

LSLNY, LLC v Greene

2025 NY Slip Op 33271(U)

August 29, 2025

Supreme Court, New York County

Docket Number: Index No. 651541/2025

Judge: Lyle E. Frank

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. LYLE E. FRANK **PART** **11M**

Justice

-----X

LSLNY, LLC

Plaintiff,

- v -

GREENE, DAVID

Defendant.

-----X

INDEX NO. 651541/2025

MOTION DATE 03/20/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 9, 11, 12, 13, 14, 15, 16, 17, 19, 20

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

Upon the foregoing documents, the motion is denied, and the cross-motion is granted.

Background

Defendant David Greene was a commercial real estate consultant with plaintiff LSLNY, LLC. On June 26, 2020, the parties executed a promissory note for the amount of \$36,577.00, with a maturity date of the earlier of 1) Defendant’s net commission equaling the note amount of 2) the date Defendant’s association with LSLNY ended. The Note contained no interest rate other than a default rate of 1.5% per month, or 18% per annum. The parties dispute when Defendant’s association with LSLNY ended. Plaintiff alleges that Defendant’s association with them ended sometime in June. Defendant argues that the second maturity date condition is ambiguous and that his association with LSLNY may have ended when his last commission was paid to Plaintiff. Plaintiff has brought the present motion for summary judgment in lieu of complaint, seeking to recover the full amount of the promissory note and default interest.

Standard of Review

CPLR § 3213 provides for a plaintiff to move for summary judgment in lieu of a complaint for “an action based upon an instrument for the payment of money only or upon any judgment.” When an “instrument requires something in addition to defendant’s explicit promise to pay a sum of money” or if “outside proof is needed, other than simple proof of nonpayment or a similar de minimis deviation from the face of the document” then CPLR § 3213 is not available. *Weissman v. Sinorm Deli*, 88 N.Y.2d 437, 444 [1996]. Once a plaintiff meets their prima facie burden under this provision, “the burden shifts to the defendant to establish, by admissible evidence, the existence of a triable issue with respect to a bona fide defense.” *Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A., “Rabobank Intl.”, N.Y. Branch v. Navarro*, 25 N.Y.3d 485, 492 [2015].

Discussion

Plaintiff has moved for summary judgment in lieu of complaint, arguing that Defendant ceased his association with them some unspecified time in June of 2020 and that there have been no payments made towards the Note amount. Defendant opposes the motion and has cross-moved to dismiss the complaint on the basis that the Note is unenforceable as a usurious loan. For the reasons that follow, the 3213 motion is denied due to material issues of fact and the need to resort to outside documents, and the cross-motion to dismiss is granted.

CPLR § 3213 Is Not Available in This Matter

The date of Defendant’s association with LSLNY ending is the undisputed earlier-occurring maturity date of the Note. Plaintiff has provided an affidavit from one of their managing members stating that Defendant’s association ended on an unspecified date in June of 2020. Defendant has provided a November 4, 2020, email from the same managing member. This email discusses the wait for certain commissions from clients that were to be paid to

Plaintiff on Defendant's behalf because of certain advance payments made to Defendant. The email also states that [i]t is sad to see you go, but I respect your decision." Defendant argues that his association with Plaintiff did not end until at least November of 2020 when a commission was allegedly paid to Plaintiff on his behalf.

CPLR § 3213 is unavailing here because determining both the maturity date (and thus the date interest began to accrue) and the amount of principal due requires the Court to resort to outside documents. *See, e.g., PDL Biopharma, Inc. v. Wohlstadter*, 147 A.D.3d 494, 495 [1st Dept. 2017] ("a document does not qualify for CPLR 3213 treatment if the court must consult other materials besides the bare document and proof of nonpayment, or if it must make a more than de minimis deviation from the face of the document"). Determining the maturity date requires establishing the date that Defendant's "association" with Plaintiff ended, and there is a dispute over this given the language of the November email and the fact that Plaintiff cannot point to a specific date that the association ended. Furthermore, determining the amount of principal would require determining the amount of Defendant's commissions paid to Plaintiff, which would require resorting to further documents and evidence. *See, e.g., Hirsch v. Rifkin*, 166 A.D.2d 293, 294 [1st Dept. 1990] (when "an instrument sued upon is subject to terms and conditions in a separate document, the accelerated procedure for judgment under CPLR 3213 [...] may not be employed"). The requirements for CPLR § 3213 have not been met here.

Defendant Has Met Their Burden on the Cross-Motion to Dismiss

Defendant has cross-moved to dismiss on the grounds that the promissory note is unenforceable as a usurious loan. Under General Obligations Law § 5-501(2), interest rates on loans that exceed 6% per annum are prohibited. When a loan purports to charge interest in violation of GOL § 5-501, it is void under New York law, both as to enforceability of principal

and interest. *Adar Bays, LLC v. GeneSYS ID, Inc.*, 37 N.Y.3d 320, 326 [2021]. But when the otherwise usurious interest rate is “interest to be paid based upon a contingency within the control of the debtor [such as default] and the debtor could have avoided the imposition of such charges simply by paying promptly”, then the rate and loan is not usurious. *Bryan L. Salamone, P.C. v. Russo*, 129 A.D.3d 879, 881 [2nd Dept. 2015].

On a motion to dismiss, the non-moving party’s allegations are to be taken as true. *Avgush v. Town of Yorktown*, 303 A.D.2d 340, 341 [2d Dept. 2003]. Here, Plaintiff alleges that the maturity date was some unspecified time in June of 2020, near simultaneously with the alleged default. Therefore, the default interest began to accrue at or nearly simultaneously at the date of execution, and Defendant did not have the ability to avoid the default interest rate. When determining whether a loan is usurious or not, a court should “look not to its form but to its substance or real character.” *Blue Wolf Capital Fund II, L.P. v. American Stevedoring Inc.*, 105 A.D.3d 178, 183 [1st Dept. 2013]. In *Eikenberry*, the Court of Appeals examined an extension agreement for retainer fees and held that the relevant agreements were not enforceable under the usury laws because “there was no condition within defendants’ control in those agreements whereby defendants could avoid paying more than the legal rate of interest.” *Eikenberry v. Adirondack Spring Water Co.*, 65 N.Y.2d 125, 129 [1985].

Although dealing with different facts, the same reasoning in *Eikenberry* applies to the Note here. If the Note matured at time of execution, as according to Plaintiff’s allegations, then there was no way for Defendant to avoid the default interest rate provided for under the Note. Plaintiff even argues in their papers that the 18% interest rate, an alleged default rate, applied “at maturity.” While an “obligation valid at its inception is not invalidated or tainted with usury by a subsequent usurious transaction”, here the Note was usurious from inception and therefore

cannot be enforced. *Brest v. Kleidman*, 751 N.Y.S.2d 473, 474 [1st Dept. 2002]; *see also ECO Engg., Inc. v. Source Renewables, LLC*, 235 A.D.3d 467, 468 [1st Dept. 2025] (holding that a default interest rate was not usurious when the “borrower had the power to avoid paying the higher rate” and the interest rate only applied *after* maturity). Because this action is premised entirely upon an unenforceable promissory note, it fails to state a valid claim and therefore must be dismissed. Accordingly, it is hereby

ADJUDGED that the motion is denied; and it is further

ADJUDGED that the cross-motion is granted; and it is further

ORDERED that the matter is dismissed.

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8/29/2025

DATE

LYLE E. FRANK, 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