

Puka Capital Funding, LLC v L & N Twins Place, LLC
2013 NY Slip Op 33657(U)
August 20, 2013
Supreme Court, Bronx County
Docket Number: 307611/2011
Judge: Howard H. Sherman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX

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Puka Capital Funding, LLC.,

Plaintiff

Index No. 307611/2011

-against-
L & N Twins Place, LLC

Decision and Order

Defendant
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The following papers numbered 1- 5 read on motion by defendant for an order clarifying this court's prior decision and order and cross-motion by plaintiff for an order pursuant to CPLR 2218 directing a trial on the issue raised on the renewal motion and for an order staying the vacatur of the judgment ordered by the court's prior determination, and extending and continuing a restraining order issued by plaintiff against the defendant's bank account

<u>PAPERS</u>	<u>NUMBERED</u>	
Order to Show Cause , Affirmation of Counsel , Exhs. A- C	1	
Notice of Cross-Motion, Affidavits in Support, Exhs. A-D	2	
Affidavit in Opposition/Cross-Motion , Exhs. A,B	3	
Reply Affidavits	4	
Affirmation in Sur-Reply	5	

Upon the forgoing papers, and after oral argument, the motion for clarification of this court's prior decision and order , and the cross-motion for an order directing a trial on the issue of the date of execution of the promissory note, and a stay of the vacatur of the judgment entered on the court's original determination are decided as set forth below.

Facts and Procedural Background

In pertinent part, the court restates the procedural history of this case as set forth in the decision and order of May 6, 2013.

By decision and order of this court dated March 27, 2012, the motion of plaintiff Puka Capital Funding , LLC ("Puka Capital") for summary judgment in lieu of a

complaint was granted. On April 10, 2012, judgment was entered in favor of plaintiff in accordance with that decision and order in the amount of \$ 356, 987.17 with interest calculated at the rate of 6 % per annum from 02/26/07.

The underlying claim was the default of defendant L & N Twins Place , LLC ("L&N ") in the payment of principal on a promissory note dated February 28, 2002 signed by David Balaj as a member of L &N. By its terms, the note called for the payment of all outstanding principal and accrued interest as of February 28, 2007.

It is undisputed on this record, that in February 26, 2002, David Balaj and his wife Maria Balaj the only other member of L & N, purchased real property in Pleasantville, New York,¹ after having received \$861,000.00 from Puka Capital, a limited liability company whose managing director is Zef Balaj, ("Z. Balaj") , the father of David Balaj.

Also undisputed is the fact that that on April 30, 2002, L & N paid to Puka Capital the sum of \$ 587, 043.00 .

In 2009, David Balaj commenced divorce proceedings in Supreme Court, Westchester County.²

In August 2011, Puka Capital commenced this action seeking payment of the unpaid principal on the note.

¹ The premises is described as a 7 unit residential building with six one-bedroom apartments , and a three-bedroom unit.

² *Balaj v. Balaj* , Index # . 23678/09, Supreme Court, Westchester County

Puka Capital moved for summary judgment [CPLR § 3213] and in opposition, Maria Balaj maintained that the balance of the funds advanced by Puka Capital not repaid, was, in fact, intended to be a gift from her husband's parents, the only members of the plaintiff LLC.

The court granted the motion for summary judgment, and then upon the motion of Maria Balaj, granted renewal and upon same, vacated its prior determination in favor of plaintiff upon a finding that there were triable issues of fact precluding dispositive relief.

Motion and Cross-Motion

- 1) By order to show cause, defendant³ seeks clarification of this court's decision/ order to the extent of directing the vacatur of the judgment and a further order directing that any and all restraints on Twin Parks bank account be released, or alternatively directing plaintiff to release and withdraw the restraining notice.
- 2) Plaintiff cross-moves for an order directing a trial on the issue raised on renewal, i.e., whether the underlying promissory note was created in 2002, or 2010. Pending disposition of this issue, plaintiff seeks a stay of the vacatur of the 04/20/12 judgment, as well as an order "extending retroactive from April 22, 2013 and continuing for an additional period of one year, or through such other date set down by this Court, a

³ It is noted that the motion is made on behalf of defendant L & N.

Restraining Notice issued by Plaintiff against Defendant's bank account maintained at Hudson Valley Bank. "

Discussion and Conclusion

Upon review of the papers herein , and after oral argument, the court finds that the movant has demonstrated that the implicit determination in the court's decision on renewal should be made explicit.

Upon a finding that there were issues of fact concerning the execution of the underlying instrument precluding an award pursuant to CPLR § 3213 , the court vacated its prior decision and order , however, it did not further direct that the judgment entered thereon also be vacated.

It is submitted that any arguments raised in opposition to the granting of such ministerial relief are unavailing . It was the clear import of the court' s determination that the judgment on the award of summary judgment , be vacated.

Also upon the denial of the "quick relief" envisioned in the statute (see, Weissman v. Sinorm Deli, 88 N.Y.2d 437, 443 669 N.E.2d 242 [1996]), the court having not ordered otherwise, the moving and answering papers were deemed the complaint and answer, respectively (see, CPLR 3213 ; see also, Sea Trade Mar. Corp. v. Coutsodontis, 2013 N.Y. App. Div. LEXIS 5518, 2013 NY Slip Op 5599 (N.Y. App. Div. 1st Dep't Aug. 13, 2013))

By cross-motion plaintiff now seeks to set this action down for a hearing on the issue of the date of the preparation of the note to include expert testimony concerning the meta-data files in connection with the preparation of the document.

It is noted that for the first time in this action, David Balaj provides an affidavit in support of the cross-motion in which he attests as to the circumstances of the preparation and the execution of the note in his capacity as managing member of the defendant LLC.

It is submitted that in light of the requirement for expert testimony concerning meta-date files in both a work and home computer and external hard-drives, and CD's accessed by David Balaj, the hearing requested by plaintiff would neither be expeditious, nor would the findings upon the hearing be dispositive of the other issue raised by Maria Balaj, whether the monies sought in this action were intended to be a family gift, or a debt to be discharged at a future date , an issue requiring an assessment of credibility of the four individuals comprising the party LLCs.

In light of this determination, there is no basis to grant the remaining relief sought in the cross-motion a further stay of the vacatur of the judgement and the continuation of enforcement proceedings thereon.

Accordingly, it is ORDERED that the motion be and hereby is granted and it is further

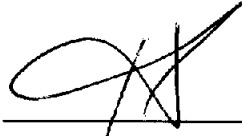
ORDERED that the judgment entered in favor of plaintiff on April 20, 2012, be and hereby is vacated , and it is further

ORDERED that all enforcement sought thereon be and hereby is vacated and it is further

ORDERED that the cross-motion be and hereby is in all respects, denied.

This constitutes the decision and order of this court.

Dated: August 20, 2013


Howard H. Sherman