

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JENNIFER G. SCHECTER PART IAS MOTION 54EFM

Justice

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INDEX NO. 657341/2020

ZHANG CHANG,

MOTION SEQ. NO. 001

Plaintiff,

- v -

DECISION + ORDER ON MOTION

PHILLIPS AUCTIONEERS LLC,

Defendant.

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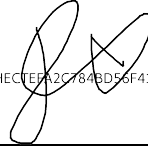
The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 14, 15, 16

were read on this motion to/for DISMISS

Plaintiff seeks return of \$2,644,608 he claims was in excess of what he owed under the parties' settlement agreement and that he paid under duress. His claim is barred by the March 11, 2019 acknowledgment that he signed, confirming his agreement to pay that amount to extinguish his obligations (Dkt. 9 at 22-23). Consideration was not necessary for this acknowledgment to be enforceable (GOL § 5-1103; see GG Managers, Inc. v Fidata Trust Co. N.Y., 215 AD2d 241, 242 [1st Dept 1995] ["A written, signed agreement to discharge or modify an existing obligation is not rendered invalid because of the absence of consideration"]). The acknowledgment, moreover, as a matter of law was not procured by duress because defendant was merely threatening to exercise its right under the settlement agreement to sell the work due to plaintiff's failure to timely pay the full amount owed (Dkt. 8 at 11 ["Prior to Phillips' receiving the full Settlement Amount, Phillips shall retain title to and possession of the Richter Work, as well as possession of the Bacon Work as collateral with power of sale for the Settlement Amount"]; see 767 Third Ave. LLC v Orix Cap. Markets, LLC, 26 AD3d 216, 218 [1st Dept 2006] ["The threatened exercise of a legal right cannot constitute duress"]; see also Foundry Cap. Sarl v International Value Advisers, LLC, 96 AD3d 620, 621 [1st Dept 2012] ["a party cannot claim that it was compelled to execute an agreement under duress while simultaneously accepting the benefits of the agreement"]). Plaintiff's breach of contract claim is dismissed based on this documentary evidence, which utterly defeats his declaratory-judgment and unjust-enrichment claims as well (see Ithilien Realty Corp. v 180 Ludlow Dev. LLC, 140 AD3d 621, 622 [1st Dept 2016]); Goldman v Metropolitan Life Ins. Co., 5 NY3d 561, 572 [2005] ["no unjust enrichment because the matter is controlled by contract"]).

The court declines to reach defendant's other arguments.

Accordingly, it is ORDERED that defendant's motion to dismiss the complaint with prejudice is GRANTED, it is ADJUDGED and DECLARED that the \$2,644,608 plaintiff paid under the Acknowledgement need not be returned to him and the Clerk is directed to enter judgment in accordance with this decision.

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7/12/2021
DATE

JENNIFER G. SCHECTER, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED

DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART

OTHER