19 Stanton Realty LLC v 19 Stanton St. LLC
2018 NY Slip Op 30844(U)
May 1, 2018
Supreme Court, New York County
Docket Number: 650482/2016
Judge: Melissa A. Crane

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 15

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19 STANTON REALTY LLC,
Plaintiff,

Index No.: 650482/2016

-against-

Mot. Seq. No. 003

19 STANTON STREET LLC, MICHAEL SHAH, HAMID CASTRO, and AYANO TAKA,
Defendants.

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MELISSA A. CRANE, J.S.C.:

This case arises from the sale of real property located at 19 Stanton Street (the "Property"), a five-story mix-use building located on Manhattan's Lower East Side. In July 2015, the parties entered into an Agreement of Purchase and Sale (the "Agreement") whereby 19 Stanton Street, LLC ("19 Stanton Street") agreed to sell plaintiff the Property for $12,000,000. Plaintiff alleges corporate defendants fraudulently represented that the tenant co-defendants, Hamid Castro and Ayano Taka, were not subject to rent stabilization.

Around January 2015, corporate defendants rented Apartment 51 to defendant Hamid Castro ("Castro") for $1,500 per month under an oral rental agreement. Shah employed Castro as his personal trainer. Corporate defendants rented Apartment 42 to defendant Ayano Taka ("Taka") for $1,000 per month under an oral rental agreement. At one point, Shah and Taka may have dated each other. Plaintiff alleges that corporate defendants orally represented to plaintiff that Castro and Taka were employees, and thus exempt from rent stabilization status (*see* Rent Stabilization Code [9 NYCRR] § 2520.11 [m]). However, after the sale of the Property closed in the Fall of 2015, plaintiff contends Castro and Taka both claimed that they were rent stabilized tenants. Plaintiff's second cause of action, at issue on this motion, alleges that corporate defendants made oral false misrepresentations and omissions as to whether Castro and Taka were

subject to rent stabilization.

Corporate defendants deny liability under the Agreement of Purchase and Sale (the "Agreement"), that the parties entered into in July 2015. Corporate defendants argue first that the Agreement disclaims the seller's representations or warranties to the buyer:

> Seller has not made and does not make any representations as to…any other matter or thing affecting or related to the Property or this transaction, which might be pertinent in considering the making of the purchase of the Property or the entering into of this Agreement, including, without limitation…the compliance, or lack of compliance with any applicable *rent control, rent stabilization or other rent regulatory rules,* regulations, laws or decisions…
> (*see* Agreement Section 11.1) (emphasis added)
> The foregoing representations will not survive the closing.
> (*see* Agreement Section 15.5)

Second, corporate defendants argue the Agreement releases the seller from future personal liability:

> By execution of this Agreement, Purchaser, on behalf of itself and its members, managers, and its and their successors and assigns, releases Seller and Seller's members, managers, officers, agents and advisors (collectively, "Seller's Affiliates") of and from any and all losses, liabilities, damages, claims, demands, causes of action, costs and expenses ("Losses") , whether known or unknown, arising out of or in any way connect with the environmental condition, the physical condition and the *rent registration of the Property*...
> (*see* Agreement Section 11.3) (emphasis added)
>
> Purchaser will not seek recourse or commence any action against any Seller's Affiliates (including, without limitation, the individuals executing this Agreement), or any of their personal assets, for the performance or payment of any obligation hereunder, related hereto or in connection herewith, whether arising by contract, tort or otherwise.
> (*see* Agreement Section 26.5)

Third, corporate defendants point to the merger clause:

> This instrument constitutes the entire agreement between the parties and there are no other covenants, promises or agreement, written or oral, and no agent of either party has the authority to make representations or other agreements, verbal or written which modify or vary the terms or conditions of this agreement. This Agreement supersedes and cancels any and all negotiations, arrangements, agreement and understandings, if any, between the parties hereto. This

> Agreement has been negotiated at arm's length between persons sophisticated and knowledgeable in the matters dealt with in this Agreement and each party has been represented by experienced legal counsel.
> (*see* Entire Agreement Section)

Finally, corporate defendants claim they adequately and directly informed plaintiff that all building tenants were subject to rent stabilization. Tenant rent stabilization records are public,[1] and due diligence by plaintiff before closing would have confirmed that all building tenants were subject to rent stabilization. Therefore, plaintiff misplaces its reliance on communications extraneous to the Agreement. Plaintiffs claim that although they knew that rent stabilization applied to the entire building, corporate defendants misled plaintiff into believing that exemptions applied to Castro and Taka's occupancy (*see* Brody Memo of Law, p. 1)

Defendants 19 Stanton Street, LLC and Michael Shah (collectively, as "corporate defendants"), move to dismiss plaintiff's complaint pursuant to CPLR 3211(a)(1), (a)(5), and (a)(7); or alternatively, granting corporate defendants summary judgment under CPLR 3212.[2]

Motion to Dismiss Standard

A court must deny a motion to dismiss under CPLR 3211 (a)(7) "if from the pleading's four corners, factual allegations are discerned which taken together manifest any cause of action cognizable at law" (*Richbell Info. Servs. v Jupiter Partners*, 309 AD2d 288, 289 [1st Dept 2003] [internal quotation marks omitted], quoting *511 W. 232nd Owners Corp. v Jennifer Realty Corp.*, 98 NY2d 144, 151-152 [2002]). The court must afford the pleading a "liberal construction," and "the benefit of every possible favorable inference" (*Leon v Martinez*, 84 NY2d 83, 87 [1994]).

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[1] Defendants note rent stabilization records are publicly available via the New York State Department of Housing and Community Renewal ("DHCR").

[2] Castro and Taka agreed to vacate their respective apartments in return for a $150,000 payment to each. Hence, that part of plaintiff's complaint seeking a declaratory judgment that the Property was not subject to rent stabilization is moot. Defendants Castro and Taka's counterclaims are also moot. Plaintiff only seeks money damages.

However, the court may disregard "bare legal conclusions" and "inherently incredible" facts. *Matter of Sud v Sud,* 211 AD2d 423, 424 [1st Dept 1995]). Moreover, "[w]hen the moving party offers evidentiary material, the court is required to determine whether the proponent of the pleading has a cause of action, not whether [he or] she has stated one" (*Asgahar v Tringali Realty, Inc.*, 18 AD3d 408, 409 [2d Dept 2005]). CPLR 3211(a)(1) dismisses claims that are barred as a matter of law based upon documentary evidence, while CPLR 3211(a)(5) provides that a party may move for judgment dismissing a cause of action based on the Statute of Frauds.

Fraudulent Misrepresentation

To plead fraudulent misrepresentation, plaintiff must allege that (1) defendant made a material false representation; (2) defendant intended to defraud the plaintiffs; (3) the plaintiffs reasonably relied upon the representation; and (4) plaintiffs suffered damage as a result of their reliance (*see Swersky v Dreyer & Traub,* 219 AD2d 321, 326). A fraud claim must consist of "a material misrepresentation or a material omission of fact which was false and known to be false by defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury" (*see Lama Holding Co. v Smith Barney, Inc.,* 88 NY2d 413, 421 [1996]).

The issue is whether corporate defendants fraudulently represented to plaintiff that tenants Taka and Castro were employees of defendant Shah, and therefore, exempt from rent stabilization, and, if so, whether plaintiff reasonably relied on those alleged misrepresentations in purchasing the Property.

Corporate defendants argue that the court should dismiss plaintiff's complaint based on documentary evidence in the Agreement (*see* CPLR 3211[a][1]). They claim that the Merger Clause in the Agreement bars the fraud cause of action (*see* "Entire Agreement" Section).

Plaintiff, however, argues that merger clauses are not applicable to claims based on fraud, citing to *Sabo v Delman,* 3 NY2d 155 [1957]). Plaintiff's case is inapposite. *Sabo* involved a vague and general merger clause that provided as follows: "no verbal understanding or conditions, not herein specified, shall be binding on either party" (3 NY2d at 160).

The merger clause here, however, includes specific and detailed disclaimers as to the rent stabilization status of the building's units (*see* Agreement Section 11.1; *see also, New WTC Retail Owner, LLC v Pachanga, Inc.,* 2018 WL 1954456, -- NYS3d -- [1st Dept 2018]). Specifically, Section 11.1 specifies that the seller does not make any representations as to rent stabilization rules. Section 11.2 disclaims liability for any representations, and seller relies on its own expertise. Section 11.3 particularizes the disclaimer of liability or damages connected with the rent registration of the Property (*see Masters v Visual Building Inspections, Inc.,* 227 AD2d 597, 597 [2d Dept 1996] ["while general merger clause is ineffective to exclude parol evidence of fraud in inducement, specific disclaimer defeats any allegation that contract was executed in reliance upon representations to the contrary"]; *see also, Oseff v Scotti,* 130 AD3d 797 [2d Dept 2015] ["while a general merger clause is ineffective to exclude parol evidence of fraud in the inducement, a 'specific disclaimer destroys the allegations in a plaintiff's complaint that the agreement was executed in reliance upon … contrary oral misrepresentations'"]). The Merger Clause therefore warrants dismissal of the fraudulent misrepresentation claim.

Even if corporate defendants made false representations to plaintiff at the closing, plaintiff cannot establish reasonable reliance on those representations. Plaintiff is a highly sophisticated and experienced real estate investor. The disclaimers in the Agreement contradict plaintiff's reliance on any alleged representations about Castro and Taka's occupancy status. An entity as sophisticated as plaintiff should know not to rely on outside representations in the face

of a disclaimer like the one here. Further, plaintiff does not dispute in any meaningful way that corporate defendant provided plaintiff with access to Stanton Street, LLC's books and records, including public DHCR records, prior to the closing.

Plaintiff's argument that the fraud stems from Shah's exclusive knowledge of Castro and Taka's occupancy status is without merit. Further, it is undisputed that plaintiff had access to Taka and Castro, and could have, by exercising due diligence, inquired the nature of their tenancy (*see* Brody Memo of Law, p. 8-9; *see also* Schwartz Reply Memo, p. 8). First, the Agreement specifically provides that it "…has been negotiated at arm's length between persons sophisticated and knowledgeable…," and therefore defendant had no duty to provide plaintiff with any information. Plaintiff, then, would have discovered that Castro and Taka had made some rent payments to defendant Shah. In turn, this would have raised an issue as to whether Castro and Taka were exempt from rent stabilization under NYCRR 2520.11(m).

Accordingly, it is hereby

ORDERED that the court grants defendant's motion to dismiss the complaint.

Dated: May 1, 2018

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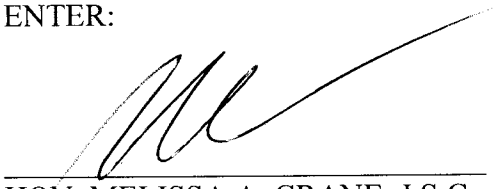

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