

Triantafillakis v Madden
2016 NY Slip Op 32503(U)
December 13, 2016
Supreme Court, New York County
Docket Number: 650120/2015
Judge: Cynthia S. Kern
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

-----X
JOHN TRIANTAFILLAKIS,

Plaintiff,

-against-

Index No. 650120/2015

DECISION/ORDER

JENNIFER MADDEN, ET AL.,

Defendants.
-----X

HON. CYNTHIA KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for: _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Affidavits in Opposition.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Plaintiff commenced this action against defendants seeking enforcement of an option agreement which was entered into between some of the parties in this litigation. He has brought the present motion to vacate this court’s order granting defendants summary judgment dismissing the complaint without opposition. As will be explained more fully below, the motion to vacate is denied on the ground that plaintiff cannot establish a meritorious defense to the summary judgment motion.

The relevant facts, as described in this court’s previous decision denying plaintiff’s motion for a preliminary injunction, are as follows. On December 5, 2011, defendant Jennifer Madden, in her capacity as the sole member, manager and owner of Trian West LLC (“Trian”), entered into an irrevocable option agreement with plaintiff John Triantafillakis, and two other persons, pursuant to which she granted plaintiff and the other two individuals the exclusive and

irrevocable option and right to purchase all of her right, title and interest as sole member of Trian for \$1000. The agreement further provides that it is irrevocable and cannot be canceled, terminated or modified. It also provides that for as long as the option remains in effect, Madden's interest in Trian cannot be sold or assigned or otherwise transferred or encumbered and that Madden shall not otherwise transfer or assign her interest in Trian or allow her interest to be encumbered. Trian, which is a limited liability company, is the lessee for the premises located at 610 11th Avenue where the diner is located and is also the owner of the diner.

On October 30, 2014, HR Pom Pom LLC ("Pom Pom") and Trian executed an agreement of sale under which Pom Pom purchased certain Trian assets related to the diner. Following the execution of the agreement, the parties started preparing for a closing. In December 2014, after the agreement of sale was entered into, the plaintiff attempted to exercise his option to purchase Trian and then brought the present suit.

In this suit, plaintiff initially sought a preliminary injunction preventing the lease which is in the name of Trian from being transferred to Pom Pom or any other entity and preventing the diner which is owned by Trian from being transferred. This court denied the motion by plaintiff for a preliminary injunction on the ground that plaintiff could not establish a likelihood of success on the merits. The court found that the option agreement in the present case, which forever prevents Madden from transferring her interest in Trian to anyone other than plaintiff, is an unreasonable restraint on alienation and cannot be enforced.

After this court denied plaintiff's motion for a preliminary injunction, defendants moved for summary judgment dismissing the complaint. Plaintiff did not submit any opposition to the motion and the motion was granted without opposition. Plaintiff now seeks to vacate the decision of the court granting defendants summary judgment. It is well settled that a party

seeking to vacate a default judgment under CPLR §5015(a)(1) must establish a reasonable excuse for the default and a meritorious defense to the underlying action. *Mercado v. Allstate Life Ins. Co.*, 193 A.D.2d 476 (1st Dept 1993); *Arred Enterprises Corp. v. Indemnity Ins. Co.*, 108 A.D.2d 624 (1st Dept 1985).

In the present case, plaintiff's motion to vacate the decision of this court granting defendants summary judgment dismissing the complaint without opposition is denied as the court finds that he has failed to provide a meritorious defense to the summary judgment motion. Plaintiff's claims in this action to enforce the option agreement fail on summary judgment for the same reasons that this court found that plaintiff had no likelihood of success on his preliminary injunction action, which is that the option agreement he is seeking to enforce in this action is unenforceable as a matter of law as an unreasonable restraint on alienation.

Moreover, the claim by plaintiff that Madden breached her fiduciary duty to plaintiff by not acting within the scope of her obligations pursuant to the option agreement is without merit as it is duplicative of the claim to enforce the option agreement, which this court has already found has no merit. The breach of fiduciary duty claim is based on the same facts that underlie the contract claim, Madden's failure to honor the option agreement, and it seeks the same damages as the contract claim, specific performance of the option agreement and an injunction barring defendants from executing the purchase and sale agreement with Pom Pom. *See Fin Structures Ltd. v. UBS AG*, 77 A.D.3d 417, 419 (1st Dept 2010).

Finally, plaintiff's claim for a constructive trust must also be dismissed as duplicative of the breach of contract claim. His constructive trust claim merely asserts that Madden has intentionally withheld his one third equal share in breach of the option agreement despite his compliance with the terms of the option agreement.

To the extent plaintiff contends that summary judgment should be denied pursuant to CPLR § 3212(f) because discovery remains outstanding, such argument is unavailing. It is well settled that "a claimed need for discovery, without some evidentiary basis indicating that discovery may lead to relevant evidence, is insufficient to avoid an award of summary judgment." *Hariri v. Amper*, 51 A.D.3d 146, 152 (1st Dept 2008). In the present case, plaintiff's argument that discovery is required with respect to the intent of the parties in entering into the option agreement is without basis as the option agreement is unambiguous on its face and the court is able to make the determination that it is unenforceable without resort to any extrinsic evidence. Nor has plaintiff provided any other evidentiary basis to support his claim that discovery will lead to any relevant evidence.

Plaintiff's argument that he has a meritorious defense to the summary judgment motion based on a potential claim he has, which he has not yet asserted, for rescission of the option agreement based on mutual mistake is also without basis. Even if plaintiff could amend his complaint to assert a claim for rescission of the option agreement, the rescission of the option agreement would not provide a defense to the claim that the option agreement is unenforceable, which is the entire basis of defendants' summary judgment motion. To the extent that plaintiff may wish to assert a claim that the assignment of Triam to Madden should be rescinded, such claim has never been part of this litigation and the assertion of such a claim would not be a defense to the summary judgment motion before the court to dismiss the current complaint.

Based on this court's determination that there is no meritorious defense to this action, the court need not reach the issue of whether plaintiff has established a reasonable excuse for his failure to oppose the summary judgment motion on the merits when it was originally submitted.

Based on the foregoing, the motion to vacate this court's decision granting defendants

summary judgment dismissing the complaint is denied. The foregoing constitutes the decision and order of the court.

Dated: 12/13/16

Enter: PK

J.S.C.
HON. CYNTHIA S. KERN
J.S.C.