

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST DEPARTMENT

Schaeffer v. May

2023 NY Slip Op 01152 (N.Y. Ct. App. 2023) · No. Index No. 651064/19; Appeal Nos. 17427-17428-17429; Case Nos. 2022-00925, 2022-00933, 2022-00938 · Decided March 2, 2023

SUMMARY

The Appellate Division, First Department, affirmed judgments dismissing Brad Schaeffer's amended complaint against Lawrence May and awarding May damages and attorneys' fees. The court held that documentary evidence established the loan and that Schaeffer's conflicting affidavit created only a feigned issue of fact regarding payments under the promissory note.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Renwick, J.P.; Friedman, J.; Gesmer, J.; Singh, J.; Higgitt, J.
JURISDICTION	New York
DECIDED	March 2, 2023
DOCKET	Index No. 651064/19; Appeal Nos. 17427-17428-17429; Case Nos. 2022-00925, 2022-00933, 2022-00938
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from judgments dismissing his amended complaint, awarding defendant \$106,411.25 on counterclaims, and awarding defendant \$55,000 in attorneys' fees. Plaintiff also appealed from an amended order, which appeal was dismissed as academic.
STANDARD OF REVIEW	Summary judgment review; the court applied the rule that summary judgment on an action involving a promissory note is not precluded by an unsupported debtor affidavit when documentary evidence conclusively establishes the loan.
PRECEDENTIAL VALUE	Published opinion of the New York Appellate Division, First Department
PARTIES	Brad Schaeffer v. Lawrence May

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the documentary evidence and the promissory note conclusively established the loan and entitled May to judgment despite Schaeffer's contrary affidavit.
2. Whether Schaeffer's affidavit created a genuine issue of fact or instead constituted a feigned issue of fact because it conflicted with his contemporaneous email and deposition testimony.
3. Whether the judgments dismissing Schaeffer's amended complaint, awarding May on his counterclaims, and awarding attorneys' fees should be affirmed.

HOLDINGS

1. Where documentary evidence conclusively establishes the existence of a loan evidenced by a promissory note, an unsupported statement by the debtor does not preclude summary judgment. Schaeffer's conflicting affidavit created only a feigned issue of fact.
2. The judgments in favor of May on his counterclaims and dismissing Schaeffer's amended complaint were properly entered.

KEY QUOTATIONS

“In an action on a promissory note, where the documentary evidence conclusively indicates the existence of a loan, summary judgment will not be precluded based solely on the unsupported statement of the debtor” (at 1)

“creates only a feigned issue of fact” (at 1)

FACTUAL BACKGROUND

Schaeffer executed a promissory note requiring repayment of a \$230,000 principal balance plus 12 percent interest in 60 monthly installments of \$5,066 beginning August 1, 2017. He later asserted by affidavit that all payments made to May or Schaeffer's former employer, Argentum, were loan payments totaling \$302,340.51. That assertion conflicted with Schaeffer's April 16, 2018 email itemizing payments, including payments designated as "debt service" and others designated as "debt/misc," and his deposition testimony did not explain or apportion those payments.

PROCEDURAL HISTORY

The Supreme Court, New York County, entered judgments on March 1, 2022, dismissing Schaeffer's amended complaint against May, awarding May \$106,411.25 on his counterclaims, and awarding May \$55,000 in attorneys' fees. The Appellate Division unanimously affirmed the judgments and dismissed as academic the appeal from an amended order entered on or about January 21, 2022.

DISPOSITION

affirmed

CASES CITED

- Salrex Invs. v. M. Slavin & Sons, 214 A.D.2d 399, 400 (1st Dep't 1995)
- Dixon v. Sum Realty Co., 190 A.D.3d 584, 585 (1st Dep't 2021)

OPINION

PER CURIAM.

Schaeffer v May (2023 NY Slip Op 01152)

Schaeffer v May
2023 NY Slip Op 01152</td>
Decided on March 02, 2023</td>
Appellate Division, First Department</td>
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.</td>
This opinion is uncorrected and subject to revision before publication in the Official Reports.</td>

Decided and Entered: March 02, 2023
Before: Renwick, J.P., Friedman, Gesmer, Singh, Higgitt, JJ.

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Index No. 651064/19 Appeal No. 17427-17428-17429 Case No. 2022-00925 2022-00933 2022-00938

<div align="center">[*1]Brad Schaeffer, Plaintiff-Appellant,

v

Lawrence May, Defendant-Respondent. </div>

<p>McCarter & English, LLP, New York (Joseph R. Scholz of counsel), for appellant.</p><p>Paul F. Condzal, New York, for respondent.</p>

<p>Judgment, Supreme Court, New York County (Gerald Lebovits, J.), entered March 1, 2022, dismissing plaintiff Brad Schaeffer's (Schaeffer) amended complaint against defendant Lawrence May (May) and awarding May the total sum of \$106,411.25, and judgment, same court and Justice, entered March 1, 2022, awarding May \$55,000 in attorneys' fees, unanimously affirmed, without costs.

Appeal from amended order, same court and Justice, entered on or about January 21, 2022, unanimously dismissed, without costs, as academic.</p><p>"In an action on a promissory note, where the documentary evidence conclusively indicates the existence of a loan, summary judgment will not be precluded based solely on the unsupported statement of the debtor" (<i>Salrex Invs. v M. Slavin & Sons</i>, <a href="/opinion/6123426/salrex-investments-inc-v-m-slavin-sons-inc/#400" aria-

description="Citation for case: Salrex Investments, Inc. v. M. Slavin & Sons, Inc.">214 AD2d 399, 400 [1st Dept 1995]).

The promissory note here stated that Schaeffer would repay the \$230,000 principal plus twelve percent interest in 60 consecutive monthly installments of \$5,066, payable on the first day of the month, beginning August 1, 2017. Schaeffer's affidavit, in which he avers that all the payments made — whether to May or Schaeffer's then employer, Argentum — were payments made on the loan, totaling \$302,340 51, creates only a feigned issue of fact (*Dixon v Sum Realty, Co.*, 190 AD3d 584, 585 [1st Dept 2021]).

The affidavit conflicted with Schaeffer's own April 16, 2018 email to May, which lists itemized payments from November 27, 2017 through August 1, 2018, and which includes certain payments to May for "debt service," while other payments were paid to both May and Argentum as "debt/misc," with no apportionment between the two.

In addition, Schaeffer, in his deposition testimony could not explain the distinction between "debt" and "misc," nor could he apportion payments between these terms and entities. Accordingly, judgment was correctly entered in favor of defendant's counterclaims and the amended complaint properly dismissed.</p> <p>THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.</p> <p>ENTERED: March 2, 2023</p>

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