

Holland v 115 Meacham Ave. Corp.

2010 NY Slip Op 33977(U)

September 20, 2010

Sup Ct, Nassau County

Docket Number: 014957/04

Judge: Michele M. Woodard

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
GREGORY L. HOLLAND

Plaintiff,

-against-

115 MEACHAM AVENUE CORP., ROSA POLLATOS
a/k/a ROSA KARANASOS, HAMILTON EQUITY AND
ASSOCIATES CORP., ESTHER SERRANO, G.E.
ABSTRACT, INC., MARIA KARRAS and LEARIE
WILSON,

Defendants.

MICHELE M. WOODARD
J.S.C.
TRIAL/IAS Part 12
Index No.: 014957/04
Motion Seq. Nos.: 03, 04 & 08

DECISION AND ORDER

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Papers Read on this Motion:

Defendants 115 Meacham and Maria Karras's Notice of Motion	03
Defendants Hamilton Equity and Rosa Pollatos's Notice of Motion	04
Plaintiff's Notice of Motion	08
Plaintiff's Memorandum of Law and Opposition to Karra's Summary Judgment Motion	xx
Plaintiff's Memorandum of Law and Opposition to Pollatos' Summary Judgment Motion	xx
Affidavit of Anthony Ippolito in Support of Plaintiff's Motion	xx
Defendants Hamilton Equity, Maria Karras and Rosa Karanasos's Affirmation in Opposition	xx
Plaintiff's Reply Affirmation	xx

In motion sequence numbers three and four, defendants 115 Meacham Avenue Corp. ("115"), Maria Karras, ("Ms. Karras"), Rosa Pollatos a/k/a Rosa Karanasos ("Ms. Karanasos") and Hamilton Equity and Associates Corp. ("Hamilton") move for an order, pursuant to CPLR §3212, for summary judgment and attorney fees/costs.

In motion sequence number eight, the plaintiff moves to enforce a so-ordered stipulation in which the defendants were directed to turn over/exchange discovery.

Plaintiff contends he was a partner with defendant Ms. Karanasos in Hamilton Equity and Associates Corp., hereinafter referred to as "Hamilton," and defendants have prevented plaintiff from receiving his fair share of profits in the partnership. Plaintiff contends he and Ms. Karanasos had, by oral agreement, formed a partnership in which they, plaintiff and Karanasos bought and sold property. Plaintiff contends he was an experienced real estate broker who showed Ms. Karanasos "the ropes" and with his, assistance, Ms. Karanasos became a licensed mortgage broker. Plaintiff contends they formed Hamilton to buy and sell commercial properties.

Ms. Karanasos and Hamilton contend that plaintiff is not a partner in Hamilton since, among other things, the plaintiff is not listed on the tax returns of Hamilton nor the certificate of incorporation (see Exhibit A annexed to Karanasos and Hamilton's motion).

Ms. Karras contends she had no business with plaintiff, and she, Ms. Karras, merely purchased property known as 115 Meacham Avenue, Elmont, New York and formed the corporate entity, defendant 115 Avenue Corp.

Plaintiff contends Ms. Karras is the sister-in-law of Ms. Karanasos and Ms. Karras purchased 115 Meacham with defendants' capital as a "ghost" or bogus purchaser as part of defendants' plan to deprive plaintiff of his share of profits in Hamilton.

As to Ms. Karras, one who aids and abets breach of a fiduciary duty is liable for that breach as well, even if he or she had no independent fiduciary obligation to the allegedly injured party, if the alleged aider and abettor rendered substantial assistance to the alleged offending fiduciary in the course of effecting the alleged breach of duty (*see Velazquez v Decaudin*, 49 AD3d 712 [2d Dept 2008]).

A claim for aiding and abetting a breach of a fiduciary duty requires proof that the aider or abettor substantially assisted the party in breach (*see Kaufman v Cohen*, 307 AD2d 113 [1st Dept 2003]).

Plaintiff's claim is that Ms. Karras was or is a "straw" owner of 115 Meacham Avenue which was pumped up by the monies of defendant Ms. Karanasos to defraud plaintiff. Plaintiff, as an alleged partner with Ms. Karanasos, alleges he and Ms. Karanasos were in a fiduciary relationship (*see Meinhard v Salmon*, 249 NY 458 [1928]). Plaintiff's allegation that Ms. Karras substantially aided defendants and Ms. Karanasos specifically in breaching Ms. Karras' fiduciary duty towards plaintiff, i.e., Ms. Karras helped Ms. Karanasos deprive plaintiff of profits from the purchase of 115 Meacham

Avenue. Thus, plaintiffs' allegations against Ms. Karras are viable at this point.

A partnership agreement may be oral (*Missan v Schoenfeld*, 95 AD2d 198 [1st Dept 1983]).

Under New York law, parties are free to enter into a binding contract without memorializing their agreement in a fully executed document; this ability to contract orally remains even if the parties contemplate a writing to evidence their agreement and the mere intention to commit the agreement to writing will not prevent a contract formation prior to the execution (*see Winston v Mediafare Entertainment Corp.*, 777 F2d 78 [2d Circuit 1986]; *Delyanis v Dyna-Empire, Inc.*, 465 FS upp2d 170 [EDNY, 2006]).

Under New York law, oral agreements are binding and enforceable absent a clear expression of the parties' intent to be bound only by writing (*Wisdom Import Sales Co., LLC v Labatt Brewing Co., Ltd.*, 339 F3d 101 [Second Circuit 2003]).

Receipt by a person of a share of the profits of a business is *prima facie* evidence that the person was a partner (Partnership Law § 11, subd. 4; *Martin v Peyton*, 246 NY 213 [1927]).

As long as an oral agreement may be fairly and reasonably interpreted such that it may be performed within a year, the Statute of Frauds will not act as a bar however unexpected, unlikely, or even improbable that such performance will occur during that time frame (*see Cron v Hargro Fabrics, Inc.*, 91 NY2d 362 [1998]). Here, the lack of a written partnership contract would not violate the Statute of Frauds.

Plaintiff has offered the affidavits of Thomas V. Pantelis and Greg Grabovenko (see Exhibit P annexed to plaintiff's affidavit in opposition) which indicate plaintiff appeared to be a partner in Hamilton. Plaintiff also offered the affidavit of Anthony L. Ippolito (dated May 13, 2010). Mr. Ippolito is a CPA, and he states he examined certain documents which showed plaintiff was a principle factor in Hamilton since plaintiff made payments to employees of Hamilton, to vendors and contractors, shared in the profits of Hamilton and had a managerial position in Hamilton.

Thus, plaintiff has offered enough to, at least, raise issues of fact that an oral partnership did exist.

A court may hold a summary judgment motion in abeyance pending further discovery when the facts essential to justify opposition of the motion may exist but cannot be stated (CPLR §3212[f]; *Murray v ANB Corp.*, 74 AD3d 1548 [3d Dept 2010]).

Denial of summary judgment because discovery remains outstanding requires a showing that the request for additional discovery is calculated to yield facts that would warrant denial of summary judgment (*Town of Brookhaven v Mascia*, 38 AD3d 758 [2d Dept 2007]).

In the opinion of this court, plaintiff has, on the present record, raised enough issues of fact to prevent the court from granting defendants' summary judgment motion. Also, plaintiff does raise the issue of incomplete discovery.

Plaintiff also argues that the defendants are in possession of many partnership documents that would demonstrate plaintiff's position. Therefore, he alleges the summary judgment requests herein are premature. The court must agree and the defendants' motions are **denied**.

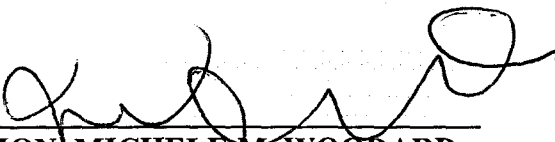
As to plaintiff's motion to enforce a so-ordered stipulation, the court will order a conference in chambers in which all parties shall attend and where this court shall direct, upon the threat of sanctions, full compliance with the previous orders of this court for meaningful relevant discovery to be accomplished. This court shall set forth exactly how this will be accomplished by the parties (if they have not already so complied). Thus, plaintiff's motion is **granted** only to this extent. It is hereby

ORDERED, that the parties are directed to appear on September 27, 2010 at 10:30 a.m. before the undersigned.

This constitutes the Decision and Order of the Court.

DATED: September 20, 2010
Mineola, N.Y. 11501

ENTER:


HON. MICHELE M. WOODARD
J.S.C.

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