

Soforo v Sollins

2013 NY Slip Op 33235(U)

December 17, 2013

Supreme Court, New York County

Docket Number: 12394-2012

Judge: Emily Pines

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

INDEX NUMBER: 12394-2012

SUPREME COURT - STATE OF NEW YORK
COMMERCIAL DIVISION, PART 46, SUFFOLK COUNTY

COPY

Present: **HON. EMILY PINES**
 J. S. C.

Original Motion Date: 12-20-2012; 02-06-2013
 Motion Submit Date: 12-17-2013
 Motion Sequence No.: 003 RRH
 004 WDN

_____ X
SHERRY SOFORO,

Plaintiff,

-against-

JAMES SOLLINS,

Defendant.

Attorney for Plaintiff Sollins

Farrel Fritz, PC
 James M. Wicks, Esq.
 Aaron E. Zerykier, Esq.
 1320 RXR Plaza
 Uniondale, New York 11556

Attorney for Defendant Soforo

Bradley B. Davis, Esq.
 3 Delta Road
 Massapequa, New York 11758

_____ X

ORDERED that the plaintiff's motion (Mot. Seq. 003) for an order directing defendant to pay advance retainers to counsel for plaintiff in this action and in a related action is referred to a conference before the Court on February 4, 2014, at 3:00 p.m., to schedule a factual hearing in accordance herewith; and it is further

ORDERED that defendant's motion to disqualify plaintiff's counsel (Mot. Seq. 004) is withdrawn in accordance with this Court's order placed on the record following a conference on December 16, 2013.

The plaintiff, Sherry Soforo (“Soforo”) and the defendant, James Sollins (“Sollins”) lived together from October 2001 to early 2007. On February 13, 2007, they entered into a Revised Cohabitation Agreement (“Cohabitation Agreement”) pursuant to which, among other things, Sollins agreed to make monthly support payments to Soforo for a period of ten years. The Cohabitation Agreement provides, in relevant part:

ARTICLE 16: COSTS

RESPONSIBILITY FOR COSTS: James has agreed to pay all legal costs of Sherry in conjunction withy this document or its enforcement, or negotiations with regard thereto.

* * *

ARTICLE 18: MISCELLANEOUS

* * *

GOVERNING LAW: In the event of any dispute or disagreement concerning the meaning of the terms of this Agreement, all terms . . . may be enforced in a Supreme Court in the county in New York in which either party then resides . . . In the event it becomes necessary for either party to proceed pursuant to this paragraph . . . such party may seek an advance retainer for estimated legal fees on the same basis as in a matrimonial action, and at the termination of such litigation shall be entitled to seek an award of legal fees and costs on the same basis.

Soforo alleges that in 2009 she received loans totaling \$162,629 from Sollins as set forth in several successive promissory notes executed by the parties. Additionally, Soforo executed written personal guarantees of certain loans totaling \$20,000 from Sollins in 2009 to a limited liability company of which Soforo was the sole member.

Soforo alleges that in July 2009, Sollins began deducting sums totaling almost 50% from the monthly support payments to Soforo under the Cohabitation Agreement as payments for the aforementioned loans. Soforo acknowledges that each of the notes contains a provision allowing Sollins to deduct payments on the loans from her support payments due under the Cohabitation Agreement but she alleges that she was not represented by independent counsel with regard to the terms of any of the notes. Although Soforo admits that she signed a letter dated June 230, 2009, “which effectively permitted [Sollins] to reduce her monthly support based on the then outstanding Individual Guaranties as they came due,” she alleges that she did so without “any opportunity to have the documents reviewed by independent counsel or to ascertain what legal implications there would be to her execution of these documents” (Amended Complaint at ¶ FOURTEENTH). Soforo alleges that the deductions from her support were not reflected as repayment on the notes, but were rather charges as interest in violation of New York’s usury laws. Soforo claims that Sollins breached the Cohabitation Agreement by reducing the amount of her monthly support payments because there is no right of set off in the Cohabitation Agreement and she seeks damages in the amount of \$133,475.

In the related action, *Sollins v Soforo* (Suffolk County Index No. 11-03678), Sollins sues Soforo to recover outstanding indebtedness allegedly owed to him by Soforo totaling \$246,003.93

under three promissory notes, as well as a series of oral loans totaling \$349,893.49. Sollins alleges that Soforo defaulted under the terms of the notes and oral loans. Sollins also alleges, among other things, that Soforo agreed that Sollins could deduct certain amounts from the support payments due to Soforo under the Cohabitation Agreement to apply towards repayment of the oral loans. In Accordance with such deductions, Sollins alleges that the outstanding balance of the oral loans has been reduced from \$349,893.49 to \$206,693.49. In her answer, Soforo alleges, among other things, that “[e]xcept for the automobile loan and promissory notes, all other moneys given to [her] were given as gifts to her” (Amended Verified Answer and Affirmative Defenses and Counterclaim).

Based upon the submissions in support of and in opposition to the instant motion, including the affidavits of the parties, the Court finds that there are sharply contested issues of fact requiring a hearing as to whether Sollins loaned any funds to Soforo in addition to the funds reflected in the promissory notes and guarantees signed by Soforo. It is clear that Soforo agreed that Sollins could deduct amounts for repayment of the loans reflected in the promissory notes and guarantees from the support payments due to her pursuant to the Cohabitation Agreement. Therefore, the Court finds that the propriety of such deductions is not the subject of enforcement of the Cohabitation Agreement. However, Sollins also claims oral loans to Soforo totaling more than \$350,000, and he has deducted amounts from Soforo’s support payments for repayment of the alleged oral loans. Soforo claims that such funds were gifted to her by Sollins and that he cannot deduct from her support payments for repayment of same. To the extent that such funds were not loans, deductions from support payments for repayment of such funds do relate to enforcement of the Cohabitation Agreement. Thus, a hearing is necessary as it is unclear whether this aspect of the dispute between the parties concerns

enforcement of the provision of the Cohabitation Agreement regarding support payments thus entitling Soforo to an advance retainer for estimated legal fees.

This constitutes the **DECISION** and **ORDER** of the Court.

Dated: December 17, 2013
Riverhead, New York



EMILY PINES
J. S. C.

FINAL
 NON FINAL