Green Leaf Hemp, LLC v God's Flower LLC
2025 NY Slip Op 35569(U)
January 21, 2025
Supreme Court, Queens County
Docket Number: Index No. 711793/2024
Judge: Marguerite A. Grays
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: **HONORABLE MARGUERITE A. GRAYS**
Justice

CD PART B

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GREEN LEAF HEMP, LLC,

Plaintiff(s),

-against-

GOD'S FLOWER LLC f/k/a
ELEVATED HEMP FARMS LLC,

Defendant(s).

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Index No.: 711793/2024

Motion Date: September 24, 2024

Motion Cal. No.:

Motion Seq. No.: 1

The following papers numbered EF 2-6, EF 9, EF 12-20, read on this motion by plaintiff for an Order: pursuant to CPLR §3213, (1) granting summary judgment in lieu of complaint against defendant God's Flower LLC f/k/a Elevated Hemp Farms, LLC and in favor of plaintiff Green Leaf Hemp, LLC, in an amount no less than $354,735.27, including the outstanding principal balance of $199,289.48 and accrued and unpaid interest in the amount of $155,445.79, with interest accruing at the contractual rate through date of judgment, plus post-judgment interest at the default rate; and (2) granting contractually-mandated costs and expenses, including reasonable attorneys' fees incurred in connection with this lawsuit, in an amount to be determined by the Court; upon the ground that this action is based on instruments for the payment of money only and that there is no defense thereto and read on the cross-motion for for an order: (1) pursuant to CPLR §§ 3211 and 3212, dismissing the case and granting summary judgment in defendant's favor; and (2) pursuant to CPLR §§ 510(3), transferring venue from Queens County to Orange County.

	PAPERS NUMBERED
Notice of Motion – Exhibits, Affirmation and Affidavit Annexed..	EF 2-5, EF 9
Affirmation in Opposition - Exhibits.............................	
Reply Affidavit..	EF 17-18
Notice of Cross-Motion – Exhibits, Affirmation	

and Affidavit	EF 12-15
Affirmations in Opposition - Exhibits............................	EF 17-18
Memoranda of Law..	EF 6, EF16, EF19-20

Upon the foregoing papers, it is ordered that this motion and cross-motion are determined as follows:

Plaintiff Green Leaf Hemp, LLC, moves for an Order, pursuant CPLR §3213, granting summary judgment in lieu of complaint based on two secured promissory notes under which plaintiff alleges that defendant God's Flower LLC f/k/a Elevated Hemp Farms, LLC, promised unconditionally to repay plaintiff a principal sum of $199,289.48 plus accrued interest within ninety days. Plaintiff argues that it is entitled to summary judgment on the basis that the promissory notes executed and issued by defendant and owned and held by plaintiff, are instruments for the payment of money only, and although the promissory notes' maturity and due dates have passed, and demand was made, defendant has failed to pay Plaintiff the amounts due and owing.

Defendant cross-moves for an Order: (1) pursuant to CPLR §§ 3211 and 3212, dismissing the case and granting summary judgment in defendant's favor; and (2) pursuant to CPLR §510(3), transferring venue of this action from Queens County to Orange County.

According to the affidavit of Rena Chase, a member of plaintiff Green Leaf Hemp, LLC, plaintiff is an investor in the hemp and cannabis business and owns two percent (2%) of defendant God's Flower LLC f/k/a Elevated Hemp Farms, LLC. She avers that defendant is in the business of cultivating hemp for resale and leases land to a licensed cannabis operation. The affidavit claims that in March 2022, in order to satisfy amounts due to plaintiff, defendant executed two secured promissory notes dated March 3, 2022, the first note in the principal sum of $108,286.48 and the second note in the sum of $91,003. The Notes are annexed to the motion and are signed by Rena Chase on behalf of plaintiff as Holder and by Michael Kandhorov on behalf of defendant as Borrower.

Pursuant to the terms of the two Notes dated March 3, 2022, for value received, defendant promised to repay plaintiff $199,289.48 as principal plus any accrued interest within ninety (90) days, which was June 1, 2022. The Notes provide that interest would accrue at a rate of 24% per annum, commencing on the date of the Notes, and continuing on the unpaid balance of principal existing on each day during the payment period. The Promissory Notes further provide that (1) overdue accrued and unpaid principal was to be assessed a late fee at the rate of three percent (3%) per month or such lower maximum amount of interest permitted by law, (2) in the event defendant defaults in payment of the principal or interest and default interest, and the default is not cured within two days, (a) the full amount of principal and interest would become immediately due, (b) the amount owed would be payable in cash and (c) the aggregate loan amount would be increased to the full principal and accrued interest. The two Promissory Notes further provide that: (1) if either party commences an action or a proceeding to enforce any provisions of Note, such action or proceeding shall be commenced in state and federal courts sitting in Queens County, New York, and (2) the prevailing party in such action or proceeding will be reimbursed by the other party for its attorney's fees and other costs and expenses incurred in relation to the investigation, preparation and prosecution such action or proceeding.

Plaintiff asserts that defendant has paid no principal or interest before, on, or after June 1, 2022, the date on which the entire outstanding loan amount was due. As of June 2, 2024, plaintiff claims the principal balance due on the Notes is $199,289.48 and the accrued and unpaid interest at the contractual rate, including default interest, is $155,445.79.

Defendant opposes the motion, arguing that the Notes are unenforceable as the product of procedural and substantive unconscionability, as they lacked consideration and as they are uncollectible due to their usurious interest rates. In his affidavit, Michael Kandhorov, the managing member of God's Flower LLC f/k/a Elevated Hemp Farms LLC, claims that the parties had entered into an earlier agreement pursuant to which plaintiff extended a $400,000 line of credit to defendant. He states that upon defendant's default on the line of credit in September 2020, defendant agreed to the execution of the new Notes. Michael Kandhorov states that he signed the Notes under great duress due to other events happening at that time impacting defendant's finances.

Michael Kandhorov further claims that in March 2022, a partner of defendant's sought to divest itself from God's Flower LLC f/k/a Elevated Hemp Farms LLC. He avers that this divestiture was somehow crucial for defendant's survival, would avoid the loss of substantial investor funds and necessary in order for the company to avoid bankruptcy. Michael Kandhorov claims that plaintiff, holding a 2% ownership interest in defendant, refused to sign off on the divestiture and release, demanding, as a condition of its sign off, that defendant pay in full, in cash, the line of credit balance owed on the earlier loan.

According to Michael Kandhorov, this shows that plaintiff held defendant hostage forcing it to sign the two Promissory Notes or face bankruptcy. At the time the Notes were executed on March 3, 2022, he claims, without evidentiary support, that the total amount defendant owed plaintiff was $503,000. It is undisputed that defendant secured $500,000 from an existing equity holder, Tree of Life, and assigned those funds to plaintiff to pay that amount on the earlier line of credit. Defendant claims, without evidentiary support, it also paid plaintiff an additional $50,000. According to defendant, it owed plaintiff no money when it signed the two Promissory Notes and thus there was no consideration provided to defendant when it executed the new Notes obligating it to pay $199,289.48 plus substantial interest.

Defendant claims that because the interest rate contained in the Notes exceeds the criminal usury cap, the loan is void ab initio as it is a usurious transaction and therefore unenforceable with the principal and interest uncollectible. Defendant argues that the motion should be denied and as there are genuine disputes of material fact, this action should be converted to a plenary action so the parties can move to discovery.

Annexed to Rena Chase's reply affidavit is annexed a Line of Credit Purchase Agreement And Assignment Agreement dated March 1, 2022, executed by plaintiff, defendant and non-party Tree of Life Capital, Inc. as substitute creditor. In this Purchase Agreement, defendant acknowledges owing plaintiff the outstanding balance of $699,289.48 on the earlier agreement, the substitute creditor agrees to pay plaintiff $500,000 of that debt to plaintiff, leaving a balance owed by defendant to plaintiff of $199,289.48. The Agreement provides that defendant would issue two Promissory Notes in the amount of $199,289.48 to cover the outstanding debt. It is undisputed that on March 3, 2022, plaintiff and defendant executed the Notes which are the subject of this action.

Under CPLR 3213, "[w]hen 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" (*Maksoud v Iskhakov*, 187 AD3d 1167, 1168 [2020]; *Estate of Hansraj v Sukhu*, 145 AD3d 755, 755 [2016]). "A promissory note is an instrument for the payment of money only, provided that it contains an unconditional promise by the borrower to pay the lender over a stated period of time" (*Intermax Eco, LLC v Eco Family Food Mart Corp*., 172 AD3d 1040, 1041 [2019] quoting *Estate of Hansraj v Sukhu*, 145 AD3d at 755). A plaintiff demonstrates its prima facie entitlement to judgment as a matter of law with respect to a promissory note if it shows "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" (*Express Valentine Auto Repair Shop, Inc. v New York Taxi 2, Inc.*, 185 AD3d 550, 551-552 [2020]).

An instrument does not qualify for CPLR §3213 relief if "outside proof is needed, other than simple proof of nonpayment or a similar de minimis deviation from the face of the document" (*Weissman v Sinorm Deli*, 88 NY2d 437, 444 [1996]; *US Premium Fin. v Sky Materials Corp*., 182 AD3d 629 [2020]). A defendant can defeat a CPLR §3213 motion by offering evidentiary proof sufficient to raise a triable issue of fact (*Banco Popular N. Am. v Victory Taxi Mgmt*., 1 NY3d 381, 383 [2004]; *Mallad Constr. Corp. v County Fed. Sav. & Loan Assn*., 32 NY2d 285, 290 [1973]).

It is well settled that in order to demonstrate unconscionability, there must be a showing that a contract is "both procedurally and substantively unconscionable when made" (*Gillman v Chase Manhattan Bank,* 73 NY2d 1, 10 [1998]). "A contract may be voided on the ground of economic duress where the complaining party was compelled to agree to its terms by means of a wrongful threat which precluded the exercise of its free will" (*Stewart M. Muller Constr. Co. v New York Tel. Co.*, 40 NY2d 955, 956 [1976]; *21st Century Radiology & Imaging, P.C. v Dobtsis*, 207 AD3d 689, 690 [2022]). There must be an adequate showing of an unlawful or wrongful threat to serve as the basis for a claim of duress (*Herson v Kalenscher-Kirschenfeld*, 164 AD3d 481, 482 [2018]; *Lopez v Muttana*, 144 AD3d 871, 871-872 [2016]). A claim of economic duress is waived by a party's failure to promptly repudiate the contract (*Lopez v Muttana*, 144 AD3d at 871-872).

Pursuant to Penal Law §190.40, the criminal usury cap is 25% per annum. A limited liability company cannot interpose a defense of civil usury, but it can raise the defense of criminal usury in a civil action as an affirmative defense (GOL §5-521[3]; Limited Liability Company Law §1104[c]; PL §190.40; *Fred Schutzman Co. v Park Slope Advanced Med., PLLC*, 128 AD3d 1007, 1008 [2015]). A clause in a promissory note purporting to reduce the rate of interest to a non-usurious rate if the rate originally imposed was found to be usurious, can not save the note from being usurious (*id).* The defense of criminal usury, however, does not apply where the terms of the promissory note impose a rate of interest in excess of the statutory maximum only after default or maturity (*Torto Note Member v Babad*, 192 AD3d 843, 845 [2021]; *Miller Planning Corp. v Wells*, 253 AD2d 859, 860 [1998]).

Here, plaintiff has established each element entitling it to summary judgment by providing proof of the Promissory Notes, executed by defendant, as defendant admits, which contain an unequivocal and unconditional obligation to pay, and the failure by defendant to pay pursuant to the terms of the Notes, also as conceded by defendant. Plaintiff has demonstrated that the Notes were supported by adequate consideration in the form of plaintiff's forbearance of its right to seek immediate repayment of the balance of $199,289.48, plus accrued interest. Plaintiff has shown that there was consideration for the Notes and that they are not unconscionable as plaintiff forebore collecting the debt and the interest rate is not usurious.

In opposition to plaintiff's prima facie showing, defendant fails to raise a triable issue of fact as to a bona fide defense, its conclusory claims notwithstanding. The amount of interest on the Notes is below 25% (Penal Law § 190.40) and, pursuant to the terms of the Notes, interest did not begin to accrue at the 3% monthly rate until after the occurrence of the default. Defendant failed to allege any unlawful or wrongful threat by plaintiff that could serve as the basis of a claim of duress as both parties agree that defendant had already defaulted on the earlier line of credit and owed plaintiff over $500,000. As the two

Promissory Notes extended defendant's time to pay and plaintiff forbore asserting its rights as to the earlier debt, defendant raises no issue of fact as to duress. This is especially so as there is no showing that defendant repudiated the Notes in a timely fashion.

Defendant's cross-motion for an Order, pursuant to CPLR §§3211 and 3212, dismissing the case and granting summary judgment is denied. As there is no complaint yet in this action, there is no cause of action to dismiss pursuant to CPLR §3211. Further, as there has been no complaint, no answer and thus no joinder, summary judgment is premature (CPLR §3212[b]; *Cremosa Food Co., LLC v Amella*, 164 AD3d 1300 [2018]). Defendant's cross-motion to change venue is denied in light of the Notes' forum selection clause (*Knight v New York & Presbyt. Hosp.*, __ NY3d __ [2024]; 2024 NY Slip Op 05870).

Accordingly, the motion for summary judgment in lieu of complaint is granted to the extent that it is ordered that plaintiff is awarded a money judgment on the two Promissory Notes dated March 3, 2022, in the combined amount of $199,289.48, plus interest at the contractual rate of 24% from March 3, 2022 to June 1, 2022. From June 2, 2022 until entry of judgment, default interest shall accrue at the rate of 3% per month. After entry of judgment, interest shall accrue at the statutory rate. The motion is denied as any additional relief.

This constitutes the Order of the Court.

Dated: January 21, 2025

FILED
1/22/2025 PLG
COUNTY CLERK
QUEENS COUNTY

MARGUERITE A. GRAYS,
J.S.C.