

Qasemi v Edhi

2012 NY Slip Op 33778(U)

December 3, 2012

Supreme Court, Queens County

Docket Number: 16081/2012

Judge: Robert J. McDonald

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

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ORIGINAL

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD
Justice

OS

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AHMED QASEMI,

Index No.: 16081/2012

Plaintiff,

Motion Date: 09/20/12

- against -

Motion No.: 32

Motion Seq.: 1

QUTUB EDHI and USA EDHI INTERNATIONAL
FOUNDATION,

Defendant.
----- X

QUEENS COUNTY CLERK
FILED
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The following papers numbered 1 to 13 were read on this motion on the plaintiff for summary judgment in lieu of complaint pursuant to CPLR 3213:

Papers Numbered

Notice of Motion-Affidavits-Exhibits.....	1 - 6
Affirmation in Opposition.....	7 - 10
Reply Affirmation.....	11 - 13

By motion dated July 27, 2012, plaintiff moves pursuant to CPLR 3213 for summary judgment in lieu of complaint with regard to a series of alleged promissory notes dated from July 30, 2009 through December 16, 2011. The plaintiff asserts that the notes were executed by both defendants in return for monies lent and constitute unconditional agreements to pay the total sum of \$348,650 plus interest.

The first document, dated July 30, 2009, is entitled "Agreement" and states that Qutub Edhi agrees to pay Ahmed Qasemi \$60,000. It is signed by Edhi in his individual capacity. There is no date for repayment, no mention of the defendant, USA EDHI INTERNATIONAL FOUNDATION, and no set rate of interest.

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The second "Agreement" is dated September 14, 2009 and states that Qutub Edhi agrees to pay Ahmed Qasemi the amount of \$100,000 as reimbursement for certain payments made to third parties by the plaintiff. It is signed by Edhi in his individual capacity, contains no rate of interest, no date for repayment and no mention of defendant, USA EDHI INTERNATIONAL FOUNDATION.

The third note dated October 1, 2009, is entitled, "Affidavit and Indemnification Agreement." It is executed by Qutub Edhi in his individual capacity and states that he owes Qasemi the sum of \$40,000 which he agreed to pay three months from the date of the note. It states that interest will be 10% and will increase to 15% if not paid on time. It also states that "if I fail to make any payment he has the right to come after me personally and my company (Edhi Foundation)."

The fourth note dated October 21, 2009 is also entitled "Affidavit and Indemnification Agreement" and states that defendant Edhi owes plaintiff \$31,500.00 with respect to a Jeep Wrangler and states that it must be paid in full within two months by December 21, 2009." The interest rate is 10% increasing to 15%. The note states that it is a personal guarantee but that "If I fail to make any payment he has the right to come after me personally and my company (Edhi Foundation)."

The fifth document dated December 16, 2011, is entitled "Agreement," and states that "I Qutub Edhi as a member of Edhi Foundation, hereby acknowledge that I have borrowed \$10,000 from Ahmed Qasemi." It states that the rate of interest is 20%. The note does not contain a date for repayment but states that if defendant fails to repay said amount that plaintiff has the right to take legal action against defendant and his corporation.

The sixth note dated January 31, 2011 is entitled, "Agreement," and states that plaintiff agrees to pay certain third parties for the benefit of the defendant and in return Edhi agrees to pay plaintiff the sum of \$100,000 within 3 months from the date of the agreement. The interest rate was set at 19%.

In support of the motion, the plaintiff, Ahmed Qasemi submits an affidavit dated July 27, 2012, stating that to date defendants are in default as they have failed to make any payments to him pursuant to the above stated documents. Plaintiff also submits a copy of a letter sent by his counsel to the Edhi Foundation which purports to be a demand for the Corporation to make payment on the notes.

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As a result of the defendants' failure to make payment, plaintiff now requests an order pursuant to CPLR 3213, granting a money judgment for the full amount of the notes to wit \$348,650 plus interest accrued as per the terms of each note and counsel fees. Counsel contends that plaintiff has submitted proof of the existence of the notes and the defendants' default in payment.

In opposition, the defendant, submits an affidavit from the defendant, Qutub Edhi, and an affidavit from Mohammad Chaudary, the manager of the New York Office of Defendant USA Edhi International Foundation. Chaudary states in his affidavit dated September 5, 2012 that Qutub Edhi is the son of the founder of the organization and works as an assistant in the New York Office and has no managerial responsibilities. He also states that Qutub Edhi has no authority to bind the foundation financially in any way. He states that the foundation was not a party to any of the Agreements signed by the defendant.

Qutub Edhi submits an affidavit dated September 5, 2012 admitting that the notes in issue do bear his signature. He states however, that he did not understand the nature of the notes, he was not represented by a lawyer and moreover, that he made partial payments on the notes and never received a receipt therefor. He also asserts that he did not sign the notes in any capacity for the foundation and in fact he has no authority to bind the foundation. Defendant also attaches copies of checks which he states constitute repayments for the various notes and agreements set forth in the plaintiff's motion for summary judgment. He states that the total amount paid on the notes to date is \$373,000. Lastly defendant states that the plaintiff attorney has a conflict of interest in that he is likely to be called as a witness in the case as he previously represented the defendant in ancillary matters.

In reply, the plaintiff submits an affidavit in which he disputes that the monies paid to him by the defendant as shown in the checks annexed to the defendants' opposition have any relevance to the monies due and owing to him in accordance with the terms of the various documents executed by the defendant Edhi. Thus, plaintiff argues that he has not been repaid for the loans in issue and that none of the loans which were are the subject of this action have been satisfied. Further, plaintiff submits a print out from the foundation's website showing that defendant is a trustee of the foundation and as such has full authority to bind the foundation. Plaintiff's counsel did not address the issue of whether he has a conflict of interest in this case.

Upon review of the plaintiff's motion for summary judgment, defendant's cross-motion and affirmation in opposition and plaintiff's reply thereto, this court finds as follows:


"To establish a prima facie entitlement to judgment as a matter of law with respect to a promissory note, a plaintiff must show 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 (see Larry Lawrence IRA v Exeter Holding Ltd., 84 AD3d 1175 [2d Dept. 2011]; Signature Bank v Galit Props., Inc., 80 AD3d 689 [2d Dept. 2011]; Lugli v Johnston, 78 AD3d 1133 [2d Dept. 2010]; Gullery v Imburgio, 74 AD3d 1022 [2d Dept. 2010]; Superior Fid. Assur., Ltd. v Schwartz, 69 AD3d 924 [2d Dept. 2010]; Verela v Citrus Lake Dev., Inc., 53 AD3d 574 [2d Dept. 2008]; Levien v Allen, 52 AD3d 578 [2d Dept. 2008]).

Here, the plaintiff failed to establish his prima facie entitlement to judgment with respect to plaintiff USA EDHI INTERNATIONAL FOUNDATION. None the agreements and affidavits were signed by any representative of the Foundation and Qutub Edhi did not sign any of the documents as a trustees or as a representative of the Foundation. With respect to the defendant Qutub Edhi, individually, said defendant has raised a triable issue of fact by submitting copies of checks which he claims constitute full payment of all of the loans which are the subject of this proceeding. There are also question of fact as to whether the defendant had any authority to bind the Foundation and whether the plaintiff's counsel, Stephen I. Feder has a conflict of interest (see Sound Shore Med. Ctr. of Westchester v Maloney, 96AD3d 823 [2d Dept. 2012]; Agai v. Diontech Consulting, Inc., 64 AD3d 622 [2d Dept. 2009]; Ippolito v Family Medicine of Tarrytown & Ossining, LLP, 46 AD3d 752 [2d Dept. 2007]; Khoury v Khoury, 280 AD2d 453 [2d Dept. 2001]).

Therefore, the plaintiff's motion for summary judgment in lieu of complaint is denied and it is hereby,

ORDERED, that the plaintiff's motion shall be deemed the complaint and the defendant is granted leave to file an answer within 20 days of service of a copy of this order with notice of entry thereof.

Dated: December 3, 2012
Long Island City, N.Y.



ROBERT J. MCDONALD
J.S.C.

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