Bloostein v Morrison Cohen LLP
2017 NY Slip Op 31238(U)
June 7, 2017
Supreme Court, New York County
Docket Number: 651242/2012
Judge: Anil C. Singh
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JONATHAN BLOOSTEIN, et. al.,

Plaintiffs,

-against-

MORRISON COHEN LLP, BRIAN SNARR and DOES 1-10,

Defendants.

MORRISON COHEN LLP, BRIAN SNARR, and DOES 1-10,

Third-Party Plaintiffs,

-against-

BROWN RUDNICK LLP,

Third-Party Defendant.

BROWN RUDNICK LLP,

Fourth-Party Plaintiff,

-against-

STROOCK & STROOCK & LAVAN LLP,
Fourth-Party Defendant.

DECISION
AND
ORDER

Index No.
651242/2012
Mot. Seq. 005

HON. ANIL C. SINGH, J.:

In this action for contribution, pursuant to CPLR §§ 3211(a)(1), (a)(5), and (a)(7). Fourth-party defendant Stroock & Stroock & Lavan LLP ("Stroock") moves to dismiss the Second Third-party Complaint brought by Fourth-party plaintiff Brown Rudnick LLP ("Brown Rudnick"). Brown Rudnick opposes.

The Main Action

Plaintiffs Jonathan Bloostein et. al. ("plaintiff investors") allegedly engaged Morrison Cohen LLP, Brian Snarr and Does 1-10 ("Morrison Cohen") as attorneys to represent them in connection with a reinvestment transaction (the "Transaction") designed by former third-party defendant Stonebridge Capital ("Stonebridge").

The plaintiff investors commenced the main action against Morrison Cohen for, *inter alia*, legal malpractice. In the main action, the plaintiff investors allege that Morrison Cohen was negligent in failing to address the inclusion of a new provision in the documents that comprised the Transaction (the "Transaction Documents") and as a direct result of this negligence, the investors incurred various damages, including having to pay significant capital gains taxes. The Transaction closed on September 26, 2007.

The Second Amended Third-Party Complaint ("Third-party Complaint")

On or about January 9, 2015, Morrison Cohen commenced the third-party action against Stonebridge and Brown Rudnick. In the Second Amended Third-Party

Complaint ("Third-party Complaint"), Morrison Cohen alleges that Stonebridge retained two law firms to represent their interests in the Transaction, including Brown Rudnick. The terms of Stonebridge's retention of Brown Rudnick are set forth in the March 16, 2006 Stonebridge/ Brown Rudnick engagement letter ("Engagement Letter").

The Third-party Complaint further alleges that Brown Rudnick was the primary drafter of the Transaction Documents. In addition to drafting the Transaction Documents, Brown Rudnick is also alleged to have issued a tax opinion letter to the plaintiff investors (the "Opinion Letter").

The Third-party Complaint states three causes of action: (1) indemnification and contribution as against Stonebridge ("First Cause of Action") (2) indemnification and contribution as against Brown Rudnick concerning the Opinion Letter ("Second Cause of Action"); and (3) indemnification and contribution as against Brown Rudnick concerning the Transaction Documents ("Third Cause of Action"). Stonebridge and Brown Rudnick filed motions to dismiss by their respective counsel.

On July 11, 2016, the Court (1) granted dismissal of the contribution and indemnification claims against Stonebridge; (2) granted dismissal of the indemnification claim against Brown Rudnick; and (3) and denied dismissal of the contribution claim against Brown Rudnick as to the Opinion Letter. On April 21,

2017, the Court granted dismissal of the contribution claim against Brown Rudnick as to the Transaction Documents. (NYSCEF No. 168).

The Second Third-party Complaint

On August 17, 2016, Brown Rudnick impleaded Stroock. In its Second Third-party Complaint, Brown Rudnick asserts that from June 22, 2007 through the closing of the Transaction, Stroock provided legal services to Stonebridge in connection with the drafting, editing reviewing and revision of the Transaction documents. (NYSCEF No. 109).

Arbitration between Stonebridge and Stroock

On or about July 29, 2013, Stonebridge commenced an arbitration against Stroock, alleging legal malpractice relating to the Transaction (the "Arbitration"). Stonebridge Capital, LLC v. Stroock & Stroock & Lavan LLP, et al., No. 13-Y-194-01552-13. On May 29, 2015, the arbitration was resolved by execution of a Settlement Agreement ("Settlement Agreement").

Discussion

On a motion to dismiss on the ground that the cause of actions may not be maintained because of a prior release, a claim must be barred if the release is valid on its face and properly executed. CPLR 3211(a)(5); Toledo v. West Farms Neighborhood Housing Development Fund Co., Inc., 34 A.D.3d 228, 229 (1st Dept 2006) (internal citation omitted). "It is well established that further litigation

following a release should not be permitted except under circumstances ... which would render any other result a grave injustice." Toledo, 34 A.D.3d at 229. "It is for this reason that the traditional bases for setting aside written agreements, namely, duress, illegality, fraud, or mutual mistake, must be established or else the release stands." Id.

On a motion to dismiss a complaint for failure to state a cause of action, all factual allegations must be accepted as truthful, the complaint must be construed in the light most favorable to plaintiffs, and plaintiffs must be given the benefit of all reasonable inferences. Allianz Underwriters Ins. Co. v. Landmark Ins. Co., 13 A.D.3d 172, 174 (1st Dept 2004). The court determines only whether the facts as alleged fit within any cognizable legal theory. Leon v. Martinez, 84 N.Y.2d 83, 87-88 (1994). The court must deny a motion to dismiss, if, from the pleading's four corners, factual allegations are discerned which, taken together, manifest any cause of action cognizable at law." 511 West 232nd Owners Corp. v. Jennifer Realty Co., 98 N.Y.2d 144, 152 (2002).

[N]evertheless, allegations consisting of bare legal conclusions, as well as factual claims either inherently incredible or contradicted by documentary evidence, are not entitled to such consideration. Quatrochi v. Citibank, N.A., 210 A.D.2d 53, 53 (1st Dept 1994) (internal citation omitted).

New York General Obligations Law §15-108

Stroock argues that Brown Rudnick is precluded from seeking contribution because under the Settlement Agreement with Stonebridge it was released from all claims,

> asserted or that could have been asserted relating in any manner to [Stroock's] representation of [Stonebridge] or any of [Stonebridge's] current or former parents, subsidiaries, affiliates, successors, or assigns, and each of their current or former employees, principals, partners, members, agents, advisors, representatives, **or attorneys in the Transaction**.

(emphasis added).

Paragraph 5 of the Settlement Agreement further provides that:

> [t]he Parties intend that the release of [Stroock]...be within the scope of New York General Obligations Law ('GOL') §15-108, and that [Stroock] be provided with, and [is] entitled to, a contribution bar to the fullest extent permitted by law. The Settlement Payment shall be deemed to be the monetary consideration required to bring the release of [Stroock] within the scope of New York GOL § 15-108...and in full satisfaction of all claims against [Stroock], including, but not limited to, any claims that have been or may be asserted in Bloostein v. Morrison Cohen LLP et al., Index No. 651242/12 (Sup. Ct. N.Y. Cnty.)...

NY GOL §15-108 states in relevant part that "[w] hen a release or a covenant not to sue or not to enforce a judgment is given to one of two or more persons liable or claimed to be liable in tort **for the same injury**, ..., it does not discharge any of the other tortfeasors from liability for the injury...unless its terms expressly so provide but... it reduces the claim of the releaser against the other tortfeasors." (emphasis added). The Court of Appeals has held that GOL §15-108 was designed precisely to allow "defendant[s] to settle a claim and obtain release without fear of

being brought back into the action by a non-settling defendant seeking contribution." Mitchell v. New York Hosp. 61 N.Y.2d 209, 215 (1984).

NY GOL §15-108(d) also lays out the requirements for a release and covenant that fall within the scope of the provision[1]. Brown Rudnick does not dispute the validity of the release with respect to GOL §15-108(d).

The gravamen of Brown Rudnick's opposition is that GOL §15-108(a) applies only to persons liable for "the same injury" and the injury in this action is not the same injury as in the Arbitration.

In Ackerman v. Price Waterhouse, 252 A.D.2d 179 (1st Dept 1998), the court held that the plaintiffs in the action did not seek recovery for the same injury as they did in a federal action. Plaintiff in the federal action brought a fraud in the inducement claim. The court held that the settlement reached in the federal action related to an initial investment. However, the state court action did not raise a fraudulent inducement claim and related to post-investment actions.

In Italian Economic Corp. v. Community Engineers, Inc., 135 Misc.2d 209, 214 (S. Ct. NY Ctny, 1987), the court held that pursuant to the GOL §15-108, a

[1] There is no dispute that Stonebridge received a monetary consideration greater than one dollar. Moreover, Stonebridge completely terminated the arbitration and dispute with Stroock and released Stroock from all claims prior to entry of judgment. NY GOL §15-108 also applies to releases between tortfeasors. F.W. Woolworth Co. v. Southbridge Towers, Inc. 101 A.D. 2d 434, 435-38 (1st Dept 1984). Moreover, 15-108(d) states that "release or a covenant not to sue between a plaintiff or **claimant and a person who is liable or claimed to be liable in tort** shall be deemed a release".

settlement agreement with a defendant did not relate to the same injury as the injury of the remaining defendants flowed "from the defects in the structural design, defects and damages for which [the settling defendant] could not be held liable". The settling defendant's liability was "limited to the heating, ventilation, air conditioning and fire retardation design". Id. The court further held that "[f]or a defendant to be entitled to credit for the settlement amount it must be legally possible that a defendant and the settling party can be held jointly or severally liable to the plaintiff for the same damages." Id.

In BDO Seidman LLP v. Strategic Res. Corp., 70 A.D.3d 556 (1st Dept 2010), a mutual fund's former accountant brought a contribution claim against the fund's former manager. Prior to the action, the fund brought a federal action against the fund manager and an arbitration against the accountant. The fund manager settled with the fund. The settlement agreement required the fund manager to pay the fund a certain amount and release the fund manager from all claims including in the event that the accountant loses the arbitration and seeks contribution from the fund manager. The court held that GOL §15-108 applied as the settlement agreement "unquestionably anticipated that [the accountant] might make a contribution claim against [the fund manager] and "[the fund manager] was attempting to address every possible scenario which might defeat the purpose of the settlement, which was to

finally resolve all claims arising out of [the fund manager's] relationship with [the fund]." Id. at 561.

BDO is analogous to the case at hand. Here, Stroock settled with Stonebridge unquestionably anticipating that other parties involved in the Transaction, including Brown Rudnick, may seek contribution. Hence, the settlement agreement released Stroock from claims "asserted or that could have been asserted relating in any manner to [Stroock's] representation of [Stonebridge] or any of [Stonebridge's]...attorneys in the Transaction". There is no dispute that Brown Rudnick served as attorneys for Stonebridge. As in BDO, Stroock addressed every possible scenario which might defeat the purpose of the settlement, which was to finally resolve all claims arising out of the Transaction including all claims raised in this action.

Brown Rudnick argues that there are distinct injuries in the instant action and the Arbitration. It claims that the injuries in the Arbitration were "having to pay legal fees and disbursements to Stroock for the negligent legal services Stroock provided Stonebridge; deprivation of the full amount of the loan fee Stonebridge was to recover had an Event of Default not occurred; (and) Stonebridge's payment of substantial fees to participants in the Transaction." (NYSCEF No. 145 at p.4-5). Brown Rudnick contends that the injuries in this action are distinct as they concern "significant capital gains taxes; (and) legal fees and disbursements the (plaintiff

investors) paid to Morrison Cohen in connection with the Transaction." Id.

This argument is without merit. Unlike Ackerman, the contribution claim brought in this action by Brown Rudnick against Stroock stems from the same Transaction, Opinion Letter and losses as those addressed in the Arbitration. This action and the Arbitration is predicated upon legal malpractice. Both Brown Rudnick and Stroock may be held jointly or severally culpable to the plaintiff investors for the same injury. Accordingly, GOL §15-108 and the release bars Brown Rudnick from seeking contribution from Stroock.

Accordingly, it is hereby,

ORDERED that Fourth-party defendant Stroock & Stroock & Lavan LLP's motion to dismiss the Fourth-party Complaint by Fourth-party plaintiff Brown Rudnick LLP is granted with prejudice.

Date: June 7, 2017
New York, New York

Anil C. Singh