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**SHORT FORM ORDER**

**SUPREME COURT : STATE OF NEW YORK  
COUNTY OF NASSAU**

**PRESENT:**

**HON. IRA B. WARSHAWSKY,**

**Justice.**

**TRIAL/IAS PART 7**

LISA KLAIRE

*Plaintiff,*

INDEX NO.: 2187/2011  
MOTION DATE: 5/26/2011  
MOTION SEQUENCE: 001

-against-

SCOTT KLAIRE and METALCRAFT  
LABORATORIES, INC.,

*Defendants.*

The following papers read on this motion:

Notice of Motion .....	1
Plaintiff's Affidavit in Support, Plaintiff Attorney's Affirmation in Support and Exhibits Annexed .....	2
Defendant's Affidavit in Opposition, Defendant Attorney's Affirmation in Opposition and Exhibits Annexed .....	3
Plaintiff's Reply Affidavit and Exhibits Annexed .....	4
Plaintiff & Defendant's Letters of April 21, 2011 .....	5

**PRELIMINARY STATEMENT**

Plaintiff, Lisa Klaire, ("Plaintiff") moves for summary judgment pursuant to CPLR § 3212 against both defendants on the basis of violations of a "Stock Purchase Agreement", Real Estate Agreement" and a "Salary Continuation Agreement" among the parties.

## BACKGROUND

In February 2008, Plaintiff sold her 50% ownership stake in MCL to Defendant. In conjunction with this sale, the parties entered into the previously mentioned agreements.

MCL is a family-run manufacturer of dental appliances. The company was founded by Plaintiff's and Defendant's father in 1962. In 1980, Plaintiff began working at MCL. Defendant joined the company a few years later. In approximately 1995, Plaintiff and Defendant purchased their father's interest in MCL; resulting in Plaintiff and Defendant each owning 50% of MCL. Subsequently, several disputes arose between the parties, which culminated in Plaintiff's sale of her 50% share to the Defendant in February 2008.

As part of the sale, the three abovementioned contracts were executed. In the Stock Purchase Agreement, Plaintiff sold all of her shares in MCL to Defendant for \$1,036,098, secured by a non-negotiable promissory note (the "Note"). The \$1,036,098 purchase price was to be paid monthly by Defendant over ten years, interest-free. (Plaintiff's Affidavit in Support, Exs. C & D). Plaintiff also sold defendant her 50% interest in 485 South Franklin Street, Hempstead, NY, the business premises of MCL, for \$109,950. Defendant paid Plaintiff \$10,600 on February 12, 2008. The remaining balance of \$99,350 was payable to Plaintiff in 120 monthly installments of \$827.92. (Plaintiff's Affidavit in Support, Ex. E). Lastly, under the Salary Continuation Agreement, MCL agreed to pay Plaintiff \$39,000 per year for ten years, in exchange for Plaintiff "mak[ing] herself available for projects relating to the Business, at the reasonable request of the Company, but shall have no minimum time commitment for the term of this Agreement." (Plaintiff's Affidavit in Support, Ex. F ¶ 1).

Plaintiff contends that under the Stock Purchase Agreement, Defendant paid the \$8,634.15 monthly amount due through May 2010. From June through October 2010, Defendant

reduced the amount he paid Plaintiff. As of November 2010, Defendant ceased paying Plaintiff any money under the Stock Purchase Agreement. On January 6, 2011, Plaintiff sent Defendant Notice of Default on the Note. In said Notice of Default, Plaintiff notified Defendant that if default was not cured, the entire unpaid balance would immediately become due and payable.

Under the Real Estate Agreement, Defendant paid \$827.92, the full amount due, to Plaintiff each month through October 2010. Plaintiff contends that Defendant has not paid his real estate obligation since November 2010 and that she is owed \$74,512.40, together with pre-judgment interest.

Plaintiff also contends that MCL breached the Salary Continuation Agreement in December 2010 when MCL stopped paying Plaintiff \$3,250 per month. MCL, however, argues that it was justified in not paying Plaintiff the full amount owed each month. According to MCL, Plaintiff refused to make herself available to work when MCL requested her help on several occasions. MCL also claims that Plaintiff submitted bills for, and was paid, \$48,025.20 to which she was not entitled. Plaintiff, on the other hand, contends that the \$48,025.20 was not an overpayment by MCL, but rather constituted monies owed her for "salary earned prior to the closing of the sale of [Plaintiff's] shares," based on an alleged side-agreement between Plaintiff and Defendant that "[Plaintiff] would be paid \$37.50 per hour if [she] was required to physically come into work for Metalcraft or work at any trade shows"; \$8,000 in "commissions owed to [Plaintiff] for the period prior to closing relating to a customer, Island Smile," and gold MCL purchased from Plaintiff "to be used in connection with its business." (Plaintiff's Reply Affidavit).

## DISCUSSION

Plaintiff asserts three causes of action. The first and second causes of action are against Defendant, Scott Klaire, for breach of the Stock Purchase Agreement and Real Estate Agreement, respectively. The third cause of action is against MCL for breach of the Salary Continuation Agreement..

In April 2011, defendant Scott Klaire filed for Chapter 7 Bankruptcy. Pursuant to 11 U.S.C. 362, this court grants Defendant's request for stay of the first and second causes of action pending a determination by the United States Bankruptcy Court of the Eastern District of New York. The court, however, denies Defendant's application for stay of the third cause of action. Bankruptcy protection does not extend to a non-bankrupt defendant that is partially owned by a bankrupt individual. (*See* 11 U.S.C. 362).

A motion for summary judgment, under CPLR §3212, "shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party. . . . [T]he motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact." (CPLR §3212).

Here, Plaintiff and Defendant present substantially different facts in their respective affidavits. Plaintiff claims that MCL breached the Salary Continuation Agreement by failing to remit \$3,250 per month since December 2010. (Plaintiff's Affidavit in Support). MCL, however, contends that MCL overpaid Plaintiff \$48,025.20. Moreover, since Plaintiff allegedly refused to make herself available to work, despite MCL's reasonable request for her assistance, MCL contends it should not owe Plaintiff money under the Salary Continuation Agreement. (Defendant's Affidavit in Opposition). Plaintiff, in her Reply Affidavit, asserts that the

\$48,025.20 was not an overpayment; but instead money owed to her outside of the Salary Continuation Agreement, such as for gold Plaintiff sold to MCI, and commission for work Plaintiff did with Island Dental, a MCI client, prior to commencement of the Agreement. Therefore, since Defendant raises issues of fact not sufficiently replied to by Plaintiff's Reply Affidavit, Plaintiff's motion for summary judgment of the third cause of Action is denied.

With the aforementioned considered, Plaintiff's motion for summary judgment of the first and second cause of action is stayed pending a determination by the United States Bankruptcy Court of the Eastern District of New York and Plaintiff's motion for summary judgment of the third cause of action is denied.

This constitutes the Decision and Order of the Court. Preliminary Conference is set for Wednesday, September 7, 2011 at 9:30 a.m.

Dated: August 1, 2011

  
J.S.C.

**ENTERED**  
AUG 04 2011  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE