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Burns v. Herman

SAMANTHA BURNS, Plaintiff, v. LAWRENCE S. HERMAN and
MARTHA R. HERMAN, his wife, Defendants
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Civil Action — Law, No. 2003–1072

Demurrer; Breach of contract; Interest

1. Under the law governing demurrers, a complaint is sufficient as to the potential liability of both defendants for unpaid loans where it alleges that wife as well as husband received the benefits of the loans.

2. A plaintiff is not limited at the pleading stage to the 6% interest set by statute, where the interest rate agreed to in an oral contract is a matter of dispute subject to clarification through discovery.

3. Where no time for performance is specified in a contract, performance should occur within a reasonable time, depending on the nature of the business; what constitutes a reasonable time under the circumstances is for the trier of fact.

4. Where a defendant, relying on his own self-serving writing which declares that the parties never agreed to a specific repayment schedule, asserts that his duty to repay is a moral one only, the court will overrule his demurrer insofar as the writing alone does not constitute the entire contract.

Appearances:

John W. Frey, Esq., *Counsel for Plaintiff*

J. McDowell Sharpe, Esq., *Counsel for Defendants*

OPINION

Herman, J., December 10, 2003

Introduction

Before the court are defendants' preliminary objections to plaintiff's complaint. Plaintiff filed this action seeking to collect on a series of loans which she made to defendants. The parties filed briefs and oral argument was held before the undersigned. This matter is ready for decision.

Background

Plaintiff made a series of loans to defendants between October 1, 1992 and August 10, 1993. (Complaint, ¶3.) The monies were used for various business and personal purposes. (Complaint, ¶4.) Defendant-

husband acknowledged the terms of the loans in a written letter to plaintiff dated February 21, 1994. (Complaint, exhibit A.) Defendants made numerous payments to plaintiff between June 1994 and October 1995. Defendants have made no payments since October 23, 1999, despite plaintiff's repeated demands. (Complaint, ¶¶11, 12.)

Discussion

Defendants raise three objections in the nature of a demurrer. The first is that the complaint fails to state a cause of action against defendant-wife, Martha R. Herman. Mrs. Herman contends that the complaint does not set forth specific facts to support the allegation that she is liable for the loans. She points out that her husband alone acknowledged the loans in writing and that writing makes no mention of her at all. She also contends that the complaint, which avers some of the monies were used to start her husband's chiropractic business, does not specify that she herself received any monies or participated in her husband's business.

We here keep in mind that a demurrer is a challenge to the legal sufficiency of a claim. The party asserting the demurrer admits as true all well-pleaded, material, relevant facts contained in the complaint, as well as every inference fairly deducible from those facts, yet argues that, even accepting those facts as true, plaintiff is left with no entitlement to relief under any theory of law. The court should sustain a demurrer only in cases which clearly fail to state a claim for which relief may be granted. If any doubt exists under the law as to whether the court should sustain the demurrer, the court must overrule it. Willet v. Pennsylvania Catastrophic Loss Fund, 702 A.2d 850 (Pa. 1997).

Contrary to Mrs. Herman's assertions, the complaint does contain sufficient facts to survive this demurrer. To begin with, the complaint avers that plaintiff made a series of loans to defendant **s** (¶¶3, 5), and that plaintiff and defendant **s** agreed to various repayment terms (¶¶6, 7, 8). The court must accept these averments as true for purposes of ruling on this demurrer. Also, the fact that the only writing evidencing the loans is the letter written to plaintiff by defendant-husband does not shield Mrs. Herman from potential liability because the initial agreement allegedly between all three parties was a verbal one and may have included terms not contained within the 1994 letter. Furthermore, paragraph 4 of the complaint avers as follows:

The above-listed loans were made to Defendants for various purposes, including to allow Defendants to repay other pre-existing debts to third parties, to pay Defendants' living expenses, to pay for the purchase of automobiles by Defendants, and to enable Defendant Lawrence S. Herman to open a chiropractic practice in Pennsylvania.

Again, accepting this averment as true and allowing for all fair inferences, plaintiff may maintain this action against Mrs. Herman insofar as plaintiff specifically asserts in paragraph 4 that Mrs. Herman herself received the benefit of at least some of the loan monies, either directly through the retirement of debts to third parties and the use of purchased items, or indirectly through the income earned by her husband in a business opened using the loans as seed money. Furthermore, even if Mrs. Herman was initially unaware of the loans, her failure to repudiate them later could provide a basis for holding her personally liable. Lapio v. Robbins, 729 A.2d 1229, 1235 (Pa.Super. 1999). We therefore overrule the demurrer as to Mrs. Herman.

Defendants next demur to plaintiff's demand for interest. Regarding the loans made on October 26 and October 28, 1992 and on April 1, February 3 and May 1, 1993 totaling $60,000, the parties agreed that defendants would pay interest as follows:

... 5% simple interest...if the full amount was paid before January 1, 1995;

... 6% simple interest...if payment in full was made before January 1, 1996;

... 7% simple interest...if payment in full was made before January 1, 1997;

... 8% simple interest...if payment in full was made before January 1, 1998;

... 9% simple interest...if payment in full was made before January 1, 1999;

...10% simple interest...if full payment was not made until after January 1, 1999, with $66,000 being the full amount of principal and interest due if payment was received before January 1, 2000.

(Complaint, ¶8). Defendant-husband acknowledged these terms in his February 21, 1994 letter and made payments between June 1994 and October 1995. (Complaint, ¶¶9, 10, 11, 12.) Plaintiff alleges that defendants owe $91,592.21 consisting of $41,000 in principal and $50,592.21, with this latter figure representing "simple interest at 10% per annum through 4/21/2003" and that "interest will continue to

accrue on the principal balance at the per diem rate of $11.2329 from April 21, 2003." (Complaint, ¶¶14, 15.)

Defendants argue that, according to both Mr. Herman's letter and paragraph 8 of the complaint, the total amount possibly due if the money was fully repaid before January 1, 2000 was $66,000, which is the addition of 10% simple interest to the $60,000 principal. According to defendants, insofar as the agreement does not address what should occur if defendants made payments after January 1, 2000, there is a pattern of an increase of 1% per year resulting in an additional $600 more for each year the debt went unpaid. This is in direct contrast to plaintiff's demand for $50,592.21 in paragraph 14 representing simple interest at 10% per year on the entire balance due based on a period of approximately ten years.

Defendants also argue that, in the absence of an agreement setting the rate at 10%, plaintiff cannot demand that rate because it exceeds the 6% rate set by statute. "Reference in any law or document enacted or executed heretofore or hereafter to 'legal rate of interest' and reference in any document to an obligation to pay a sum of money 'with interest' without specification of the applicable rate shall be construed to refer to the rate of interest of six percent per annum." 41 P.S. §202.

Plaintiff maintains that her right to certain interest is not circumscribed by the loan terms appearing in Mr. Herman's letter. We agree. The mere fact that plaintiff attached the letter to the complaint does not mean she admits the truth or accuracy of every statement in that letter. This is because the letter is not itself the contract and is ambiguous as to what was to happen if defendants failed to repay the full amount due after January 1, 2000. According to plaintiff, the 10% simple interest was to continue after that date until defendants paid the debt in full. The contract itself was verbal, and its terms, including the actual interest rate originally agreed to, must eventually be determined by the trier of fact after the parties have engaged in discovery aimed at clarifying this issue.

Furthermore, 41 P.S. §201 states: "...the maximum lawful rate of interest for the loan or use of money in an amount of...$50,000 or less in all cases where no express contract shall have been made for a less rate[,] shall be six percent per annum." First we note the original loan amount was more than $50,000. Second, if the court finds that the contract expressly set a particular interest rate for the period after January 1, 2000, and the court is able to determine what that rate was, the 6% rule will not apply. Only in the absence of such an express term would the court impose the 6% rate on the amount due. Under the standard governing demurrers, it would be error for the court at this point to preclude plaintiff from pursuing 10% interest.

Lastly, defendants demur to the complaint because it does not aver a basis for the loans' due date, nor does it state that the amount due was payable on demand. Instead, according to Mr. Herman's letter, "there was no exact schedule of payments required or asked for at any time since the inception of the loan." According to defendants, this lack of a fixed maturity date nullifies the note by making defendants the sole judge of time of repayment, rendering the obligation to repay a moral one alone.

The flaw in this argument, as plaintiff points out, is the presumption that Mr. Herman's letter constitutes the contract and contains all its terms. The letter, however, is not the basis of defendants' obligation to pay, but is merely a self-serving statement made years after the parties entered into the agreement and plaintiff lent the money. Plaintiff has not fully adopted Mr. Herman's view of all the contract's terms. Furthermore, it has been held that where a contract is silent regarding time for performance, an obligor's failure to pay a debt upon demand may constitute a default. Also, where no time for performance is specified in a contract, performance should be done within a reasonable time depending on the nature of the business. Field v. Golden Triangle Broadcasting, Inc., 305 A.2d 689 (Pa. 1973), cert. denied, 414 U.S. 1158, 94 S.Ct. 916, 39 L.Ed.2d 110; Francis Gerard Janson, P.C. v. Frost, 618 A.2d 1003 (Pa.Super. 1993). What constitutes a reasonable time under the circumstances is a question for the trier of fact, which must consider the intent of the parties in entering into the contract as revealed by the surrounding circumstances, the situation of the parties and the purpose of the undertaking. Lubrecht v. Laurel Shipping Co., 127 A.2d 687 (Pa. 1956). Plaintiff has made numerous demands for payment and has pled this in the complaint. (¶¶11, 12.) It will be for the trier of fact to decide at what point defendants were obligated to make full payment on the debt. The court will overrule this demurrer as well.

ORDER OF COURT

NOW this 10th day of December 2003, the court hereby overrules the preliminary objections filed by defendants to plaintiff's complaint.

Although defendants have styled two of the objections as motions to strike, these objections are more properly viewed as demurrers.