

STATE OF VERMONT
WINDSOR COUNTY, SS

Esther Clenott
Plaintiff

v.

David Kadoch
Laurie Kadoch
Defendant

SUPERIOR COURT
Docket No. 230-4-09 Wrcv

DECISION ON MOTION FOR SUMMARY JUDGMENT

Plaintiff Esther Clenott alleges in her complaint that she loaned \$200,000 to her daughter and her daughter's now-estranged husband, and that defendants have defaulted on their promise of repayment.

It has been represented to the court that defendants Laurie Kadoch and David Kadoch are currently involved in a divorce proceeding which has not yet reached final judgment. They have taken opposing positions in this litigation. Ms. Kadoch has stipulated that judgment may be entered against her, whereas Mr. Kadoch has taken the position that he is not liable for this debt. The parties have not raised any issues about whether this matter is appropriate for resolution in superior court, given the pendency of the divorce proceedings.

The present matter before the court is Ms. Clenott's motion for summary judgment against defendant David Kadoch. Summary judgment is only appropriate when the moving party demonstrates that there are no genuine issues of material fact for trial. *Price v. Leland*, 149 Vt. 518, 521 (1988).

Here, the following facts are established for purposes of summary judgment. In the fall of 2004, defendants were attempting to finish a renovation project on a rental unit they owned in Queechee, and they asked Ms. Kadoch's parents for help in financing the project. Ms. Clenott and her late husband agreed to take out a home equity line of credit on their own primary residence in Maine and give the proceeds to defendants for use in the Queechee project.

Ms. Clenott asserts that defendants agreed to make the interest-only payments on the line of credit, and also to repay the loan in full within a short amount of time once the renovations were complete. She asserts that this was an oral agreement.

Mr. Kadoch disputes the terms of the financial arrangement. In a sworn affidavit filed in opposition to summary judgment, he says that he understood that the money was given to Ms. Kadoch as an advancement against her inheritance, rather than as a loan. In other words, he says that there was no agreement that the principal amount would ever be repaid in full. He also denies that the renovations are complete. He does admit, however, that there was an arrangement whereby Ms. Kadoch would make the monthly interest-only payments.

The dispute over the terms of the financial arrangement are a genuine issue of material fact that preclude the entry of summary judgment at this time. There will need to be a trial to establish whether the money was given as an advancement, or as a loan with an expectation of repayment. If the former, the pleadings show a dispute as to whether Mr. Kadoch is also liable for the missed monthly payments. If the latter, it will additionally need to be determined whether the renovations have been sufficiently completed such that repayment of the loan in full is past due.

ORDER

Plaintiff's Motion for Summary Judgment (MPR #5), filed November 18, 2009, is *denied*.

Dated at Woodstock, Vermont, this 14 day of January, 2010.



Hon. Harold E. Eaton, Jr.
Presiding Judge

FILED
JAN 14 2010

Windsor County Clerk