Ianni v Sagar
2024 NY Slip Op 35702(U)
April 4, 2024
Supreme Court, Nassau County
Docket Number: Index No. 608222/2023
Judge: Sharon M.J. Gianelli
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU - Commercial Division - Part 7
Present: Hon. Sharon M.J. Gianelli

X

JOHN IANNI

Plaintiff,

-against-

ROBERT SAGAR,

Defendant.

X

Index No.: 608222/2023

Motion Seq. No. 001

Decision and Order

Papers Submitted:

Notice of Motion, Affidavit, Affirmation and Exhibits in Support ____ X
Affirmation, Affidavit and Exhibit in Opposition ____ X
Affidavits in Reply ____ X

Plaintiff moves for an Order pursuant to CPLR §3213, granting summary judgment in lieu of complaint in favor of Plaintiff, and directing the Plaintiff recover from the Defendant principal together with contractual interest through April 15, 2023 in the total amount of $518,235.55 plus interest thereon from on or about April 1, 2023 to the date of entry of judgment plus all fees associated with collection and Plaintiff's attorneys' fees incurred in connection with enforcing payment under that certain Promissory Note executed by the Defendant date on or about December 2014, on the ground that this action is based upon an instrument for the payment of money only, and that there are no defenses thereto.

This action arises out of allegations that Defendant failed to repay to Plaintiff, a loan secured by a promissory note in the amount of $325,000.00, together with interest at a rate of 10 percent per annum, on or about December 2014.

This action was commenced by the filing of a Summons and Motion for Summary Judgment in Lieu of Complaint on May 22, 2023.

Factual Summary

Plaintiff alleges that, in or around December of 2014, Plaintiff and Defendant executed a Promissory Note wherein Defendant agreed to pay to Plaintiff $325,000.00, together with interest at the rate of ten (10%) percent per annum in monthly installments of $2,708.00 beginning on January 15, 2015 and ending on June 15, 2017, when all outstanding principal and accrued interest came due.

Plaintiff states that from January 31, 2015 to July 2016, Defendant made requisite payments to Plaintiff pursuant to the terms of the Promissory Note, then made staggered payments in February 2017, March 2017, August 2017, October 2017, and August 2019 which was the last interest payment of $2,708.00.

Plaintiff further states that, though the principal amount was due on June 15, 2017 and no payment was made on the balance, Plaintiff, having been personal friends with Defendant, provided extensions of time for payment beyond the loan satisfaction period.

Plaintiff states that on November 8, 2021, Defendant paid an additional "sum of Eight Five Thousand Dollars ($85,000.00) towards principal and the sum of Three Hundred Dollars ($300.00) on November 10, 2022 that indicated that it was towards principal."

However, Plaintiff asserts that "Defendant has not paid Plaintiff any part of the amounts due under the Note, or any expenses incurred in either collecting the amounts due under the Promissory Note." Consequently, Counsel for Plaintiff sent Defendant a letter of default dated February 25, 2023, notifying Defendant that he was in breach of his payment obligations and demanding that monthly payments be made to satisfy the interest portion of the loan as Defendant moves forward to pay off the remainder of principal.

Plaintiff contends that there is now due and owing the principal and interest in the amount of $518,235.55, plus interest at a fixed per annum rate of ten (10%) percent from on or about April 1, 2023, to the date of entry of judgment.

In opposition, Defendant argues the existence of several material issues of fact which warrant denial of Plaintiff's motion for summary judgment in lieu of complaint.

Defendant denies ever signing the subject promissory note, asserting that he "never saw said note" until he was served with papers in connection with the instant motion.

Defendant further asserts that he never appeared before the notary identified in the Promissory Note and points to the absence of the day in December 2014 on which he allegedly executed said Note.

In an Affirmation in Opposition, Defendant's Counsel argues that "Plaintiff's counsel affirms the alleged note is signed by both parties herein, however, plaintiff's signature does not appear thereon thus presenting the issue of a second promissory note".

Defendant's Counsel further argues, notwithstanding the aforementioned, that "Plaintiff's affidavit relates payments received over a period of years that [includes] payments made after the alleged note's payment date of June 15, 2017 thus reflecting non-written changes to the note's provisions. Said changes would be contrary to the provisions of the note submitted herein by the plaintiff."

In reply, Plaintiff submits the Affidavit of Steven J. Noto, the Notary Public to the subject Promissory Note. Mr. Noto identifies Defendant as an associate of his, whose signature he is familiar with, and states that he notarized Defendant's signature on or about December 14, 2014.

Plaintiff claims that any allegations that both parties signed the Promissory Note is "a clear mistake" and that Defendant's payments under the Note run contrary to Defendant's claim that there was no valid Note.

Law/Analysis

CPLR § 3212(b) permits the court to grant summary judgment "if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party."

"To establish prima facie entitlement to judgment as a matter of law with respect to a promissory note, a plaintiff must show the existence of a promissory note, executed by the defendant, containing an unequivocal and unconditional obligation to repay, and the failure by the defendant to pay in accordance with the note's terms." *Lugli v. Johnston*, 78 A.D.3d 1133, 1135. "Once the plaintiff submits evidence establishing these elements, the burden then shifts to the defendant to submit evidence establishing the existence of a triable issue with respect to a bona fide defense." *Am. Realty Corp. of NY v Sukhu*, 90 AD3d 792. "Mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient [to defeat a motion for summary judgment]." *Zuckerman v. City of New York*, 49 NY2d 557, 562.

Here, Plaintiff seeks recovery on an instrument for the payment of money only and presents: a promissory note demonstrating Defendant's indebtedness to Plaintiff; an affidavit of the Notary Public confirming Defendant's signature on said promissory note; a payment receipt dated January 31, 2014, signed by both parties, along with a copy of a check dated January 15, 2015, from Defendant to Plaintiff "For Interest Payment" in the amount of $2,708.00; a copy of a check dated November 8, 2021, from Defendant, via his corporate entity, to Plaintiff, in the amount of $85,000.000; a copy of a check dated

November 10, 2022, from Defendant, via his corporate entity, to Plaintiff, in the amount of $300.00 "towards principal on December 2015 [...]".

The Court notes that according to the Promissory Note, "In the event that any monthly payment is not made within ten (10) days of the due date, the holder of [the] Note may declare the entire unpaid amount of principal and interest under this Note to be immediately due and payable if Maker defaults in the due and punctual payment of any installment of principal or interest hereunder." However, "[Plaintiff] at any time may extend the time of payment of all or any part of the indebtedness secured hereby or may grant any other indulgences." In this instance, it is apparent that any extensions of time for payment granted to Defendant by Plaintiff, were afforded in accordance with the terms of the Promissory Note.

Plaintiff has demonstrated his prima facie entitlement to judgment as a matter of law.

Defendant denies signing the subject promissory note but does not dispute that a loan was made by Plaintiff to Defendant in the amount of $325,000.00 or that certain payments were made by Defendant to Plaintiff in connection with said loan.

Defendant fails to offer evidentiary proof to substantiate his claim that the subject promissory note was not signed by him, or was otherwise fraudulently obtained, warranting summary judgment (see generally, *Moezinia v Baroukhian*, 247 AD2d 452; *Vamattam v. Thomas*, 205 A.D.2d 615; *Joint Venture Asset Acquisition v. Tufano*, 203

A.D.2d 102; *Marine Midland Bank, N.A. v. Mattioli*, 180 A.D.2d 406). The fact that the promissory note is undated as to a certain day, is of no consequence. All other arguments presented by Defendant are unavailing.

Notwithstanding the aforementioned, the amount Plaintiff may recover based on the proper application of Defendant's prior payments on the Promissory Note, must be determined.

Accordingly,

It is

ORDERED, that Plaintiff John Ianni's motion for an Order granting summary judgment in lieu of complaint in favor of Plaintiff John Ianni and against Defendant Robert Sagar, is Granted to the extent of liability; and

It is

ORDERED, that an Inquest shall be held to assess damages, attorney's fees, costs and interest; and

It is

ORDERED, that Plaintiff shall serve a Note of Issue, together with a copy of this Order upon Defendant by certified mail, return receipt requested, and shall serve copies of same together with receipt of payment, upon the Calendar Clerk of this Court within twenty (20) days of the date of this Order; and

It is

ORDERED, that upon proof of the Note of Issue filing, an Inquest to assess Plaintiff's damages shall be held In-Person on July 23, 2024 at 9:30 a.m. at Nassau County Supreme Court, 100 Supreme Court Drive, Mineola, NY 11501.

All applications not specifically addressed herein are denied.

The forgoing constitutes the decision and order of the Court.

DATED: Mineola, New York
April 4, 2024

Sharon M.J. Gianelli
Justice of the Supreme Court

ENTERED
Apr 12 2024
NASSAU COUNTY
COUNTY CLERK'S OFFICE