

Pinelli v Shorestein

2025 NY Slip Op 33223(U)

August 25, 2025

Supreme Court, New York County

Docket Number: Index No. 656680/2021

Judge: Emily Morales-Minerva

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. EMILY MORALES-MINERVA PART 42M
Justice
-----X

MICHAEL PINELLI, and CHARLOTTE PINELLI, INDEX NO. 656680/2021
Plaintiffs,

- v -

**DECISION & ORDER
AFTER TRIAL**

DAVID SHORENSTEIN, JASON SILVERSTEIN,
SILVERSHORE PROPERTIES 89 LLC, SILVERSHORE
PROPERTIES 118 LLC, SILVERSHORE PROPERTIES 28
LLC, SILVERSHORE PROPERTIES 92 LLC, and 1576 EP
LLC,
Defendants.

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APPEARANCES:

The Weinstein Group, P.C., Syosset, NY (Lloyd J. Weinstein,
Esq., of counsel), for plaintiffs.

Thompson, LLP, New York, NY (Andrew H. Meier, Esq., of
counsel), for defendants.

EMILY MORALES-MINERVA, J.S.C.

In this action for breach of a promissory note, the Court held a two-day bench trial, which commenced, on October 22, 2024, from 10:00 A.M. to 12:30 P.M., and continued to conclusion, on April 08, 2025, from 10:00 A.M. to 12:30 P.M. At the trial, plaintiffs MICHAEL PINELLI and CHARLOTTE PINELLI, appeared with and/or by counsel of record, and defendants DAVID SHORENSTEIN, SILVERSHORE PROPERTIES 89 LLC, SILVERSHORE PROPERTIES 118 LLC, SILVERSHORE PROPERTIES 28 LLC, SILVERSHORE

OTHER ORDER – NON-MOTION

PROPERTIES 92 LLC, and 1576 EP LLC appeared with and/or by counsel of record.

Following opening statements, plaintiffs presented their case, calling only one witness: plaintiff Michael Pinelli, who testified under oath, subject to cross-examination. Over defendants' objection, the court also entered into evidence plaintiffs' exhibits numbered 1 and 2: (1) the promissory note between plaintiffs and defendants SILVERSHORE PROPERTIES 89 LLC, SILVERSHORE PROPERTIES 118 LLC, and SILVERSHORE PROPERTIES 28 LLC (exhibit 1), and (2) the guaranty agreement between defendant DAVID SHORENSTEIN and former defendant Jason Silverstein, as guarantors, and plaintiffs, as lenders, dated July 15, 2017 (exhibit 2).

Plaintiffs offered into evidence, and upon defendants' consent, the court entered into evidence plaintiffs' exhibits numbered 3 through 5, and 7. These exhibits are: (1) defendants' response to notice to admit, dated July 12, 2023 (exhibit 3); (2) defendants' response to demand for documents, dated July 13, 2023 (exhibit 4); (3) plaintiffs' bank statement for the period of January 01, 2019 to January 31, 2019, and January 01, 2021 to January 31, 2021 (exhibit 5); and (4) an e-mail exchange between plaintiffs and defendants' counsel of record, dated October 09, 2024 (exhibit 7).

After plaintiffs rested, defendants called their only

witness: defendant David Shorenstein, who testified under oath, subject to cross examination. Defendants offered, and without objection, the court entered into evidence defendants' exhibits marked A through D. These exhibits are: (A) an e-mail exchange between defendant David Shorenstein and defendants' counsel of record Andrew Meier, dated December 22, 2021; (B) the notice of motion for summary judgment in lieu of complaint in this action, dated November 16, 2021; (C) the joint affidavit in support of motion for summary judgment in lieu of complaint and in opposition to cross-motion in this action, dated January 04, 2022; and (D) the decision and order (N. Bannon, J.S.C.) on the summary judgment motion, dated August 22, 2022.

Defendants rested and, in closing, submitted to the court that plaintiffs failed to meet their burden of showing that defendant David Shorenstein did not meet his obligation under the guaranty, which was a payment of 50% of the amount owed under the promissory note. Defendants made no argument that plaintiffs failed to establish that plaintiffs and defendants Silvershore Properties 89 LLC, Silvershore Properties 118 LLC and Silvershore Properties 28 (89, 118, and 28 LLCs) entered into a promissory note and breached its terms.

Defendants also made no argument that plaintiffs failed to establish that defendant David Shorenstein executed the subject guaranty on the promissory note. Again, defendants only argued

that the individual defendant David Shorenstein made do on such guaranty.

In their summation, plaintiffs proffered that they met their burden of establishing, by a fair preponderance of the credible evidence, entitlement to a judgment of \$162,611.05 plus legal fees against defendants as they proved that a promissory note exists between plaintiffs and defendants 89, 118, and 28 LLCs for \$127,500.00; that plaintiffs provided said amount to 89, 118, and 28 LLCs as part of the bargain; and that 89, 118, and 28 LLCs defaulted in repayment. Plaintiffs also summarized that they submitted proof, establishing, by a fair preponderance of the evidence, that defendant David Shorenstein executed a personal guaranty of the promissory note, entitling them to collect 50% of the amount due on the promissory note from David Shorenstein, and that said defendant has made no payment on said amount.

Now, upon the credible testimony, evidence admitted, law of the case, and applicable case law, the court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Defendant DAVID SHORENSTEIN is the owner and/or managing member of limited liability corporations, including

defendants SILVERSHORE PROPERTIES 89 LLC, SILVERSHORE PROPERTIES 118 LLC, SILVERSHORE PROPERTIES 28 LLC (89, 118, and 28 LLCs), SILVERSHORE PROPERTIES 92 LLC, and 1576 EP LLC.

2. Prior to 2017, plaintiffs MICHAEL PINELLI and CHARLOTTE PINELLI, who are spouses, and defendant David Shorenstein became acquainted.
3. Throughout their friendship, plaintiffs loaned David Shorenstein and/or his LLCs money and received repayment for said loans.
4. However, their relationship soured, after plaintiffs and defendants 89, 118, and 28 LLCs executed a promissory note with plaintiffs, dated July 15, 2017.
5. In the promissory note, 89, 118, and 28 LLCs "promised to pay to the order of **Michael Pinelli and Charlotte Pinelli**" the principal sum of "\$127,500.00" with "interest on the unpaid principal balance from the date hereof [July 15, 2017], at a rate of (see paragraph 2 [of the promissory note]) due in lawful money of the United States of America" (plaintiffs' exhibit 1, Promissory Note, dated July 15, 2017 [emphasis in original]).
6. Paragraph 2 of the promissory note provides:

"Interest Rate: During the period commencing on the date hereof [July 15, 2017] and continuing until this

note is paid in full, interest on the outstanding principal balance of this Note shall accrue as follows:

"Interest on the principal balance shall be computed daily for the 12 months prior to the Default Period at an annualized rate of sixteen percent (16%) or \$55.89 per day. Default Interest shall commence on July 15, 2018 and shall be computed daily at an annualized rate of twenty percent (20%) on the principal balance—unpaid portion and all non-default interest accrued up to and including July 14, 2018"

(id. at § 2 [strike out in original and emphasis added]).

7. Before a notary, David Shorenstein executed the promissory note, as "Managing Member" of defendants 89, 118, and 28 LLCs, along with former defendant Jason Silverstein, also listed as "Managing Member" of said defendants.
8. The term of the Promissory Note commenced on July 15, 2017, and ended "on or before the last day of the twelfth (12th) month following [July 15, 2017], but in no event later than July 14, 2018 (the 'Maturity Date')"" (id. at § 1 [emphasis in original]).
9. Then, defendant David Shorenstein, as "an individual," and former defendant Jason Silverstein,¹ as "an individual," executed a guaranty agreement, dated July 15, 2017, and

¹The court (N. Bannon, J.S.C.) dismissed this action against Jason Silverstein for lack of personal jurisdiction, upon plaintiffs' failure to submit an affidavit of service establishing that they effectuated service on said individual (see NYSCEF Doc. No. 24, Decision and Order, dated August 22, 2022).

signed, before a notary, on November 02, 2017 (plaintiffs' exhibit 2).

10. Said guaranty identifies David Shorenstein and former defendant Jason Silverstein collectively as "guarantors" to plaintiffs; identifies plaintiffs collectively as "Lender;" and identifies defendants "SILVERSHORE PROPERTIES 89, 118, & 28 LLCs" collectively as "Borrower" (id.).
11. The guaranty also identifies the loan amount of \$127,500.00 as the "Loan evidenced by [the] Promissory Note of [July 15, 2017] given by Borrower [89, 118, and 28 LLCs] to Lender [plaintiffs]" (id.)
12. The guaranty explicitly states:

"Guarantors [David Shorenstein and former defendant Jason Silverstein] hereby unconditionally and independently of any liability of Borrower [89, 118, and 28 LLCs] guarantee to Lender [plaintiffs] payment when due, whether by acceleration or otherwise, of **fifty percent (50%)** of all amounts then owed to Lender under the Note, . . . including any principal, interest, penalties, and other accounts"

(id. at § 1 [a] [emphasis in original]).

13. Further, this agreement provides:

"If Guarantors [David Shorenstein and former defendant Jason Silverstein] fail to make such payments promptly, Lender [plaintiffs] may pursue any remedies at law or in equity against Guarantors, without having to proceed first against Borrower [89, 118, and 28 LLCs], and Guarantors [David Shorenstein and former

defendant Jason Silverstein] shall be jointly and severally liable to Lender [plaintiffs] for all expenses, . . . including reasonable attorneys' fees incurred by Lender [plaintiffs], and all amounts paid by Lender [plaintiffs] in taking such action"

(id. at § 1 [b] [emphasis added]).

14. As to costs, expenses and attorneys' fees, the guaranty plainly states:

"All payments, advances, charges, costs and expenses, including attorneys' fees, made or incurred by Lender [plaintiffs] in the enforcement of this Guaranty or in the collection of the Note, shall be paid by Guarantors [David Shorenstein and former defendant Jason Silverstein] immediately and upon demand, together with interest at a rate per annum equal to the interest rate specified in the Note"

(id. at § 9).

15. Finally, the guaranty provides: "The obligations of all the Guarantors shall be joint and several" (id. at § 10).
16. 89, 118, and 28 LLCs immediately defaulted in paying the promissory note, making none of the scheduled payments.
17. Following the default, on January 10, 2019, however, plaintiffs received two wire transfers from LLCs not a party to either the promissory note or guaranty, but associated with defendant David Shorenstein.
18. The first was a wire transfer in the amount of \$7,465.00, to the personal account of plaintiffs from non-party "1576

EP LLC" (see plaintiffs' exhibit 5, entered October 22, 2024, at p 2).

19. The second payment was a wire transfer, in the amount of \$41,400.00, to the same account from defendant "Silvershore Properties 92 LLC" (92 LLC) (id.).
20. Plaintiffs credited the total of this amount (\$48,865.00) to the principal balance in the account with no objection from 89, 118, and 28 LLCs or from David Shorenstein individually.
21. No other payments were made, and this Court finds, based on the preponderance of evidence, as well as all the facts herein, that these payments were intended as payments on the principal of the promissory note.
22. Three years later, on or around January 05, 2021, plaintiffs and David Shorenstein's counsel, non-party Jan Ira Gellis, P.C., again discussed payment on the promissory note and/or guaranty.
23. At that time, David Shorenstein's non-party counsel e-mailed plaintiff Michael Pinelli, stating that "his clients are prepared to pay you 50% of the payoff based on the 50% guaranty;" the e-mail exchange included said counsel's request for the payoff amount due (defendant's exhibit A [emphasis added]).

24. Plaintiff Michael Pinelli responded to non-party counsel with three payoff amounts: "Payoff on 1/15/2021: \$167,674.04"; "Payoff on 1/19/21: \$167,967.80"; "Payoff on 1/20/21: \$168,041.24" (id.).
25. Responding on January 21, 2021, after the "payoff" dates expired, non-party counsel asked Michael Pinelli to send him "an updated payoff good through [January 22, 2021], and . . . a bank address and mailing address . . . to process the wire" (id.).
26. The next day non-party counsel wired \$84,020.62 to plaintiffs' account -- 50% of the \$168,041.24 payoff amount (~~see~~ plaintiffs' exhibit 5, entered October 22, 2024, at p 1).
27. This payment, based on the preponderance of evidence, as well as all the facts herein, was intended as David Shorenstein's payment on the guaranty and discussed as such between the parties.
28. However, almost a month later, Michael Pinelli e-mailed non-party counsel to acknowledge the wire stating, for the first time, a different understanding of said payment.
29. In said e-mail, Michael Pinelli characterized the \$84,020.62 amount as an "installment payment" made on the promissory note and demanded "payment of \$85,771.90 which [Michael Pinelli described as] the remaining balance due

- on the promissory note as of tomorrow (Friday), 2/9/21"
(see defendant's exhibit A).
30. David Shorenstein's non-party counsel did not respond to said demand or to Michael Pinelli's subsequent e-mails asking for the remaining amount due on the promissory note.
31. Now, crediting both the \$48,865.00 and \$84,020.62 payments to defendants 89, 118, and 28 LLCs -- neither to David Shorenstein individually -- plaintiffs contend that the total due on the promissory note is \$162,611.05, as of October 22, 2024, plus 20% interest until August 11, 2025.
32. Plaintiffs calculate a total amount due of \$188,695.93 on the promissory note with attorneys' fees to be determined.
33. Plaintiffs further contend that defendant David Shorenstein owes plaintiffs 50% of that amount -- a total of \$94,347.96 -- plus attorneys' fees.
34. Defendant David Shorenstein counters that his personal liability on the guaranty is 50% of \$147,900.00, which is \$73,950.00.
35. These numbers on either side presume that this Court accepts the calculation facts as true, which this Court does not (see paragraphs 21 and 27 of these factual findings).

36. Given the facts as determined here, as to the promissory note, the parties must now recalculate the amount due, crediting only the \$48,456.00 to the unpaid amount as of the date such payment was received, and adding interest based on the promissory note's terms.
37. For the amount due on the guaranty, the parties must recalculate the amount due based on the 50% responsibility of David Shorenstein on the newly calculated total amount due on the promissory note, crediting to him individually the payment of \$84,020.62.

CONCLUSIONS OF LAW

Burden of Proof

In a civil action, as here, the plaintiff has the initial burden of proof of establishing the truth of its claim by a fair preponderance of the credible evidence (see Rinaldi & Sons, Inc. v Wells Fargo Alarm Serv., Inc., 39 NY2d 191, 196 [1976] [holding that the plaintiff in an action for breach of contract "has the burden of proving his case by a fair preponderance of the credible evidence"]; see also Torem v 564 Cent. Ave. Rest., Inc., 133 AD2d 25, 26 [1st Dept 1987] [finding a lower court inadequately charged a jury on the preponderance of evidence where said court failed to explain that preponderance of

evidence does not mean the greater number of witnesses, but the greater part of the evidence]; see also Pattern Jury Instructions 1:23)).

"The standard 'simply requires [that] the trier of fact . . . believe that the existence of a fact is more probable than its nonexistence before [the trier of fact] may find in favor of the party who has the burden to persuade the [trier of fact] of the fact's existence" (Cole v Cole, 35 NY3d 1012, 1020 [2020], quoting Concrete Pipe & Products of Cal., Inc. v Construction Laborers Pension Trust for Southern Cal., 508 US 602, 622 [1993] [internal quotation marks omitted]; see also Matter of Beautisha B. [Racquirine A.], 115 AD3d 854, 854 [2d Dept 2014] [applying the preponderance of evidence standard]).

"If, at the close of the proofs, the evidence as a matter of logical necessity is equally balanced, plaintiff has failed to meet his burden and the cause of action is not made out" (Rinaldi, supra, 39 NY2d at 196).

Breach of Contract

To prevail in a breach of contract claim, plaintiff must establish, by preponderance of evidence, that (1) a contract exists between the parties; that (2) plaintiff performed in accordance with the contract; that (3) defendants breached their

contractual obligations; and that (4) defendants' breach resulted in damages (see generally 34-06 73, LLC v Seneca Ins. Co., 39 NY3d 44, 51 [2022] [internal quotation marks and citations omitted] [discussing the standard for a breach of contract in the context of a pleading]). This standard further requires the plaintiff to demonstrate "the essential terms of the parties' purported contract, including the specific provisions of the contract upon which liability is predicated" (Hempel v Wise, 224 AD3d 574, 575 [1st Dept 2024], quoting Matter of Sud v Sud, 211 AD2D 423, 424 [1st Dept 1995]; see also Harman Becker Auto. Sys., Inc. v Avnet, Inc., 237 AD3d 539, 541 [1st Dept 2025]).

Here, plaintiffs established, by a preponderance of the evidence, the existence of promissory note between it and defendants 89, 118, and 28 LLCs. Therein, these LLCs promised to pay plaintiffs the principal sum of \$127,500.00, with interest as set forth in the promissory note. Plaintiffs further established by such quantum of proof, the existence of a guaranty agreement between plaintiffs and defendant David Shorenstein, as an individual, where David Shorenstein "unconditionally and independently of any of [defendants LLCs liability] guarantee to [plaintiffs] **fifty percent (50%)** of all amounts then owed to [plaintiffs] under the Note, including any principal, interest, penalties, and other amounts" when due

(plaintiffs' exhibit 2, Guaranty Agreement, November 02, 2017, at § 1 [b] [emphasis in original]).² The guaranty further provides that defendant David Shorenstein, upon failure to make payments due under the guaranty, shall be jointly and severally liable for reasonable attorneys' fees plaintiffs incur in pursuing remedies at law (see plaintiffs' exhibit 2, Guaranty, at § 1 [b]).

Further, no dispute exists that plaintiffs fulfilled their part of the bargain to the extent that they provided defendant LLCs with \$127,500.00. Also, no dispute exists that the 89, 118, and 28 LLCs made no payments on the loan amount prior to July 14, 2018, defaulting on the note, and causing damage to plaintiffs in the amount due.

A problem arises in calculating said amount, given payments were made and received under ambiguous circumstances. No dispute exists that on January 10, 2019, 92 LLC, of which David Shorenstein is a member, transferred to plaintiffs' account \$41,400.00 (id.).³ Also on that date, defendant 1576 EP LLC -- another entity affiliated with David Shorenstein -- transferred \$7,465.00 to the account of plaintiffs. Plaintiffs credited

² Indeed, there is no dispute to the existence of these contracts (see plaintiffs' exhibit 3, Response to Requests for Admission, entered October 22, 2024, at para 1 and 2).

³ While the issue is not before this court, no parties seem to question the appropriateness of their contention that LLCs -- not a party to the promissory note or the guaranty -- are allegedly paying personal debts of their managing partner/employee or paying debts for other LLCs. Here, 89, 118, and 28 LLCs.

these amounts to the principal on the promissory note over no objection of David Shorenstein or the other defendants.

About three years later, plaintiff Michael Pinelli and personal counsel to defendant David Shorenstein discussed a payoff amount on the promissory note. Thereafter, on the direction of David Shorenstein, "JAN IRA GELLIS P.C." -- attorney to David Shorenstein -- transferred to plaintiffs half of the payoff amount: \$84,020.62 (id. at p 1).

Plaintiffs argue that these payments are to be credited to the promissory note on behalf of the 89, 118, and 28 LLCs. However, they present no evidence in this regard. Further, to the extent plaintiffs argue that defendant David Shorenstein and/or other defendants failed to establish that those payments were not made on behalf of the 89, 118, and 28 LLCs, this argument is unavailing. The burden of proof rests with plaintiffs, not with defendants.

Further, defendant David Shorenstein testified credibly and consistently with plaintiffs' evidence -- including e-mail exchanges between the parties and plaintiffs' account statement -- that he instructed non-party counsel to pay plaintiffs \$84,020.62 in satisfaction of the guaranty. The record contains no proof to the contrary, and neither plaintiffs nor other defendants called any other witness other than David Shorenstein to testify in this regard.

Therefore, in calculating damages, the court credits the \$84,020.62 to David Shorenstein's obligation on the guaranty, and the payments totaling \$48,865.00 are credited to the promissory note balance.

Lastly, plaintiffs did not establish their breach of contract claim as against defendant SILVERSHORE PROPERTIES 92 LLC and defendant 1576 EP, LLC. Therefore, the cause of action shall be dismissed as to these defendants.

Account Stated

"[A]n account stated claim is an independent cause of action that is not duplicative of a claim for breach of contract" (Aronson Mayefsky & Sloan, LLP v. Praeger, 228 AD3d 182, 183 [1st Dept 2024]). This claim is defined as an "account balanced and rendered, with an assent to the balance express or implied; so that the demand is essentially the same as if a promissory note had been given for the balance" (id. at 184-185). Such assent may be "implied where a defendant retains bills without objecting to them within a reasonable period of time, or makes partial payment on the account" (Stardom Brands, LLC v S.K.I. Wholesale Beer Corp., 172 AD3d 1266, 1268 [2d Dept 2019]).

However, "acquiescence to the account cannot be implied from that silence" where, as here, "the total amount owed was in dispute and [the dispute] should have been evident to [the] plaintiff" (Hubbell, Inc. v Lazy Swan Golf & Country Club LLC, 187 AD3d 1448, 1449-1450 [3d Dept 2020], citing Chianis & Anderson Architects, PLLC v Courterback Dev. Co., LLC, 140 AD3d 1286, 1289 [3d Dept 2016], lv dismissed and denied 28 NY3d 1021 [2016]).

In any event, plaintiffs failed to meet their burden of showing that any of the defendants here received, or retained, any invoices regarding the promissory note or guaranty (see generally Hess 938 St. Nicholas Judgment LLC v 936-938 Cliffcrest Hous. Dev. Fund Corp., 206 AD3d 514, 514-515 [1st Dept 2022] [holding a plaintiff failed to establish its prima facie entitlement to summary judgment on its claim for account stated where plaintiff provided no evidence that it properly addressed and mailed account invoices]).

Therefore, plaintiffs claim for account stated shall be dismissed.

Accordingly, it is

ORDERED that plaintiffs have established their breach of contract claim to the extent that the court finds defendants SILVERSHORE PROPERTIES 89, LLC, SILVERSHORE PROPERTIES 118 LLC, and SILVERSHORE PROPERTIES 28 LLC breached their promissory

note, and defendant DAVID SHORENSTEIN breached the guaranty agreement; and it is further

ORDERED that plaintiffs shall have judgment against these defendants accordingly and shall settle the judgment based on the fact findings herein, and submit such judgment to this Court within 30 days of this order with notice of entry; it is further

ORDERED that plaintiffs did not establish their breach of contract claim against defendants SILVERSHORE PROPERTIES 92 LLC and 1576 EP, LLC, and, therefore, those claims are dismissed with prejudice; it is further

ORDERED that plaintiffs did not establish their account stated claim against any defendant in this action and, therefore, said claim is dismissed with prejudice as to defendants DAVID SHORENSTEIN, SILVERSHORE PROPERTIES 89 LLC, SILVERSHORE PROPERTIES 118 LLC, SILVERSHORE PROPERTIES 28 LLC, SILVERSHORE PROPERTIES 92 LLC, and 1576 EP LLC; it is further

ORDERED that plaintiffs shall serve a copy of this order with notice of entry on defendants within ten days of such entry and file with the Court proof of such service; and it is further

ORDERED that the Clerk of Court shall mark the file accordingly.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Emily Morales-Minerva.

DATE: 8/25/2025

EMILY MORALES-MINERVA, JSC

Check One:

Case Disposed

Non-Final Disposition

Check if Appropriate:

Other (Specify _____)