYS3d 661 [2d Dept., 2019]). As noted, the opposition that other obligations exist fail to raise any question of fact since the breach of any of those obligations does not provide a defense of non-payment based upon the specific provisions of the promissory note (see, Porat v. Rybina, 177 AD3d 632, 111 NYS3d 625 [2d Dept., 2019]).

As previously explained, the note itself contains all the provisions necessary for its enforcement. None of the

defendant's obligations were altered by the side agreement. It did not change payment terms, payment amounts or the time line when such payments were due. The side agreement specifically included language that all the terms of the note remained the same. The side agreement merely confirmed agreements between the parties that had nothing to do with the defendant's obligations under the note. Therefore, the side agreement fails to raise any questions of fact. Consequently, the plaintiff's motion seeking summary judgement is granted.

So ordered.

ENTER:

DATED: June 17, 2024  
Brooklyn N.Y.



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Hon. Leon Ruchelsman  
JSC