Filed 10/16/19 SLM Private Education Loan Trust 2013-B v. Chepurny CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

SLM PRIVATE EDUCATION LOAN TRUST 2013-B, Plaintiff and Respondent, v. VALERIY CHEPURNY, Defendant and Appellant.	B292955 (Los Angeles County Super. Ct. No. BC672483)

APPEAL from a judgment of the Superior Court of Los Angeles County, Patricia Nieto, Judge. Reversed.

Valeriy Chepurny, in pro. per., for Defendant and Appellant.

Law Offices of Harris & Zide, Flint C. Zide and Sarkis S. Karayan for Plaintiff and Respondent.

SLM Private Education Loan Trust 2013-B (SLM) brought the instant action against Valeriy Chepurny to collect a student loan debt. Chepurny appeals from the summary judgment entered against him arguing that there is a discrepancy between the account ledger supporting the indebtedness calculation and SLM's declaration authenticating the account ledger. The trial court found this discrepancy to be immaterial. We disagree and reverse.

BACKGROUND

SLM filed a lawsuit against Chepurny to recover $46,096.59 representing the principal Chepurny allegedly owed on a student loan from Sallie Mae, plus accrued and prejudgment interest. In its ensuing summary judgment motion, SLM submitted the declaration of Mary Kay Mauer, a custodian of records and litigation supervisor, who authenticated three exhibits: (1) Chepurny's application for a student loan; (2) a promissory note; and (3) a ledger for account number ending in 7087. Mauer declared that SLM's "books and records . . . show that on or about 11/05/2010, Defendant(s) opened account XXXXXXXXXXXX0103" and "that Defendant(s) is/are currently indebted to Plaintiff on account number XXXXXXXXXXXX0103 for the $46,096.59 plus interest."

In his opposition, Chepurny disputed whether SLM was an assignee of Sallie Mae and the amounts claimed, and noted that the account numbers in the ledger differed entirely from those in the authenticating declaration. The ledger is for an account ending in 7087 whereas the declaration repeatedly refers to an account ending in number 0103.

In granting SLM's summary judgment motion, the trial court acknowledged Chepurny's argument but found the

discrepancy in the account numbers "is not material" because SLM is the holder of the note and entitled to enforce it. The court entered judgment in the amount of $57,783.60, consisting of $46,096.59 in principal, plus interest of $10,613.01, and costs of $1,074. Chepurny's timely appeal followed.

DISCUSSION

A trial court may grant summary judgment only "if there [are] no triable issues [of] material fact and . . . the moving party is entitled to . . . judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) A plaintiff moving for summary judgment " 'has met his or her burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on the cause of action.' " (*Park Management Corp. v. In Defense of Animals* (2019) 36 Cal.App.5th 649, 658; Code Civ. Proc., § 437c, subd. (p)(1).) If the plaintiff meets that burden, then the burden shifts to the defendant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. (Code Civ. Proc., § 437c, subd. (p)(1).)

"We review the trial court's ruling on a summary judgment motion de novo, and liberally construe the evidence and resolve all doubts concerning the evidence in favor of the party opposing the motion." (*Vargas v. FMI, Inc.* (2015) 233 Cal.App.4th 638, 645.)

SLM argues that the lack of a reporter's transcript is fatal to this appeal. However, summary judgment is a procedure based on documentary evidence (*Lyons v. Security Pacific Nat. Bank* (1995) 40 Cal.App.4th 1001, 1013), and we review the judgment de novo, with the result a reporter's transcript is

unnecessary (*Bel Air Internet, LLC v. Morales* (2018) 20 Cal.App.5th 924, 933).

To prevail on its complaint, SLM had the burden to show among other things, Chepurny's indebtedness in a sum certain and Chepurny's nonpayment. (*Farmers Ins. Exchange v. Zerin* (1997) 53 Cal.App.4th 445, 460.) While the declaration authenticating SLM's records stated that Chepurny "opened account XXXXXXXXXXXX0103," the document purporting to show Chepurny's indebtedness and nonpayment, authenticated as "[a] true and correct copy of the account ledger" by Mauer, is for an account ending in 7087. Contrary to the court's conclusion, this is not an immaterial discrepancy. It goes to the heart of calculating SLM's damages for the student loan indebtedness. Exhibits 1 and 2, respectively the smart option student loan application for promissory note 3SOL1006 and the smart option student loan promissory note 3SOL1006, show only the existence of a loan to Chepurny but not the amount lent nor the payments he made. SLM failed to carry this burden in moving for summary judgment to show what Chepurny owed.[1]

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[1] Chepurny also contends on appeal that SLM is not an assignee for the promissory note. However, SLM did not claim to be an assignee of Sallie Mae, the lender. Moreover, the party possessing a note endorsed in blank is presumed to own the note. (Evid. Code, § 637; see *Bank of California v. J.L. Mott Iron Works* (1896) 113 Cal. 409, 412.) Chepurny did not dispute that SLM possesses the note. It came from SLM's files. The presumption of Evidence Code section 637 affects the burden of producing evidence but Chepurny produced no rebuttal *evidence*.

DISPOSITION

The judgment is reversed. Valeriy Chepurny is awarded his costs on appeal.

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DHANIDINA, J.

We concur:

EDMON, P. J.

EGERTON, J.