

Tsai v Lo

2026 NY Slip Op 30429(U)

January 29, 2026

Supreme Court, New York County

Docket Number: Index No. 653375/2020

Judge: Arlene P. Bluth

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

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MAY R TSAI,

Plaintiff,

- v -

MARK PAUL LO, LI YU YEN

Defendant.

-----X

INDEX NO. 653375/2020
MOTION DATE N/A
MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138

were read on this motion to/for JUDGMENT - SUMMARY

Plaintiff's motion for summary judgment is denied and defendants' cross-motion for discovery penalties is denied.

Background

Plaintiff brings this case to recover based on a loans she issued to defendants, each for \$3,130,072. She contends that maturity date for each loan was August 14, 2019 and that neither defendant paid what they owed.

Plaintiff says she transferred the money to defendants in July 2017 and that defendants were to make monthly payments of interest for the entire term of the loan (July 26, 2017 through August 14, 2019) after which the principal had to be repaid in full. Plaintiff contends that both loans were secured by each defendant's 20% interest in an LLC. Plaintiff maintains that both

defendants refused plaintiff's offer to accept the collateral (the security interests) as full satisfaction for their defaults.

Defendants cross-move to strike plaintiff's complaint and her reply to their counterclaims based on purported discovery malfeasance. They explain that this case concerns the purchase of a property in order to do a flip sale. Defendants (husband and wife) contend that the LLC cited by plaintiff was created to acquire a property for the intended flip sale and that the property was purchased for \$17 million.

They contend that plaintiff was their partner in this venture and that she insisted that she loan them money to finance the purchase at a low interest rate rather than defendants attempting to secure a loan from a bank. Defendants argue that plaintiff made all sorts of promises about not holding them in default on the loans but that she still needed promissory notes in case proceeds were withheld from the flip sale. They argue that because the purchase of the property contained a two-year sale restriction, the maturity date for the loans was set as August 14, 2019 to allow the flip sale to be completed before the loans were due.

As the two year period began to end, defendants say they found a potential buyer but that plaintiff refused to go forward, insisting that the property would be worth more. They contend that they were shocked to find that plaintiff declared them in default. Defendants stress that they found another buyer in May 2020 and that instead of going forward with the deal, plaintiff started this action.

Defendants contend that this plaintiff's third motion for summary judgment and so it should be denied. They argue that they have contributed about \$3.5 million in maintenance for the property. Defendants contend that these loans were inextricably intertwined with the flip sale joint venture and so plaintiff's failure to approve the sale is an issue of fact concerning the loans.

They argue that they would not have entered into the loans if they knew that plaintiff would frustrate the sale of the property in order to get defendant's interests in the LLC.

With respect to the cross-motion, defendants argue that plaintiff has not produced any discovery despite multiple court orders directing her to respond to defendants' demands. They point out that this is why a deposition has not yet taken place.

In reply, plaintiff argues that the Court should disregard the oral agreements suggested by defendants and that an oral agreement to sell property is void under the General Obligations Law. She emphasizes that defendant entered into loans with promissory notes and they did not pay what they owed.

Discussion

The Court denies plaintiff's motion. In this Court's view there are clear issues of fact surrounding the formation of a joint venture to purchase a property for a flip sale and whether the loans at issue in this case were inextricably intertwined with that flip sale. Defendants raised legitimate issues about plaintiff's refusal to consent to a sale by showing a \$50 million offer in their papers (NYSCEF Doc. No. 86).

The Court also observes that the Appellate Division, First Department already found, in the context of a prior motion to dismiss defendants' counterclaims, that "defendants sufficiently pled that the oral agreement was effectively an LLC voting agreement under which plaintiff agreed to vote her membership interest in favor of defendants' sale of their membership interests or a sale of the property" (*Tsai v Lo*, 212 AD3d 547, 548, 183 NYS3d 77 [1st Dept 2023]). The First Department also specifically rejected plaintiff's assertion that the Statute of Frauds bars defendants' contentions about an impermissible oral agreement as this "was not an unenforceable

oral contract for the sale of real property, as it did not provide for the sale or transfer of real property or any party's interest in real property” (*id.*).

Plaintiff did not meet her burden as a matter of law to disprove defendants’ theory of this case, which is that they took out these loans as part of a joint venture and that plaintiff frustrated that plan in order to get defendants’ interest in the LLC (which owned the property). In other words, the Court finds that because the purported oral agreement about the joint venture was inextricably intertwined with the loans/promissory note, the Court denies plaintiff summary judgment (*c.f. A+ Assoc. Inc. v Naughter*, 236 AD2d 655, 654 NYS2d 44 [3d Dept 1997] [denying summary judgment because a promissory note was inextricably intertwined with a separate purchase agreement]).

The Court also denies the cross-motion for discovery penalties. This case was previously assigned to a different judge and the docket is entirely unclear as to what has happened in the last few years. Of course, this motion was never decided despite the fact that it was fully briefed by August 2024—the undersigned discovered this pending motion upon this case’s reassignment in December 2025.

The last uploaded discovery order is from May 8, 2024 (NYSCEF Doc. No. 124) and the Court sees a Teams conference marked as held back in August 2024—however, no discovery order was uploaded to NYSCEF following that conference. And then, it seems that nothing happened. This motion sat for the last year and a half, and no conferences were held. Under these circumstances, this Court cannot dismiss plaintiff’s complaint or impose some other penalty based on the failure to provide discovery.

Given that this is a 2020 case with only three parties and that the allegations are fairly routine, the Court sets a note of issue date for March 24, 2026. This should be more than enough time to finish whatever discovery is remaining. While there has been some motion practice, there is no reason this case needs six years before a note of issue is filed.

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment is denied; and it is further

ORDERED that defendants' cross-motion is denied.

Note of issue deadline March 24, 2026.



ARLENE P. BLUTH, J.S.C.

1/29/2026
DATE

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