

Nationwide Registry & Sec. Ltd. v Kim

2025 NY Slip Op 31212(U)

April 7, 2025

Supreme Court, New York County

Docket Number: Index No. 655558/2024

Judge: Arthur F. Engoron

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON PART 37

Justice

INDEX NO. 655558/2024
MOTION DATE 10/21/2024
MOTION SEQ. NO. 001

NATIONWIDE REGISTRY AND SECURITY LTD., AS
ASSIGNEE OF THE VENETIAN RESORT AND THE
PALAZZO AT THE VENETIAN,

Plaintiff,

- v -

JASON KIM,

Defendant.

DECISION + ORDER ON
MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 11, 12, 13, 14, 15,
16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31,

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

Upon the foregoing documents, plaintiff's motion for summary judgment in lieu of complaint is
granted, and defendant's cross-motion is denied.

Background

On September 17, 2022, defendant, Jason Kim, submitted a credit application to The Venetian
Resort (a non-party) for a credit at its casino. NYSCEF Doc. No. 25. On or around March 7,
2023, defendant secured a \$50,000 gambling credit from The Venetian Resort and The Palazzo
at The Venetian (the assignor, herein "The Venetian"), which were issued via two casino
markers (signed by defendant), each for \$25,000 (the "Loan"). NYSCEF Doc. No. 4.

Upon presentation to Wells Fargo for collection, the markers (the "Checks") were returned due
to defendant's "closed account." NYSCEF Doc. No. 5.

On October 18, 2024, The Venetian assigned defendant's \$50,000 indebtedness to plaintiff,
Nationwide Registry and Security Ltd., "for the purpose of collection" (the "Assignment").
NYSCEF Doc. No. 4. Plaintiff is a New York corporation located at 502 Park Avenue, New
York, NY.

Plaintiff attests that it has requested payment from defendant, but that the Loan remains due and
owing. NYSCEF Doc. No. 3.

On October 21, 2024, pursuant to CPLR 3213, plaintiff moved for summary judgment in lieu of
complaint, seeking to recover \$50,000, plus interest from the March 10, 2023 date of default,
plus costs and disbursements. NYSCEF Doc. No. 2.

On November 1, 2024, defendant was served at a Park Avenue apartment he holds legal title to, where the process server left the documents with his doorman. NYSCEF Doc. No. 9.

On December 2, 2024, pursuant to CPLR 3211(a)(8), defendant filed a cross-motion to dismiss the instant action for lack of personal jurisdiction due to improper service and pursuant to CPLR 3212, for this Court to grant summary judgment dismissing plaintiff's claims. NYSCEF Doc. No. 11.

On December 31, 2024, plaintiff served defendant in California at the dwelling at which he regularly resides, by delivering true and correct copies of the moving papers to a man of suitable age and discretion; the process server affirmed that the man gave the name "Curtis 'Doe'" (refused to provide last name) and defined his relationship to defendant as a "Co-occupant." NYSCEF Doc. No. 24. On January 6, 2025, copies of the moving papers were also mailed to defendant, pursuant to CPLR 308(2).

In support of his cross-motion, defendant contends that the subject casino markers are not mere "checks," but are more complex instruments subject to Nevada gaming regulations. NYSCEF Doc. No. 14. Defendant alleges that the Clark County District Attorney's Office in Las Vegas initiated criminal proceedings regarding the Loan, resulting in a criminal restitution agreement allowing defendant until 2027 to satisfy the restitution amount. NYSCEF Doc. No. 13. Defendant did not include the aforementioned agreement in the record. Nevertheless, defendant argues that the Assignment acknowledges the alleged pending criminal proceeding by requiring notification to "the office of the District Attorney within 48 hours of any payments received." *Id.* Defendant notes that the Assignment lists the full Loan being owed to "The Venetian Resort, Las Vegas" without listing The Palazzo, and argues that this is a discrepancy raises "serious questions about the validity" of the Assignment. NYSCEF Doc. No. 14.

In opposition to defendant's cross-motion and in further support of plaintiff's motion, plaintiff argues, inter alia; that New York has personal jurisdiction over defendant as service was proper. NYSCEF Doc. No. 20. Plaintiff also cites CPLR 503(e) for the proposition that an action can be brought by an assignee who is a holder in due course of a negotiable instrument; and cites case law for the proposition that a marker is considered a check in Nevada, and a check is a negotiable instrument (citing *Nguyen v State*, 116 NEV 1171; 14P 3d 515; NY UCC § 3-302). NYSCEF Doc. No. 21. Plaintiff attests that defendant, in pursuit of the Loan, signed multiple credit agreements where he waived all defenses against The Venetian and its assignees and agreed that an action related to any markers may be brought in any jurisdiction, including in New York. NYSCEF Doc. Nos. 25, 26.

Further, plaintiff disputes defendant's claim that he made a deal for payment up to 2027 with the Las Vegas District Attorney. NYSCEF Doc. No. 20. Plaintiff attests that The Venetian also denies and has no knowledge of same, and further made no settlement with defendant. Plaintiff highlights that no documents were filed with the Nevada courts relating to same, nor has defendant produced any such documentation. *Id.* Plaintiff argues that even if there is a pending Nevada criminal case, it does not take precedence over a civil collection matter, and furthermore that "[p]arallel proceedings do not exist herein as it is the law of both Nevada and New York that you can have criminal and civil cases arising out of the same facts proceeding at the same time as

different proofs are required for each case.” NYSCEF Doc. No. 21. Additionally, plaintiff notes that while defendant has made allegations of plaintiff’s lack of adherence to Nevada Gaming Commission regulations, defendant has neither attached copies of same nor set forth proof of facts in how plaintiff did not follow such regulations applying to the Checks. NYSCEF Doc. No. 20.

In reply, defendant argues, inter alia, that plaintiff’s “attempt at re-service in California” was defective, as defendant was traveling at the time of service. NYSCEF Doc. No. 27.

Discussion

Here, the December 31, 2024, service upon defendant was proper (despite defendant’s arguments), pursuant to CPLR 308(2), as the process server mailed the moving papers in addition to leaving them with someone of suitable age and discretion at defendant’s usual dwelling. NYSCEF Doc. No. 24.

“A gambling debt will not be enforced in New York unless it was validly contracted in another jurisdiction and is enforceable there.” Natl. Recovery Sys. v Mazzei, 123 Misc 2d 780, 781 (Sup Ct 1984). The Supreme Court of Nevada has explained that, generally “patrons apply for casino credit by completing a standard form setting forth the name of the applicant, his or her address, the name of the applicant’s bank, and the bank account number. Casino personnel approve the applications pending verification of the basic bank information, including the average balance of the applicant’s account.” Nguyen v State, 116 Nev 1171, 1172, 14 P3d 515, 516 (2000). The Supreme Court of Nevada has held that casino markers are enforceable as “checks” Id. at 515, 518 (2000).

Here, defendant validly contracted with plaintiff in Nevada. NYSCEF Doc. No. 5. This Court rejects defendant’s argument that The Venetian did not adhere to Nevada gaming regulations; the record illustrates that defendant applied for casino credit at The Venetian and that The Venetian followed the general procedure summarized above by the Nevada Supreme Court. NYSCEF Doc. Nos. 25, 26.

“When an action is based upon an instrument for the payment of money only ... the plaintiff may serve with the summons a notice of motion for summary judgment and the supporting papers in lieu of a complaint.” CPLR 3213. “A check qualifies as an instrument for the payment of money only[,]” provided that the plaintiff can establish a prima facie case via proof of the check and a failure to make the payments called for by its terms. Omansky v Chase Manhattan Bank, 79 Misc 3d 1233(A) (Sup Ct 2023).

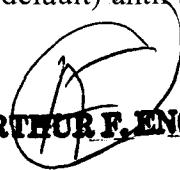
Plaintiff has demonstrated that it is entitled, pursuant to CPLR 3213, to summary judgment in lieu of complaint against defendant by submitting, inter alia: the Checks, which are an instrument for the payment of money only and illustrate defendant’s non-payment (NYSCEF Doc. No. 5); the Assignment (NYSCEF Doc No. 4); and an affirmation from Arnold Koenig, plaintiff’s attorney, attesting to the facts of the claim (NYSCEF Doc. No. 3).

This Court has considered defendant's other arguments and finds them to be unavailing and/or non-dispositive. Accordingly, defendant's cross-motion to dismiss the instant action, pursuant to CPLR 3211(a)(8) and CPLR 3212, is hereby denied.

Conclusion

The motion of plaintiff, Nationwide Registry and Security Ltd., assignee of The Venetian Resort and The Palazzo at The Venetian, for summary judgment in lieu of complaint is granted, and the Clerk is hereby directed to enter judgment against defendant, Jason Kim, in the amount of \$50,000, plus statutory interest from March 10, 2023 (the date of default) until the date of this Decision and Order, plus costs and disbursements.

HON. ARTHUR F. ENGORON



4/7/2025

DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE