Goodale v Central Suffolk Hosp.
2019 NY Slip Op 32620(U)
August 5, 2019
Supreme Court, Suffolk County
Docket Number: 13-4030
Judge: Denise F. Molia
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[* 1]

SHORT FORM ORDER

INDEX No. 13-4030
CAL. No. 18-00689CO

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 39 - SUFFOLK COUNTY

PRESENT:

Hon. DENISE F. MOLIA
Acting Justice of the Supreme Court

MOTION DATE 9-27-18
ADJ. DATE 9-28-18
Mot. Seq. # 002 - MG; CASEDISP

JESSE GOODALE, III, and DONNA GOODALE, a/k/a DHONNA R. GOODALE,

Plaintiffs,

- against -

CENTRAL SUFFOLK HOSPITAL d/b/a PECONIC BAY MEDICAL CENTER, and CENTRAL SUFFOLK HOSPITAL FOUNDATION d/b/a PECONIC BAY MEDICAL CENTER FOUNDATION,

Defendants.

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Upon the following papers numbered 1 to 69 read on this motion for summary judgment : Notice of Motion/Order to Show Cause and supporting papers 1-28 ; Notice of Cross Motion and supporting papers ____; Answering Affidavits and supporting papers 29-65 ; Replying Affidavits and supporting papers 66-69 ; Other ___; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that the decision of this court, dated June 7, 2019, is recalled and vacated; and it is further

ORDERED that the motion by defendants for summary judgment dismissing the complaint is granted.

This is an action arising from the solicitation for a charitable donation and alleged oral promise by Andrew Mitchell, a representative of Peconic Bay Medical Center Foundation (the Foundation), to give the plaintiffs "unconditional naming rights" to the expanded emergency center of Peconic Bay Medical Center (PBMC) in consideration of a pledge of funds to the hospital. Plaintiffs allege that a

sign with the designated name, as selected by them, would be affixed to the exterior of the hospital, in recognition of their donation. Plaintiffs maintain that defendants breached their promise by naming the hospital's new emergency department the "Goodale Emergency Department," rather than the "Dhonna and Jesse Goodale Emergency Center," which they allegedly proposed. Based on this alleged promise and its breach, plaintiffs have asserted causes of action sounding in rescission of the pledge agreement and refund of the pledge, breach of contract, and fraud in the inducement.

Defendants now move for summary judgment in their favor and dismissal of the complaint, arguing that plaintiffs' claims contradict the plain and unambiguous terms of the pledge agreement signed by Jesse Goodale, III, which expressly states: "This is an unrestricted pledge, and it may be used for any corporate purpose within the mission of [PBMC], as determined by the Board of Trustees of [PBMC]." Defendants argue that the pledge agreement is an unambiguous contract and that there is no material issue of fact as to its enforceability. Defendants also argue that an alleged promise, made to a non-contracting third party, Dhonna Goodale, to give "unconditional naming rights" as consideration for the pledge is parol evidence that should not be considered, as the terms of the contract on its face are unambiguous and unequivocal. In support of their motion, defendants submit, *inter alia*, copies of the pleadings, copies of pledge agreements executed by plaintiff Jesse Goodale, III, copies of correspondence between the parties, copies of the minutes of various PBMC executive committee meeting minutes, and the transcript of the deposition of nonparty witness Demetrios Kadenas.

Plaintiffs oppose the motion, arguing that the oral promise made by Andrew Mitchell modifies the written pledge agreements and raises triable issues of fact on each cause of action. In support, plaintiffs submit, *inter alia*, the affidavit of plaintiff Jesse Goodale, III, various newspaper articles regarding his pledge to PBMC, copies of correspondence between the parties, and the transcripts of the deposition testimony of nonparty witnesses Andrew Mitchell, Nancy Uzo, Demetrios Kadenas, and Sharon Paterson.

PBMC is a non-profit corporation located in Riverhead, New York. The Foundation was formed for the purpose of fundraising and capital development for and on behalf of the hospital. Jesse Goodale, III, has served as a member, as well as Chairman, of PBMC's Board of Directors. He alleges that in February 2008, he and his wife, Dhonna Goodale, were solicited by PBMC's President and CEO, Andrew Mitchell to make a donation to the Foundation's "Campaign to Build Tomorrow's Medical Center . . . Today!" Plaintiffs allege that Mr. Mitchell verbalized to Dhonna Goodale "for a million dollars, you can name [the emergency center] whatever you want." Plaintiffs allege that it was their understanding that this statement from Mr. Mithchell was a promise that they would have unconditional naming rights to the facility upon completion of such a pledge.

On or about May 12, 2008, Jesse Goodale, III, made a one million dollar pledge to the Foundation's campaign ("First Pledge"). There is no reference to the subject of naming rights in this initial pledge agreement. When he failed to comply with the payment terms of the First Pledge, he then signed a revised pledge on December 1, 2008 ("Second Pledge"), extending his payment schedule and increasing the amount of the pledge to one million one-hundred-fifty thousand dollars. When the payment terms of the Second Pledge were not met, he executed a third agreement on or about June 24, 2010 ("Pledge Agreement"). This agreement, by its terms, "replaced and superceded" the First and Second Pledges, and also includes the statement: "This is an unrestricted pledge, and it may be used for

any corporate purpose within the mission of (PBMC), as determined by the Board of Trustees of (PBMC)." He satisfied the Pledge Agreement on October 17, 2011 and the funds were accepted by the Foundation on November 4, 2011. All of the aforementioned pledges were executed solely by Jesse Goodale, III, with no signature or acknowledgment of anyone on behalf of PBMC or the Foundation.

Summary judgment is a drastic remedy and should only be granted in the absence of any triable issues of fact (see ***Rotuba Extruders v Ceppos***, 46 NY2d 223, 413 NYS2d 141 [1978]). The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a mater of law by tendering proof in admissible form sufficient to demonstrate the absence of any material issues of fact (***Alvarez v Prospect Hosp.***, 68 NY2d 320, 324, 508 NYS2d 923 [1986]; ***Zuckerman v City of New York***, 49 NY2d 557, 562, 508 NYS2d 923 [1986]; ***Friends of Animals v Associated Fur Mfrs.***, 46 NY2d 1065, 1067, 416 NYS2d 790 [1979]). The movant's burden on a summary judgment motion is a heavy one, as a court must view the evidence in the light most favorable to the nonmoving party, and all inferences must be resolved in favor of the nonmoving party (***William J. Jenack Estate Appraisers & Auctioneers, Inc. v Rabizadeh***, 22 NY3d 470, 475, 982 NYS2d 813 [2013]; ***Vega v Restrani Constr. Corp.***, 18 NY3d 499, 503, 942 NYS2d 13 [2012]). If the initial burden is met, the party opposing summary judgment must produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (***Vega v Restrani Constr. Corp.***, *supra*; ***Alvarez v Prospect Hosp.***, *supra*). However, if the movant fails to make a prima facie case, summary judgment must be denied, regardless of the sufficiency of the opposing papers (***Alvarez v Prospect Hosp.***, *supra*).

Cause of Action for Breach of Contract

The elements of a cause of action to recover damages for breach of contract are the existence of a contract, the plaintiff's performance pursuant to the contract, the defendant's breach of its contractual obligations, and damages resulting from the breach (*see* ***Weatherguard Contrs. Corp. v Bernard***, 155 AD3d 921, 63 NYS3d 692 [2d Dept 2017]; ***Rayham v Multiplan, Inc.***, 153 AD3d 865, 61 NYS3d 90 [2d Dept 2017]). "[A] contract is to be construed in accordance with the parties' intent, which is generally discerned from the four corners of the document itself. Consequently, 'a written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms'" (***Legum v Russo***, 133 AD3d 638, 639, 20 NYS3d 124 [2d Dept 2015], quoting ***MHR Capital Partners LP v Presstek, Inc.***, 12 NY3d 640, 645, 884 NYS2d 211 [2009]).

When the terms of a written contract are clear and unambiguous, the contract should be enforced in accordance with the plain meaning of its terms (*see* ***W.W.W. Assoc. v Giancontieri***, 77 NY2d 157, 565 NYS2d 440 [1990]; ***Willsey v Gjuraj***, 65 AD3d 1228, 885 NYS2d 528 [2d Dept 2009]; ***Greenfield v Philles Records, Inc.***, 288 AD2d 59, 732 NYS2d 856 [1st Dept 2001]). "The best evidence of what parties to a written agreement intend is what they say in their writing" (***Slamow v Delcol***, 79 NY2d 1016, 1018, 584 NYS2d 424 [1992]). When the terms of a contract are clear and unambiguous, the intent of the parties to that agreement must be found within the four corners of the contract itself, without reference to issues outside the agreement terms (***Goldman v White Plains Ctr.***, 11 NY3d 173, 176, 867 NYS2d 27 [2008]; *see* ***Brad H. v City of New York***, 17 NY3d 180, 928 NYS2d 221 [2011]). Ambiguity is present in a contract if the language used renders it susceptible to more than one reasonable interpretation (*see id.*; ***Evans v Famous Music Corp.***, 1 NY3d 452, 775 NYS2d 757 [2004]), or if there

is contradictory or inconsistent language in different portions of the contract (*see* ***Natt v White Sands Condominium***, 95 AD3d 848, 849, 943 NYS2d 231 [2d Dept 2012]). If an ambiguity is discerned with respect to the parties' intent, the court may consider extrinsic evidence (*see* ***Laing v Laing***, 282 AD2d 655, 723 NYS2d 710 [2d Dept 2001]; ***Tirella v Tirella***, 249 AD2d 294, 670 NYS2d 889 [2d Dept 1998]; *see also* ***Morash v State***, 268 AD2d 510, 703 NYS2d 55 [2d Dept], *lv denied* 95 NY2d 755, 712 NYS2d 447 [2000]; ***Seaman Furniture Co. v Seaman***, 267 AD2d 297, 701 NYS2d 82 [2d Dept 1999]). Extrinsic evidence as to what the parties really intended, but omitted from, or misstated in, the contract, generally is not admissible to create an ambiguity in a contract that is unambiguous on its face (*see* ***W.W.W. Assoc. v Giancontieri***, *supra*; ***Chimart Assocs. v Paul***, 66 NY2d 570, 498 NYS2d 344 [1986]; ***Krystal Investigations & Sec. Bur., Inc. v United Parcel Serv., Inc.***, 35 AD3d 817, 826 NYS2d 727 [2d Dept 2006]). Thus, if a contract on its face is reasonably susceptible to only one meaning, a court may not alter such contract "to reflect its personal notions of fairness and equity" (***Greenfield v Phillies Records***, *supra* at 569-570, 750 NYS2d 565; *see* ***Slamow v Delcol***, *supra*). Moreover, an individual who signs or accepts a written contract, absent fraud or other wrongful conduct on the part of the other contracting party, "is conclusively presumed to know its contents and to assent them, and there can be no evidence for the jury as to her [or her] understanding of its terms" (***Metzger v Aetna Ins. Co.***, 227 NY 411, 416, 125 NE 814 [1920]; *see* ***Gillman v Chase Manhattan Bank***, 73 NY2d 1, 537 NYS2d 787 [1988]; ***Da Silva v Musso***, 53 NY2d 543, 444 NYS2d 50 [1981]; ***Daniel Gale Assoc. v Hillcrest Estates***, 283 AD2d 386, 724 NYS2d 201 [2d Dept 2001]).

As it is a question of law whether or not a contract is ambiguous (***W.W.W. Assoc. v Giancontieri***, *supra*), a court must first determine whether the agreement at issue on its face is reasonably susceptible to more than one interpretation (*see* ***Chimart Assocs. v Paul***, *supra*). The aim of a court interpreting a contract is to arrive at a construction that gives fair meaning to all of its terms and provisions, and "to reach a practical interpretation of the expressions of the parties so that their reasonable expectations will be realized" (***Calano v Calano***, 119 AD3d 629, 631, 990 NYS2d 65 [2d Dept 2014], quoting ***Joseph v Creek & Pines, Ltd.***, 217 AD2d 534, 535, 629 NYS2d 75 [2d Dept], *lv dismissed* 86 NY2d 885, 635 NYS2d 950 [1995], *lv denied* 89 NY2d 804, 653 NYS2d 543 [1996]; *see* ***Patsis v Nicolia***, 120 AD3d 1326, 992 NYS2d 349 [2d Dept 2014]; ***Matter of Grill v Genitrini***, 113 AD3d 767, 978 NYS2d 881 [2d Dept 2014]; ***G3-Purves St., LLC v Thomson Purves, LLC***, 101 AD3d 37, 953 NYS2d 109 [2d Dept 2012]). It is a cardinal rule of construction that a court should not interpret a contract in such a way as would leave one of its provisions substantially without force or effect (***Corhill Corp. v S. D. Plants, Inc.***, 9 NY2d 595, 599, 217 NYS2d 1 [1961]; *see* ***Beal Sav. Bank v Sommer***, 8 NY3d 318, 834 NYS2d 44 [2007]; ***Zullo v Varley***, 57 AD3d 536, 868 NYS2d 290 [2d Dept 2008]; ***Petracca v Petracca***, 302 AD2d 576, 756 NYS2d 587 [2d Dept 2003]).

As a matter of public policy, pledge agreements calculated to foster charitable enterprises are enforceable (***Woodmere Academy v Steinberg***, 41 NY2d 746, 395 NYS2d 434 [1977]; ***I. & I. Holding Corp. v Gainsburg***, 276 NY 427, 12 NE2d 532 [1938]). Charitable pledges are enforceable because they constitute an offer of a unilateral contract that, when accepted by the charity incurring liability in reliance of the pledge, becomes a binding obligation (*see* ***I. & I. Holding Corp. v Gainsburg***, *supra*). A pledge may be conditioned upon the performance of some act by the beneficiary (*see* ***Woodmere Academy v Steinberg***, *supra*; ***Allegheny Coll. v National Chautaugua County Bank of Jamestown***, 246 NY 369, 159 NE 173 [1927]). However, "as with contracts generally, when the pledge is made in writing, unless conditions are expressed, or at least implicit, in the agreement itself, parol evidence may

not be used to supply them except to show conditions precedent to the effectiveness of the agreement or fraud in the inception (***Woodmere Academy v Steinberg***, *supra* at 750; *see* ***Bank of Suffolk County v Kite***, 49 NY2d 827, 427 NYS2d 782 [1980]; ***Hicks v Bush***, 10 NY2d 488, 225 NYS2d 34 [1961]; *see also* ***Paul & Irene Bogoni Found. v St. Bonaventure Univ.***, 78 AD3d 616, 913 NYS2d 154 [1st Dept 2010]). Parol evidence can only be used to prove a condition precedent if the condition does not contradict the express terms of the written agreement (*id.*; ***Fadex Foreign Trading Corp. v Crown Steel Corp.***, 297 NY 903, 79 NE2d 739 [1948], *affg*, 272 AD 273, 70 NYS2d 892 [1st Dept 1947]).

Here, defendants established, prima facie, entitlement to summary judgment on the breach of contract cause of action. Defendants submit a copy of the Pledge Agreement, signed by plaintiff Jesse Goodale, III, which, on its face, is clear and unambiguous by its terms, as were the previous, unfulfilled pledges. These documents, on their face, express a complete agreement between the parties. As such, there is no need to resort to parol evidence as to the intention of the parties, and effect must be given to the intent of the parties as indicated by the words used in the writing (*see* ***Doniger v Rye Psychiatric Hosp. Ctr., Inc.***, 122 AD 873, 505 NYS2d 920 [2d Dept 1986]). The burden now shifts to plaintiffs to raise a triable issue of fact as to whether the pledge was conditioned on defendants' performance of some task. Plaintiffs submit an affidavit of Jesse Goodale, III, which states that at the time he signed the pledge, he did not intend for the term "unrestricted pledge" to mean that plaintiffs would not have naming rights to the emergency department. However, plaintiffs' submissions are insufficient to raise an issue of fact necessitating a trial. On its face, the Pledge Agreement is reasonably susceptible to only one interpretation, which may be gleaned from the face of the contract, therefore, extrinsic evidence is inadmissible to vary the terms of the written agreement or to create a condition not set forth in the agreement (***Namad v Salomon, Inc.***, 74 NY2d 751, 545 NYS2d 79 [1989]; ***Woodmere Academy v Steinberg***, *supra*).

Cause of Action for Fraud in the Inducement

The elements of a cause of action alleging fraud in the inducement are representation of a material existing fact, falsity, scienter, reliance and injury (*see* ***Urstadt Biddle Properties v Excelsior Realty Corp.***, 65 AD3d 1135, 1136-1137, 885 NYS2d 510 [2d Dept 2009]; ***Urquhart v Philbor Motors***, 9 AD3d 458, 780 NYS2d 176 [2d Dept 2004]). Where a party has the means to discover the true nature of the transaction by the exercise of ordinary intelligence, and fails to use those means, he cannot claim justifiable reliance on his opponent's misrepresentations (*see* ***Centro Empresarial Cempresa S.A. v America Movil, S.A.B. de C.V.***, 17 NY3d 269, 929 NYS2d 3 [2011]; ***Stuart Lipsky P.C. v Price***, 215 AD2d 102, 625 NYS2d 563 [1st Dept 1995]). A plaintiff asserting a fraud claim must also demonstrate that the defendant's misrepresentations were the direct and proximate cause of the claimed losses (*see* ***Spector v Wendy***, 63 AD3d 820, 881 NYS2d 465 [2d Dept 2009]). Loss causation is a well-established requirement of a common law fraudulent inducement claim for damages, and if the fraud causes no loss, then the plaintiff has suffered no damages (*see* ***Ambac Assur. Corp. v Countrywide Home Loans, Inc.***, 31 NY3d 569, 580-581, 81 NYS3d 816 [2018]; ***Connaughton v Chipotle Mexican Grill, Inc.***, 29 NY3d 137, 142, 53 NYS3d 598 [2017]; *see also* ***Sager v Friedman***, 270 NY 472, 1 NE2d 971 [1936]).

Plaintiffs' cause of action, described as a cause of action to recover damages due to fraud, is premised upon an alleged breach of contract. Since the alleged fraud relates to a breach of contract, the plaintiffs are limited to asserting a cause of action sounding in breach of contract (*see* ***Commander***

Terms., LLC v Commander Oil Corp., 71 AD3d 623, 897 NYS2d 151 [2d Dept 2010]; ***Krantz v Chateau Stores of Canada, Ltd.***, 256 AD2d 186, 683 NYS2d 24 [1st Dept 1998]). "[A] cause of action to recover damages for fraud will not arise when the only fraud alleged relates to a breach of contract" (***Biancone v Bossi***, 24 AD3d 582, 583, 806 NYS2d 694 [2d Dept 2005], quoting ***Rosen v Watermill Dev. Corp.***, 1 AD3d 424, 426, 768 NYS2d 474 [2d Dept 2003]; *see* ***Commander Terms., LLC v Commander Oil Corp.***, *supra*; ***Merrit v Hooshang Constr.***, 216 AD2d 542, 543, 628 NYS2d 792 [2d Dept 1995]). Therefore, defendants' motion for summary judgment with respect to plaintiffs' cause of action for fraud in the inducement is granted.

Cause of Action for Rescission

As a general rule, "where a mistake in contracting is both mutual and substantial, there is an absence of the requisite 'meeting of the minds' to the contract and relief will be provided in the form of rescission (***Sunlight Funding Corp. v Singer***, 146 AD2d 625, 536 NYS2d 533 [2d Dept 1989]; *see* ***Surlak v Surlak***, 95 AD2d 371, 380, 466 NYS2d 461, 469 [1983]). Rescission is permitted for such a breach as substantially defeats the purpose of the contract, and it is not permitted for slight, casual or technical breaches (*see* ***Ma v Biaggi***, 150 AD3d 778, 54 NYS3d 46 [2d Dept 2017]; ***RR Chester, LLC v Arlington Bldg. Corp.***, 22 AD3d 652, 803 NYS2d 100 [2d Dept 2005]; *see also* ***Callanan v Keeseville, Ausable Chasm & Lake Champlain R. R. Co.***, 199 NY 268, 92 NE 747 [1910]). Rescission is not permitted for slight, casual, or technical breaches, but only where the breach is material and willful, or, if not willful, so substantial and fundamental that it strongly defeats the intent of the parties in making the contract (*see* ***Ma v Biaggi***, *supra*; ***Matter of Kassab v Kassab***, 137 AD3d 1138, 27 NYS3d 680 [2d Dept 2016]; *see also* ***RR Chester, LLC v Arlington Bldg. Corp.***, *supra*). "The effect of rescission is to declare the contract void from its inception and to put or restore the parties to status quo" (***Cusack v American Defense Sys., Inc.***, 86 AD3d 586, 588, 927 NYS2d 381 [2d Dept 2011], quoting ***County of Orange v Grier***, 30 AD3d 556, 557, 817 NYS2d 146 [2d Dept 2006]). Rescission is inappropriate "where the status quo cannot be substantially restored" (***Singh v Carrington***, 18 AD3d 855, 857 796 NYS2d 668 [2d Dept 2005], quoting ***Rudman v Cowles Communications***, 30 NY2d 1, 14, 330 NYS2d 33 [1972]; *see* ***Kamerman v Curtis***, 285 NY 221, 33 NE2d 530 [1941]; ***Marshall v Alaliewie***, 304 AD2d 1026, 756 NYS2d 914 [2d Dept 2003]).

Defendants have met their prima facie burden establishing entitlement to summary judgment on this cause of action by establishing that the status quo cannot be substantially restored, as defendants have relied on plaintiffs' pledge and have completed construction. Plaintiff Jesse Goodale, III acknowledged the defendants' reliance on his pledge by signing the Pledge Agreement which states: "I understand that [defendants] relied upon my earlier pledges to make commitments for the construction of new facilities . . . and now owes its general contractor on that construction project, . . . a sum at least equal to the amount of my Dec. 2008 pledge." Further, defendants have established, prima facie, that there was no fraud, misrepresentation, or mistake in the creation of the contract, nor was there a breach of the Pledge Agreement. There has been no evidence submitted to show a mutual and substantial mistake that would defeat the purpose of the charitable pledge. Defendants having established their prima facie case, the burden now shifts to plaintiff to raise an issue of fact necessitating a trial. Plaintiffs fail to allege facts which, if true, would show the existence of fraud, misrepresentation, or mistake, and that defendants' alleged breach of the pledge agreement substantially defeated the purpose of the

[* 7]

agreement. Therefore, defendants' motion for summary judgment with respect to plaintiffs' cause of action for rescission is granted.

Accordingly, the motion by defendants for summary judgment dismissing the complaint is granted.

Dated: 8-5-19

A.J.S.C.

__X__ FINAL DISPOSITION ____ NON-FINAL DISPOSITION