| **Ragland v Baker** |
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| 2018 NY Slip Op 30853(U) |
| May 7, 2018 |
| Supreme Court, New York County |
| Docket Number: 154709/2017 |
| Judge: Arlene P. Bluth |
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 32

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DR. YOLANDA RAGLAND,

Index No. 154709/2017

Plaintiff,

Motion Seq: 001
DECISION+ORDER

-against-

HON. ARLENE P. BLUTH

DR. MELVA BAKER,

Defendant.

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Plaintiff's motion for partial summary judgment on its first cause of action is denied.

**Background**

This dispute arises out of the purchase shares of stock from non-party Professional Office Building Corporation ("POBC"). Both plaintiff and defendant are doctors in podiatry and had been friends for years. In or about July 2014, the defendant decided to lease Suite # 56 located at 421 Huguenot Street, New Rochelle, New York, which at the time was owned and operated by POBC.[1] As a prerequisite to tenancy, POBC demanded the purchase of 20 shares of its corporation for $2,000. Plaintiff had more money than defendant, defendant needed some money to obtain the office space and so defendant turned to her friend for money. The parties decided to enter a professional business venture together wherein plaintiff would advance funds for defendant and defendant would refer patients to plaintiff if the patients needed surgery.

[1]On or about August 28, 2017, POBC sold the building.

On July 31, 2014, plaintiff issued a check for $2,000 to purchase shares in defendant's name and at or about that time defendant obtained the shares and entered into a lease for the space. Plaintiff maintains that in order to have both her name and defendant's name on the suite door and in the lobby directory, POBC required that plaintiff purchase 20 additional shares. According to plaintiff, the purchase price for the second set of shares was also $2,000.00 and plaintiff claims that, on August 12, 2014, she issued a check for that amount to POBC.

The parties continued their relationship without major incident until November 2016 when they learned that POBC intended to sell the building and that its shareholders would be disbursed monies representing their share in the sale proceeds, a return which exceeded initial investment.

Plaintiff alleges that after POBC announced that the shares would pay off handsomely, defendant first claimed that she owned the 20 shares that were in her name because she reimbursed plaintiff for her initial $2,000.00 payment; plaintiff denies that repayment was made. Aware of the parties' dispute regarding share ownership, plaintiff claims that POBC placed the funds representing 40 shares into escrow and conditioned the release of the funds upon the parties' settlement or a formal court order regarding share ownership. As a result, on July 10, 2017, plaintiff commenced this action, *inter alia* for a judgment declaring she was the sole shareholder of all 40 shares.

Plaintiff now moves for partial summary judgment on her first cause of action for a declaration that she is the owner of the 20 shares for which defendant does not claim to have repaid plaintiff (the "August 12, 2014 shares").

**Discussion**

To be entitled to the remedy of summary judgment, the moving party "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*id.*). When deciding a summary judgment motion, the court views the alleged facts in the light most favorable to the non-moving party (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492, 955 NYS2d 589 [1st Dept 2012]).

Once a movant meets its initial burden, the burden shifts to the opponent, who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 560, 427 NYS2d 595 [1980]). The court's task in deciding a summary judgment motion is to determine whether there are bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505, 942 NYS2d 13 [2012]). If the court is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied (*Tronlone v Lac d'Amiante Du Quebec, Ltee*, 297 AD2d 528, 528-29, 747 NYS2d 79 [1st Dept 2002], *affd* 99 NY2d 647, 760 NYS2d 96 [2003]).

After review of plaintiff's papers, this Court finds that plaintiff has not set forth a prima facie case for ownership of any shares. The moving papers simply do not show that plaintiff has ownership in anything. She shows that she wrote checks, but she shows no certificates, receipts

or other proof that she received anything for those checks. And the checks themselves indicate in the memo section that they were for "200 shares" rather than the 20 shares plaintiff now seeks.

As set forth above, it is well settled that plaintiff must make the prima facie case in the moving papers, before the court even looks to the opposition. Certainly, if crucial information is not submitted until the reply, then the motion can not be granted. Here, plaintiff does not submit a stock certificate until the reply; even if the certificate did not raise questions, it would not be considered. However, the stock certificate submitted in reply does raise questions: although plaintiff alleges it was issued as a result of the August 12, 2014 check, the certificate is dated August 1, 2014. Of course, judgment cannot be granted declaring ownership of 20 shares of stock issued on August 1, 2014 based upon a check dated twelve days later for payment of 200 shares. Besides, the shares are not signed by any officer of the corporation.

Moreover, the fact that defendant only claims ownership to 20 shares does not automatically mean that plaintiff is entitled to the other 20. On these papers, plaintiff has not shown entitlement to any shares, and so the motion is denied.

Accordingly, it is hereby

ORDERED that the motion for partial summary judgment on plaintiff's first cause of action is denied.

This is the Decision and Order of the Court.

**Dated: May 7, 2018**
**New York, New York**

**ARLENE P. BLUTH, JSC**



HON. ARLENE P. BLUTH
J.S.C.