At a Motion Term of the New York State Supreme Court, Broome County, held in the City of Binghamton, New York, on July 27, 2012.

PRESENT: HON. FERRIS D. LEBOUS
Justice Presiding

STATE OF NEW YORK
SUPREME COURT COUNTY OF BROOME

THE MAPLE PRESS COMPANY,

Plaintiff,

-vs-

ANDREW R. MANCINI, and DANIEL R. LEVENE,

Defendants.

DECISION & ORDER

Index No.: CA2012-0155

RJI No.: 2012-0708-M

APPEARANCES:

COUNSEL FOR PLAINTIFF:
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FERRIS D. LEBOUS, J.S.C.

This action was commenced by Plaintiff on January 23, 2012, seeking $23,299.50 that Plaintiff claims is owed pursuant to a promissory note entered into between the parties in 1989. Defendants deny that Plaintiff is owed any money under the contract as the parties entered into an Installment Sales Contract in 2010 which released both parties from any further liability. Both parties have moved for summary judgment.

BACKGROUND [1]

On August 8, 1989, Defendants purchased property from Plaintiff and leased it back to Plaintiff. As part of that transaction, a Promissory Note was signed by Defendants stating that they would pay plaintiff $23,299.50 without interest if one of two events contained in the lease occurred: Plaintiff exercising it's option to purchase pursuant to Article 31 in which event Plaintiff would receive the amount of the Promissory Note as a credit against the purchase price; or pursuant to Article 32 which related to the lease being terminated and Plaintiff permitting the separation the buildings, in which event Plaintiff would have to bear the cost with Plaintiff receiving a credit against its expenses in the amount of the fair market value of the land as if it was unimproved. If Defendant gave this credit to Plaintiff, Plaintiff would return Defendant's Promissory note to Defendant. The promissory note incorporated by reference all the terms of the lease agreement. The lease continued until November 1, 2010.

[1] There is no factual dispute with regard to the history of the transactions between the parties.

On November 1, 2010 the parties entered into an Installment Sales Contract for Plaintiff to purchase the property back from Defendants, but the agreement was a separate agreement and not an exercise of Plaintiff's rights pursuant to Article 31 of the lease. The agreement for the sale of the property back to Plaintiffs contained a provision (paragraph 6 of the Installment Sales Contract) whereby each party released the other from any obligation arising out of the lease. The release language does not mention the promissory note. The Installment Sales Agreement also stated that the lease would remain in effect until October 31, 2010 and would be considered terminated at that time.

Plaintiff now claims that because the lease was terminated by the consummation of the sale of the property back to Plaintiff, Defendants are liable to Plaintiff for the payment of the Promissory Note in the amount of $23,299.50 pursuant to paragraph 32 of the lease agreement. There was no evidence that Plaintiff raised the issue of the Promissory Note nor sought a credit at closing for the amount of the Promissory Note when the parties closed on the sale of the property back to Plaintiff on November 1, 2010.

Defendants claim that the provisions in the promissory note were conditions precedent, and since neither condition precedent occurred, Defendants are not liable to Plaintiff for the $23,299.50. In the alternative, Defendants claim that they are not liable because Plaintiff signed a release that released Defendants from any liability pursuant to the terms of the lease, or that there are questions of fact that preclude the granting of summary judgment.

ANALYSIS

Contract Interpretation:

Where the terms of the contract are clear, the interpretation of the contract is a question of law for the court to decide without referring to extrinsic evidence. (*Ruttenberg v. Davidge Data Sys. Corp.,* 215 A.D 2d 191 [1st Dept., 1995]). If there is ambiguity, then it is a question of fact for a jury to decide. (*Id.*; see also, *Coloney v. Coloney*, 80 A.D.3d 840 [3rd Dept., 2011]).

Condition Precedent:

"A condition precedent is an act or event, other than a lapse of time, which, unless the condition is excused, must occur before a duty to perform a promise in the agreement arises." (*Oppenheimer & Co., Inc. v. Oppenheim, Appel, Dixon & Co.,* 86 N.Y.2d 685, 690 [1995]). There are two types of conditions precedent: express and implied. Express conditions must be performed, implied conditions can be met with substantial compliance. (*Latham Land I, LLC v. TGI Friday's Inc.* 96 A.D.3d 1327 [3rd Dept., 2012]).

In the case before the court, the promissory note states that Defendants would pay the $23,299.50, " upon the happening of the following events." Subsection (b), which Plaintiff is relying upon, states "Upon termination of the aforesaid lease without exercise by The Maple Press Company of its option to purchase as set forth in section 32 of said lease agreement."

Section 32 of the lease agreement sets forth payment for the separation of the buildings and the credits that Plaintiff will receive. Pursuant to Section 32 of the lease agreement, Plaintiff was to receive a credit towards the separation of the buildings in an amount equal to the fair

market value of the real estate, and if Plaintiff was given this credit, Plaintiff would return the promissory note to Defendants. However, although the lease was terminated, it was because the parties entered into a new agreement and not under either condition in Sections 31 and 32 of the lease.

There is no ambiguity here. The promissory note is clearly conditioned upon the happening of one of two events, to wit: the exercise by Plaintiff of its right to purchase the property under the terms of Section 31 of the lease agreement, or, under the terms of Section 32 of the lease agreement, a separation of the buildings and a credit to Plaintiff in the amount of the fair market value of the real estate. These are express conditions precedent to Defendants' obligation to pay the amount of the promissory note. Further proof that these are conditions precedent is that payment of the promissory note was to be in the form of a credit against the purchase option price, or in exchange for a credit to be given by Defendants to Plaintiff. Clearly it was anticipated that any remuneration from the promissory note would be either as a credit or in conjunction with a credit which would, in the normal course, be settled at the closing of the transaction. Plaintiff apparently never sought a credit for payment under the promissory note at the time the transaction between the parties closed on November 1, 2010.

Since neither of the express conditions required to trigger payment under the terms of the promissory note occurred, Defendants are not liable to Plaintiff for the promissory note.

With regard to the release signed by the parties, the release relieved the parties from liability under the terms of the lease agreement. It is clear that the purpose of the release was to

extinguish the rights and liabilities of the parties related to the lease. Although the release does not mention the promissory note, since payment under the terms of the promissory note was dependent upon the parties' rights and liabilities under the terms of the lease agreement, the release signed by the parties also released any liability of the defendants under the terms of the promissory note. Any other interpretation would result in Defendants remaining liable for an obligation under the terms of the lease, which would be contrary to the purpose of the release. (See, e.g., *Foundry Capital Sarl v. International Value Advisers, LLC*, 96 A.D.3d 620 [1st Dept., 2012].

NOW, therefore, it is hereby

ORDERED, that Plaintiff's motion for summary judgment is denied, and it is further

ORDERED, that Defendant's cross-motion for summary judgment is granted, and the complaint is dismissed.

ENTER

Dated: October 2, 2012
At Binghamton, New York

s/ Ferris D. Lebous
Hon. Ferris D. Lebous, J.S.C.