Rao's City Views, LLC v 215 Enterprises LLC
2018 NY Slip Op 31445(U)
June 29, 2018
Supreme Court, New York County
Docket Number: 652100/17
Judge: Arthur F. Engoron

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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RAO'S CITY VIEWS, LLC,

Plaintiff,

--against--

215 ENTERPRISES LLC, 265 PLEASANT LLC, and LAW FIRM OF SETH STEIN, P.C., as escrow agent,

Defendants.

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Index Number: 652100/17

Sequence Number 001

DECISION AND ORDER

Arthur F. Engoron, J.S.C.

In compliance with CPLR 2219(a), this Court states that the following papers, numbered 1 to 4, were used on plaintiff's motion, and defendant's cross-motion, for summary judgement:

Papers Numbered:

Notice of Motion – Affirmation – Exhibits – Memo of Law.....1
Notice of Cross-Motion – Affidavits – Exhibits – Memo of Law.....2
Reply Affidavit (Plaintiff) – Memo of Law.....3
Reply Affirmation (Defendant).....4

In this breach of contract action plaintiff Rao's City Views, LLC ("Rao") alleges that defendants 215 Enterprises LLC ("215"), 265 Pleasant LLC ("265"), and the Law Firm of Seth Stein, P.C. ("Stein") are withholding $500,000 that is rightfully Rao's. Defendants 215 and 265 answered with counterclaims, arguing that Rao breached the contract, and with crossclaims, alleging that Stein should release the money, which it is holding in escrow, to them

Rao now moves, and 215 and 265 now cross-move for summary judgement, asserting that, "there is no material issue of fact to be tried, and that judgment may be directed as a matter of law." See Brill v City of New York, 2 NY3d 648, 652 (2004). For the reasons stated herein, Rao's motion is granted and 215 and 265's cross-motion is denied.

Background

In November 2015, Rao entered into a written contract with 215 to sell 265 Pleasant Avenue, a/k/a 455 East 114th Street New York, New York to 215. The contract provided that if the New York City Department of Buildings did not issue a final certificate of occupancy ("C of O") for the Building by closing, Rao would be required to deposit $500,000 of the sale proceeds in escrow, and would have nine months to obtain the C of O. If the C of O was issued by that deadline, Rao would be entitled to the escrow. If, on the other hand, the C of O was not issued by the deadline, 215 would be entitled to the escrow. On February 11, 2016, Rao conveyed the title of the property to Defendants 215 and 265 as 75% and 25% tenants-in-common respectively. Rao deposited $500,000 to an escrow account given to Stein. On November 10, 2016, the deadline date, the Department of Buildings issued a C of O for the entire Building. Rao demanded return of the escrow, but Stein still holds it. Rao alleges that it satisfied the Escrow Agreement by obtaining the C of O within the nine months and that it is entitled to the funds. Rao now moves for summary judgement on the ground that Rao fulfilled its duties in the Escrow Agreement, and 215 and 265 now cross-moving, seeking to obtain the escrow funds.

Discussion

A court should grant summary judgement if there is no disputed material fact and a judgement can be made as a matter of law. Brill, 2 NY3d at 652. "To obtain summary judgment it is necessary that the movant establish [its] cause of action or defense sufficiently to warrant the court as a matter of law in directing judgment in [its] favor". Whelan v GTE Sylvania, Inc., 182 AD2d 446, 448 (1st Dept 1992). "To state a claim for breach of contract, a Rao must allege: (1) the parties entered into a valid agreement; (2) plaintiff performed; (3) defendant failed to perform; and (4) damages." VisionChina Media Inc. v Shareholder Representative Servs., LLC, 109 AD3d 49, 58 (1st Dept 2013). The parties agree that the

escrow agreement was valid. Rao claims that there is no dispute of fact that it performed under the escrow agreement and defendants did not.

Contrary to what defendants argue, Rao has stated a cause of action for breach of the escrow agreement (see above). Defendants also rely on res judicata. "[T]he party seeking to invoke the doctrine of res judicata must demonstrate that the critical issue in a subsequent action was decided in the prior action". Gomez v Brill Sec., Inc., 95 AD3d 32, 35 (1st Dept 2012). Here, defendants allege that a court has already decided the issue at hand, that being whether or not Rao obtained the C of O within the time specified. Defendants 215 and 265 rely on the fact that on November 8, 2016, Rao commenced an action against them for a declaration that Rao had substantially complied with the Escrow and was entitled to recover the funds. However, after obtaining the C of O two days later, Rao considered the lawsuit moot and discontinued it without prejudice. As this lawsuit was never adjudicated on the merits and was discontinued without prejudice it cannot be the basis for a res judicata claim here.

Defendants 215 and 265 also claim that Rao failed to obtain the C of O by the deadline, and therefore breached the contract, and that 215 and 265 are entitled to the $500,000. The Purchase and Sales agreement identifies the Premises in question as "Lot 22." The Second Amendment to the agreement modified the agreement so that the description of the property would also include Lot 121. Therefore, defendants argue that the C of O should cover lots 22 and 121. Defendants allege that the C of O is instead for lot 21 instead of for lots 22 and 121. True, the first page of the C of O only mentions lot 21. However, at the end of the second page of the C of O, it states "These Premises... Lots 22...121... have been declared as one zoning regulation and have been recorded at the office of city register". Clearly, the Department of Buildings erred on the first page, and the second page, containing the text of the C of O, is more particular, and controls here. Defendants do not argue that they attempted to use the C of O and were denied anything because of this error on the first page. They were not prejudiced at all. Thus, Rao substantially complied with contract. Based on the C of O, lots 22 and 121 are indeed included

in the C of O, contrary to defendants' allegations. Therefore, Rao did indeed obtain the requisite C of O by the deadline.

Defendants 215 and 265 further allege that they are owed damages because, contrary to what the escrow agreement required, Rao never turned over all the files that would enable the defendants to obtain a permanent C of O. They complain that due to this, they are unable to rectify the double taxing done by the City on their property as a result of Rao acquiring the C of O for the wrong property lots. However, the escrow agreement prefaces this requirement with the statement, "If the permanent certificate of occupancy is not issued on or before November 10, 2016...." Rao did in fact obtain a permanent certificate of occupancy before this deadline, and so there was no need, as dictated in the escrow agreement, for Rao to turn over the files to the defendants. Rao is not liable for the city's double-taxation.

Conclusion

Plaintiff Rao's City Views, LLC's motion for summary judgement is hereby granted, and the cross-motion of defendants 215 Enterprises LLC and 265 Pleasant LLC is hereby denied. Defendant the Law Office of Seth Stein, P.C. is hereby ordered to release to Rao the $500,000 that he is holding in escrow pursuant to the subject agreements. Defendants' counterclaims and cross-claims are hereby denied. The clerk is directed to enter judgment accordingly.

Dated: June 29, 2018

Arthur F. Engoron, J.S.C.