

Yhung Gyung Kang v Shin

2021 NY Slip Op 30070(U)

January 8, 2021

Supreme Court, New York County

Docket Number: 656792/2019

Judge: Arlene P. Bluth

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 14

Justice

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YHUNG GYUNG KANG

Plaintiff,

- v -

EDWARD E. SHIN,

Defendant.

-----X

INDEX NO. 656792/2019

MOTION DATE 01/07/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27

were read on this motion to/for DISMISSAL.

The motion to dismiss by defendant is denied.

Background

Plaintiff claims that he loaned \$350,000 to defendant in January 2014, he demanded repayment in June 2019 but that defendant refused to pay the money back.

Defendant moves to dismiss based on a purported settlement agreement relating to this loan. He claims that he lacked the cash to pay the money back so he explored using common stock in a bank as a means of settling the debt. Defendant claims that his attorney and plaintiff's attorney reached a verbal agreement, and a draft settlement agreement was sent to plaintiff.

Defendant asserts that in reliance upon the settlement agreement, he endorsed his stock certificates to plaintiff. The discussions dragged on throughout the summer of 2020, but defendant insists there was an agreement and that the endorsed stock certificates were sent to counsel for plaintiff's office. However, no fully executed settlement agreement was ever sent to

defendant. Then, counsel for plaintiff apparently renounced the settlement and sent back the stock certificates.

Defendant argues that plaintiff should be bound by the settlement agreement because there is ample evidence that he intended to be bound by the terms of the agreement. He points out that the settlement agreement (the draft in writing) did not contain a provision requires that the agreement would not be binding until it was signed by both parties.

In opposition, plaintiff contends that he never signed the settlement agreement nor was there a verbal agreement on the terms and conditions of the settlement agreement. He explains that once it became clear that the stock certificates were essentially worthless due to the economic effects of the ongoing pandemic, plaintiff decided he did not want to settle the case.

Discussion

“We have long held that a contract may be valid even if it is not signed by the party to be charged, provided its subject matter does not implicate a statute—such as the statute of frauds” (*Flores v Lower E. Side Serv. Ctr., Inc.*, 4 NY3d 363, 368, 795 NYS2d 491 [2005]). “In determining whether the parties entered into a contractual agreement and what were its terms, it is necessary to look ... to the objective manifestations of the intent of the parties as gathered by their expressed words and deeds” (*id.* [internal quotations and citations omitted]).

Here, the timeline of events suggests that there was no settlement agreement. On July 28, 2020, counsel for plaintiff emailed counsel for defendant and stated that “our client is no longer amendable to settling under the previously discussed settlement terms. The stock certificates have significantly depreciated in value since the time our clients first began discussing settlement in or around February of this year. Please advise as to how you would like the stock certificates returned to your office” (NYSCEF Doc. No. 20). Counsel for plaintiff explains that the case

could settle if defendant's wife was willing to sign an affidavit of confession for the full amount due (*id.*).

Counsel for defendant later responded that he needed "to investigate the possibility. Can you state clearly what the terms of a settlement would look like if Mrs. Shin is willing to sign so we do not have a misunderstanding?" (NYSCEF Doc. No. 22).

These emails, combined with the fact that the stock certificates were sent back, show that there was not an agreement where both parties intended to be bound. After plaintiff blew up the settlement agreement, defendant investigated the new settlement demands from plaintiff. This is not a case where the parties agree to all the terms and take steps as if the agreement was finalized. Instead, counsel for defendant was waiting for plaintiff's signature and then agreed to consider the new proposed terms.

There is no doubt that plaintiff strongly considered settling the case. But he changed his mind. The Court recognizes that the sending of the stock certificates is strong evidence that the parties were close to a settlement. But the fact is that counsel for defendant continuously asked for plaintiff's signature on the draft settlement agreement. In fact, when counsel for plaintiff confirmed receiving the stock certificates, she stated that "We will send you the fully executed settlement agreement once we have Mr. Kang's signature" (NYSCEF Doc. No. 12). This demonstrates that the agreement was not finalized and plaintiff had not yet agreed to be bound by it. That he never signed the agreement only further shows that the Court cannot dismiss this case based on a settlement.


The Court understands defendant's unhappiness with the events that occurred. He thought he had an agreement and endorsed stock certificates over to plaintiff. And plaintiff changed his

mind before he signed. The Court cannot bind him to an agreement he never signed and where defendant kept asking for his signature.

Accordingly, it is hereby

ORDERED that the motion to dismiss by defendant is denied and he is directed to answer pursuant to the CPLR.

Remote Conference: February 16, 2021 at 2 p.m.

<u>1/8/2021</u> DATE			 ARLENE P. BLUTH, J.S.C.	
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE