SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **14**

Justice

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CHURCHILL OWNERS CORP.

Plaintiff,

- v -

JEFFREY KENT,

Defendant.

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INDEX NO. 650052/2022

MOTION DATE 12/06/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54

were read on this motion to/for SUMMARY JUDGMENT.

Plaintiff's motion for summary judgment is granted and the defendant's cross-motion for summary judgment is denied.

Background

Plaintiff brings this action to recover maintenance from defendant in connection with two apartments based on a guarantee. The shares in the subject apartments were formerly owned by Robert Kent (defendant's father) and then passed to the Robert Roman Kent Revocable Trust pursuant to an agreement with plaintiff. Plaintiff claims that defendant Jeffrey Kent signed a guarantee for the maintenance (and other charges) incurred in connection with those co-op shares.

Plaintiff moves for summary judgment and to amend the pleadings to conform to the proof adduced. It claims that Robert Kent approached plaintiff's board in 2017 for approval to transfer the shares to the trust. Plaintiff agreed to this transfer and conditioned it on a limitation

on the occupancy of the premises, with the only authorized occupant being Robert Kent. Plaintiff contends that defendant is not an authorized occupant. Plaintiff maintains that it is willing to provide defendant with supervised access to the apartment for inspections or to remove property. Plaintiff explains that it limits access in situations where a shareholder has died and there is no administrator of the estate (or trustee for a trust) to avoid getting involved with competing claims of beneficiaries or heirs. It argues that it prefers to wait until an administrator or, here, a successor trustee is named. Plaintiff emphasizes that the issue about access does not absolve defendant of his obligation to pay maintenance as provided for in the guarantee he signed.

Defendant cross-moves for summary judgment on his counterclaim to reform a consent letter to name him as an authorized occupant of the premises. He insists that prior to the closing where the shares were transferred to his father's trust, plaintiff insisted on numerous conditions. Defendant claims that plaintiff believed, allegedly in error, that he was the co-trustee or the successor trustee to the trust. Defendant bases that claim on the fact that his father had significant wealth and so the guarantee that plaintiff made defendant sign was based on the misapprehension that defendant would assume control over the trust after his father's death.

Defendant points to emails from August 2017 with plaintiff's then-attorney in which he claims it became clear that the guarantee had no purpose but defendant admits that he had already signed the guarantee by the time of this realization. He adds that both he and his father routinely indicated, including at the closing, that defendant be considered an authorized occupant as he is the sole beneficiary for the apartment under the terms of the trust. He claims that he is now the owner of the premises after his father's passing. Defendant argues that because "Plaintiff agreed that I would be the 'authorized successor occupant' of the Premises, it advised that it still requested my personal guaranty, which I gave to it. I let Plaintiff keep my guaranty

relying on Plaintiff's representations, and I understood there were enough references in the Consent Letter (Exhibit "A" hereto) to more than one 'Authorized occupant' to make me feel comfortable to deliver my guaranty" (NYSCEF Doc. No. 41, ¶ 15). He points out that his father passed away in May 2021 and plaintiff refuses to grant him use and occupancy of the apartment.

Defendant admits that he stopped paying the maintenance (after making a single payment following his father's death) when he realized he would not have access to the property. He observes that he was told there was a leak in the apartment in November 2022 and he insists it is plaintiff's sole responsibility because it has routinely denied him access to the apartment outside of isolated supervised visits (the leak issue is not before this Court). Defendant contends that the substitute trustee resigned one day before his father passed away and no one is named in the trust to take this person's place. He contends there is a pending proceeding in Surrogate's Court to name another substitute trustee.

In opposition to the cross-motion, plaintiff emphasizes that defendant admits there is no current trustee of the subject trust and argues that the absence of a trustee does not change the guarantee. Plaintiff argues that the transfer of the shares did not create an exception to plaintiff's by-laws and proprietary lease procedures regarding the occupancy of an apartment.

Discussion

To be entitled to the remedy of summary judgment, the moving party "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such a prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (id.). When deciding a summary judgment motion, the court views the alleged facts in the light

most favorable to the non-moving party (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492, 955 NYS2d 589 [1st Dept 2012]).

Once a movant meets its initial burden, the burden shifts to the opponent, who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 560, 427 NYS2d 595 [1980]). The court's task in deciding a summary judgment motion is to determine whether there are bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505, 942 NYS2d 13 [2012]). If the court is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied (*Tronlone v Lac d'Amiante Du Quebec*, Ltee, 297 AD2d 528, 528-29, 747 NYS2d 79 [1st Dept 2002], affd 99 NY2d 647, 760 NYS2d 96 [2003]).

The Court's analysis begins with the consent letter, the document in which the plaintiff agreed to the transfer of the shares from Robert Kent to the trust. That document conditions plaintiff's consent to the transfer on various terms and conditions including that the units "may be occupied or used only by Robert Roman Kent ("Authorized Occupant")" (NYSCEF Doc. No. 21 at 1). Accordingly, defendant's arguments that he is somehow entitled to be an authorized occupant is without merit. To be sure, the language in the agreement does make a reference to "the other Authorized Occupant" and "all other Authorized Occupants." But that imprecise language does not change the fact that the only Authorized Occupant was clearly and unambiguously defined as defendant's father. Moreover, the Court observes that defendant is specifically named in this consent letter as Mr. Kent's son and *not* as an authorized occupant. Surely, the agreement would (and should) have clearly stated if defendant was entitled to occupy the premises. Defendant's attempt to rely on oral representations is without merit. Self-serving

assertions, especially when considered alongside a written agreement signed by plaintiff, does not raise an issue of fact about the letter agreement or the guarantee.

Defendant admits he signed the guarantee to pay the maintenance for the apartment and that he paid the maintenance in June 2021 but stopped paying thereafter. Defendant's request to impose additional obligations on plaintiff as part of the guarantee are denied. The guarantee is unconditional and contains a provision stating that "No past or future course of dealing or course of performance shall be used to supplement or modify any term hereof" (NYSCEF Doc. No. 8 at 1, 3). In other words, that defendant signed an unconditional agreement that he now appears to regret or be unhappy with is not a basis to ignore or modify this clear agreement. The fact is that defendant admits he signed a guarantee and stopped paying what is owed. And defendant does not contest the amount sought by plaintiff.

Defendant asserted a counterclaim to reform the letter agreement (the consent letter) to name him as an authorized occupant of the premises. "A claim for reformation of a written agreement must be grounded upon either mutual mistake or fraudulently induced unilateral mistake. To succeed, the party asserting mutual mistake must establish by clear, positive and convincing evidence that the agreement does not accurately express the parties' intentions or previous oral agreement" (*313-315 W. 125th St. L.L.C. v Arch Specialty Ins. Co.*, 138 AD3d 601, 602, 30 NYS3d 74 [1st Dept 2016] [internal quotations and citations omitted]). Defendant did not come close to meeting his burden for summary judgment or raising a material issue of fact on his counterclaim. As stated above, the provisions of the consent agreement contain a clear definition for the authorized occupant and that was his father, not defendant.

Defendant's desire to be named as an occupant is not a basis to reform the agreement. That does not evince a mutual mistake or a fraudulently induced unilateral mistake. Plaintiff was

very aware of the terms of the agreement and there is no basis to find that plaintiff intended to have defendant be an occupant. As plaintiff points out, it is routinely hesitant to allow occupancy in these types of situations to avoid getting involved in disputes about apartments after the occupants has passed away. And, although defendant insists that he is now the owner of the shares pursuant to the terms of the trust, he also admits that the trust lacks a trustee and a proceeding is pending in Surrogate's Court to name a new trustee.

The Court also rejects defendant's argument that plaintiff's motion must be denied because it failed to include a statement of material facts pursuant to 22 NYCRR 202.8-g. That provision does not require the Court to deny a motion where the movant fails to comply with this provision. Moreover, 22 NYCRR 202.1 permits a Court to waive compliance with any rules. The Court is satisfied that the parties are well aware of the facts in this action.

Summary

On these papers, the Court finds that there is no dispute that no maintenance has been paid for over a year and defendant does not take issue with the amount sought by plaintiff. Instead, defendant attempts to gain permission to occupy the premises by requesting that the Court reform an agreement. But defendant did not establish that there was a mistake or a fraudulent scheme to exclude him from occupying the premises. Instead, it appears that he simply disagrees with the terms of the agreement and does not want to wait for the Surrogate's Court proceeding to finish. That proceeding is necessary but has little to do with plaintiff – it is necessary because defendant's father named only one successor trustee, and that person apparently decided not to do the job. A co-op, such as plaintiff, often has rules about the effectuation of the transfer of shares (*see* NYSCEF Doc. Nos. 52 and 53 [by-law excerpts]).

Defendant cannot sidestep those rules because they are inconvenient or he thinks they are onerous.

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment and to conform the pleadings to the evidence is granted, defendant's counterclaim for reformation is severed and dismissed and the Clerk is directed to enter judgment in favor of plaintiff and against defendant in the amount of $91,135.41 (plaintiff contends that this amount is inclusive of maintenance, late fees, interest, real estate taxes, fund fees and legal fees through September 30, 2022) plus interest from September 30, 2022 along with costs and disbursements upon presentation of proper papers therefor; and it is further

ORDERED that plaintiff is entitled to reasonable legal fees as provided in the guarantee in connection with this action; and it is further

ORDERED that defendant's cross-motion is denied.

12/8/2022
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[X]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE