Westchester Portfolio LLC v Parkway Vil. Equities Corp.
2019 NY Slip Op 33716(U)
December 16, 2019
Supreme Court, Kings County
Docket Number: 512636/19
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

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WESTCHESTER PORTFOLIO LLC,

Plaintiff, Decision and order

- against - Index No. 512636/19

mS #1

PARKWAY VILLAGE EQUITIES CORP., SARA MARTINEZ, DOUGLAS SHERMAN, MARY MCPARTLAND, JAMES BENNETT, MEREDITH MORELLO, METRO MANAGEMENT & DEVELOPMENT INC., JEANNETTE HERNANDEZ & GOLDSTEIN & GREENLAW LLP,

Defendants, December 16, 2019

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PRESENT: HON. LEON RUCHELSMAN

The defendant Goldstein and Greenlaw LLP has moved pursuant to CPLR 3211 seeking to dismiss the complaint. The plaintiff opposes the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

The plaintiff was an owner of sixty three apartments of defendant Parkway Village Equities Corp., a cooperative apartment corporation located in Queens New York. During February 2019 the plaintiff entered into contracts to sell all of its shares to various third parties. The closing was scheduled for June 6, 2019. In April 2019 the defendant Parkway Village informed the plaintiff that they owed $153,000 in arrears and noted the sale could not go forward without making payment. The plaintiff objected to the propriety of the arrears and further objected to another $58,531.10 of further arrears submitted to the plaintiff for payment. The plaintiff paid these arrears in efforts to be

able to close in a timely manner. This lawsuit was filed by the plaintiff seeking to recover $211,530.10 paid to satisfy the arrears they believe were unfounded. The plaintiff also sued Goldstein and Greenlaw LLP counsel for the defendant Parkway Village Equities Corp., on the grounds they individually breached a fiduciary duty, engaged in fraudulent and negligent misrepresentation, economic duress and tortious interference. The law firm has moved seeking to dismiss all the causes of action filed against it on the grounds as counsel for the defendant they cannot be liable for any of the causes of action.

Conclusions of Law

It is well settled that upon a motion to dismiss the court must determine, accepting the allegations of the complaint or allegations of the counterclaim complaint as true, whether the party can succeed upon any reasonable view of those facts (Davids v. State, 159 AD3d 987, 74 NYS3d 288 [2d Dept., 2018]). Further, all the allegations in the complaint or counterclaim complaint are deemed true and all reasonable inferences may be drawn in favor of the plaintiff (Dunleavy v. Hilton Hall Apartments Co., LLC, 14 AD3d 479, 789 NYS2d 164 [2d Dept., 2005]).

It is well settled that New York does not recognize any liability on the part of an attorney to non-client third parties for any injuries sustained as a result of the attorney's conduct

absent fraud, collusion or malicious or tortious acts (see, Michalic by Nakovics v. Klat, 128 AD2d 505, 512 NYS2d 436 [2d Dept., 1987]). The allegations against the law firm regarding the breach of any fiduciary duty do not concern acts in any legal capacity but rather are merely alternative ways of asserting the arrears requested were improper and thus the plaintiff asserts claims against the law firm in its capacity as transfer agent. Thus, paragraph 83 of the complaint states that "Goldstein and Greenlaw owed fiduciary duties to the Plaintiff to act in good faith in in [sic] processing the transfer of Plaintiff's shares, and in refraining from extorting Plaintiff and misrepresenting the amount of monies allegedly due to the Cooperative" (id). However, an arms-length business relationship cannot give rise to a fiduciary obligation (WIT Holding Corp., v. Klein, 282 AD2d 527, 724 NYS2d 66 [2d Dept., 2001]). Thus, while there are potentially viable claims against the other defendants, the plaintiff cannot pay the disputed sums to clear the sale of the units and then sue for recovery while alleging the transfer agent breached a fiduciary duty. The transaction was undertaken by sophisticated industry professionals upon the advice of counsel and the plaintiff's conduct was based upon considerations wholly unrelated to any specific actions of the law firm as transfer agent. Whether the plaintiff is entitled to recover the sums it paid is the true focus of this action. The law firm as transfer

agent did not create any relationship that can give rise to any claims. Therefore, since no such fiduciary relationship existed the third and fourth causes of action are dismissed as to Goldstein and Greenlaw.

Turning to the fifth cause of action, to state a claim for fraudulent misrepresentation the plaintiff must allege a misrepresentation of fact which was false and known to be false by defendant, made for the purpose of inducing the plaintiff to rely on it, such justifiable reliance and injury (Mandarin Trading Ltd., v. Wildenstein, 16 NY3d 173, 919 NYS2d 465 [2011]). Even if a cause of action can be asserted against defendant's counsel, there can be no claim of fraudulent misrepresentation since the plaintiff did not justifiably rely upon any representation of any defendant. On the contrary, the plaintiff continued to insist it did not owe any money to the defendant Parkway Village Equities Corp., and only agreed to pay to avoid losing its sale. Thus, there was no reliance and hence no fraudulent misrepresentation. Consequently, the fifth cause of action is dismissed as to Goldstein and Greenlaw.

The sixth cause of action is negligent misrepresentation. As noted, negligence claims, without more egregious conduct, are improper when asserted against a defendant's counsel (see, Offenhartz v. Cohen, 168 AD2d 268, 562 NYS2d 500 [1st Dept., 1990]). Therefore, the sixth cause of action is dismissed as to

Goldstein and Greenlaw.

The claim of economic duress is likewise dismissed. As already explained no duress existed where the plaintiff paid the amount sought based upon an internal business decision. Indeed, financial pressure does not constitute economic duress (Cash and Carry Filing Service LLC v. Perveez, 149 AD3d 578, 50 NYS3d 277 [1st Dept., 2017]).

The last claim is tortious interference with contracts. There can be no claim for tortious interference with contracts if those contracts were fully executed. Thus, the defendant Goldstein and Greenlaw cannot be found to have tortuously interfered with any contracts if all those contracts were timely completed. Therefore, there can be no basis for any claim of tortious interference with any contracts. Therefore, based on the foregoing the entire complaint is dismissed as to Goldstein and Greenlaw. The motion of Goldstein and Greenlaw is thus granted in full.

So ordered.

ENTER:

DATED: December 16, 2019
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC