

Metropolitan Bank & Trust Co. v Lopez
2020 NY Slip Op 30195(U)
January 8, 2020
Supreme Court, New York County
Docket Number: 159395/17
Judge: Doris Ling-Cohan
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 36

-----X
METROPOLITAN BANK & TRUST CO.,

Plaintiff,

-against-

Index No. 159395/17

Motion Seq. No.: 002, 003

MA. VICTORIA "MARIVIC" S. LOPEZ, LORENZO
VILLEGAS LOPEZ and MARIE STA. ANA LOPEZ
N/K/A LORAINNE MARIE S. LOPEZ LANNON,

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 12, 13, 14, 15, 17, 18,
19, 20, 23, 56, 86
were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 28, 29, 30, 31, 32, 33,
34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 57, 87
were read on this motion to/for ORDER OF PROTECTION.

DORIS LING-COHAN, J.:

Motion sequence numbers 002 and 003 are consolidated for disposition. In motion
sequence number 002, defendant Marie Sta. Ana Lopez n/k/a Lorainne Marie S. Lopez Lannon
(Lannon) moves, pursuant to CPLR 3211 (a) (7), to dismiss the complaint, as to her, and,
pursuant to CPLR 6501, to cancel a notice of pendency that was filed by plaintiff. In motion

sequence number 003, Lannon moves, pursuant to CPLR 1001 (a) and 3103 (a), for a protective order, and plaintiff Metropolitan Bank & Trust Co. (Bank) cross-moves to compel discovery.¹

This action arises from an alleged sixteen-year scheme by Lannon's mother that embezzled up to \$17.5 million from the Bank, by which she was employed in the Philippines. Lannon's mother is currently incarcerated in the Philippines, awaiting trial, having been denied bail. The complaint in this action alleges that Lannon, her mother, and her father, defendant Lorenzo Villegas Lopez, have colluded in an attempt to place proceeds of their wife's and mother's alleged crime beyond the reach of the Bank. Most pertinently, with regard to Lannon, the complaint alleges that her father bought her a condominium unit in the building located at 225 East 34th Street in Manhattan, which she, shortly thereafter, put on the market.

The complaint alleges the following four causes of action: (1) conversion; (2) unjust enrichment; (3) request for imposition of a constructive trust; and (4) request for an accounting. These will be discussed in turn.

The cause of action alleging conversion fails, because, in order for such a claim to be applied to a sum of money, the money must be 'a specific sum of money that [is] subject to a future obligation.' *Markov v Spectrum Group Intl., Inc.*, 136 AD3d 413, 414 (1st Dept 2016), citing *Manufacturers Hanover Trust Co. v Chemical Bank*, 160 AD2d 113, 124-125 (1st Dept 1990). Here, the complaint identifies no such specific sum of money. While the complaint alleges that the Bank ascertained that a total of Php 583,528,392.85 was stolen by Lannon's mother (complaint, ¶ 18), it does not allege that Lannon exercised unauthorized dominion over

¹ The Court notes that it attempted to settle this matter with the parties at several Court appearances.

that sum. Indeed, the complaint alleges that its investigation found that Lannon's mother transferred the money that she allegedly embezzled "to her husband, Mr. Lopez, her daughter, her two other children . . . as well as other relatives." Complaint ¶ 30. The identifiable sum of money that a claim of conversion seeks to recover must be in the possession of the defendant. See *Lucker v Bayside Cemetery*, 114 AD3d 162, 174 (1st Dept 2013); *Bankers Trust Co. v Cerrato, Sweeny, Cohn, Stahl & Vaccaro*, 187 AD2d 384, 385 (1st Dept 1992). The complaint identifies no such sum.

Unjust enrichment is a quasi-contractual "theory of recovery and is an obligation imposed by equity to prevent injustice in the absence of an actual agreement between the parties." *Federated Fire Protection Sys. Corp. v 56 Leonard St., LLC*, 170 AD3d 432, 433 (1st Dept 2019, quoting *Georgia Malone & Co. v Rieder*, 86 AD3d 406, 408 (1st Dept 2011), *aff'd* 119 NY3d 511, 516 (2012)). While parties need not be in privity for one of them to invoke unjust enrichment, their relationship cannot be "too attenuated." *Philips Int..Inv., LLC v Pektor*, 117 AD3d 1, 3 (1st Dept 2014), quoting *Georgia Malone*, 19 NY3d at 517. Here, the Bank and Lannon are strangers to each other, and have not engaged in any transaction that could give rise to a quasi contractual remedy.

A constructive trust may be imposed upon property, when the following conditions have been met: (1) a confidential or fiduciary relationship; (2) a promise or agreement, express or implied; (3) a transfer in reliance upon the agreement; (4) breach of that promise; and (5) unjust enrichment. *Palazzo v Palazzo*, 121 AD2d 261, 263 (2d Dept 1986), citing *Sharp v Kosmalski*, 40 NY2d 119, 121 (1976); see also *Jacobs v Cartalemi*, 156 AD3d 635, 638 (2nd Dept 2017). Here, as already noted, the Bank and Lannon are strangers to each other. Moreover, the Bank

alleges neither a promise made to it by Lannon, nor a transfer made in reliance upon such a promise. To be sure, a promise may be implied by the nature of a confidential relationship between the parties, *Sharp* 40 NY2d at 122. Here, however, there is no such relationship.

Finally, the Bank is not entitled to an accounting, because such remedy is available only where, unlike here, the parties are in a confidential or fiduciary relationship. *Saunders v AOL, Time Warner, Inc.*, 18 AD3d 216, 217 (1st Dept 2005).

The Court has examined the Bank's discovery request that is the subject of the motion and cross motion in motion sequence number 003. None of the information sought by the Bank can cure the infirmities of the causes of action alleged in its complaint. Accordingly, the Court dismisses the complaint as against Lannon, with prejudice.

The Bank's notice of pendency was improperly filed, inasmuch as the Bank does not assert title to, or possession of, Lannon's apartment. CPLR 6501; *Rose v Montt Assets*, 250 AD2d 451, 451 (1st Dept 1998); *see also PK Rest., LLC v Lifshutz*, 138 AD3d 434, 439 (1st Dept 2016).

Accordingly, it is hereby

ORDERED that, in motion sequence number 002, the motion of defendant Marie Sta. Ana Lopez n/k/a Lorainne Marie S. Lopez Lannon for an order dismissing the complaint as to her is granted and the complaint is severed and dismissed as against said defendant with prejudice, and with costs and disbursements as taxed by the Clerk of the Court upon the submission of an appropriate bill of costs; and it is further

ORDERED that the notice of pendency filed by plaintiff Metropolitan Bank & Trust Co., dated October 23, 2017, is cancelled; and it is further

ORDERED that, in motion sequence number 003, the motion of defendant Marie Sta. Ana Lopez n/k/a Lorraine Marie S. Lopez Lannon and the cross motion of plaintiff Metropolitan Bank & Trust Co. are denied as moot; and it is further

ORDERED that this case is severed and shall continue as to the remaining defendants; and it is further

ORDERED that within 30 days of entry of this order, defendant shall serve a copy of this order, with notice of entry, upon all parties.

Dated: January 8, 2020

Hon Doris Ling-Cohan, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

J:\Judge_Ling-Cohan\Dismiss\Metropolitan Bank v Lannon.wpd s. cherniak.wpd