

ADL Props., LLC v West 22nd LLC
2020 NY Slip Op 30301(U)
January 29, 2020
Supreme Court, New York County
Docket Number: 654535/2019
Judge: Barry Ostrager
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. BARRY R. OSTRAGER PART IAS MOTION 61EFM

Justice

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INDEX NO. 654535/2019

ADL PROPERTIES, LLC,

MOTION DATE _____

Plaintiff,

MOTION SEQ. NO. 001

- v -

WEST 22ND LLC, CHELSEA 442 LLC, DAVID GODBOUT

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34

were read on this motion to/for DISMISSAL.

Before the Court is defendants' motion to dismiss the Complaint pursuant to CPLR §§ 3211(a)(1), (5) and (7). Upon the foregoing documents and having heard oral arguments from both parties on January 8, 2020, the Court grants defendants' motion in its entirety.

This action arises out of a business relationship between ADL Properties LLC ("plaintiff") and David Godbout ("defendant"), principal of West 22nd LLC ("defendant"), and Chelsea 442 LLC ("defendant") (collectively, "defendants"). In 2010, Mr. Andrew Landesman, principal of plaintiff, and Mr. David Godbout entered a business arrangement relating to the purchase of real property located at 442 West 22nd Street in New York (the "Property").

In February 2011, plaintiff and West 22nd LLC entered into an agreement (the "2011 Agreement") which provided for a "Disposition Fee" to be paid to plaintiff if two conditions were met: (1) a "Final Sale" of the Property and (2) the members of West 22nd LLC received at least a 15% internal rate of return from such Final Sale. The 2011 Agreement defines a "Final Sale" as the earliest of: "a Foreclosure Sale, Mortgage Loan Sale, or a sale by West 22nd LLC (or an affiliate) to a person or entity that is not an affiliate of West 22nd LLC. If an affiliate of West

22nd LLC purchased the Property, that purchaser would be defined as a “Company Related Acquiror.” Thus, for a Final Sale to occur under the terms of the 2011 Agreement, the purchaser of the Property could not be a Company Related Acquiror, i.e., an affiliate of West 22nd LLC.

Plaintiff alleges that defendant Godbout formed defendant Chelsea 442 LLC and transferred the Property to Chelsea 442 LLC. Plaintiff alleges that defendant Godbout informed plaintiff that defendant Chelsea 442 LLC was *not* a Company Related Acquiror and, therefore, the sale to Chelsea 442 LLC constituted a Final Sale under the 2011 Agreement. Additionally, plaintiff alleges that Godbout informed plaintiff that the second condition under the 2011 Agreement had not been met – specifically, that the internal rate of return for West 442 LLC’s members had not reached the 15% threshold which, had it occurred, would have triggered Plaintiff’s right to the Disposition Fee. Plaintiff alleges that each of these representations was false.

Plaintiff alleges that in reliance on Godbout’s representations, plaintiff entered into a settlement agreement and release (the “Settlement and Release”) pursuant to which plaintiff was paid \$60,000 from West 22nd LLC in exchange for, *inter alia*, plaintiff terminating its rights under the 2011 Agreement. The Settlement and Release (NYSCEF Doc. No. 11) contains a mutual general release that states:

3. ADL and W22, by these presents, do for their heirs, executors, administrators, successors and assigns, remise, release and forever discharge each other, their heirs, executors, administrators, successors and assigns, of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law or in equity, which against each other they ever had, now have, or which their heirs, executors, administrators, successors and assigns, hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents, including but not limited to those arising under or in connection with the said Agreement.

Plaintiff brings four cause of action: (1) fraud (2) declaratory judgment /rescission (3) breach of contract (4) breach of implied covenant of good faith and fair dealing. Defendants move (motion 001) to dismiss plaintiff's first three causes of action on the basis that they are precluded by the plain language of the Settlement and Release quoted above. Defendants also move to dismiss the fourth cause of action on the basis that it is duplicative of the breach of contract claim. Defendant raised additional fact-driven arguments that this action is premature, because, based on plaintiff's allegations, no Final Sale has taken place to date, and thus, plaintiff's right to a Disposition Fee has not been triggered. This decision is based on the broad language of the Settlement and Release; therefore, this decision does not address defendant's factual arguments.

Centro Empresarial Cempresa S.A. v. Am. Movil, S.A.B. de C.V., 76 A.D.3d 310, 318, aff'd, 17 N.Y.3d 269 (2011) is the leading authority on whether a fraudulent inducement claim is foreclosed by a contractual release. In general, a party may challenge a release by alleging that it was fraudulently induced; however, such argument can only be made when the fraud alleged is "separate and distinct from that contemplated by the release" (internal marks omitted.) *Centro* at 275. *Centro* holds that "a release may encompass unknown claims, including unknown fraud claims, if the parties so intend and the agreement is 'fairly and knowingly made'." *Id* at 276.

Under *Centro* a valid release constitutes a complete bar to an action that is the subject of the release. First, a plaintiff seeking to invalidate a release due to fraudulent inducement must establish the basic elements of fraud. Here, plaintiff has adequately alleged fraud. However, to succeed in invalidating a release based on fraudulent inducement under *Centro*, a plaintiff must allege a fraud that is "separate from the subject of the release." *Centro* at 275. Here, the subject of the Settlement and Release, is any claim "whatsoever" "including but not limited to those

arising under or in connection with the said Agreement.” See Settlement and Release ¶3 (quoted above.) The facts that plaintiff alleges in support of its fraudulent inducement claim are that “defendants knowingly, willfully, and falsely represented to ADL that, *inter alia*, Chelsea was not a Company Related Acquiror and the 15% internal rate of return had not been Achieved.” See Complaint at ¶ 39. Thus, plaintiff’s claims against defendants concerning the circumstances ending the 2011 Agreement and the Settlement and Release are not separate from the subject of the Settlement and Release.

Likewise, the language of the Settlement and Release is clear and unambiguous. The parties specifically bound their “ heirs, executors, administrators, successors and assigns” to “release, and *forever discharge*” any claims “whatsoever, in law or in equity,” “which against each other they ever had, now have, or which their heirs... [] can, shall or may have” “by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents, including but not limited to those arising under or in connection with the said Agreement.”

Indeed, this language is similar to the release language that the court found clear and unambiguous in *Centro*. See *Centro* (finding the Members Release encompasses unknown fraud claims because “the broad language of the release reaches ‘all manner of actions ... whatsoever ... whether past, present or future, actual or contingent, arising under or in connection with the Agreement Among Members and/or arising out of ... the ownership of membership interests in [TWE].’”). The *Centro* Court held that “the phrase ‘all manner of actions,’ in conjunction with the reference to ‘future’ and ‘contingent’ actions, indicate[d] an intent to release defendants from fraud claims...unknown at the time of contract.” See *Centro* at 277.

Plaintiff contends that the Settlement and Release should be invalidated because it was not “fairly and knowingly made” as required by *Centro*. See *Centro* at 276. Plaintiff cites asymmetric knowledge and claims it was unable to verify the statements made by defendant Godbout. In response, defendants argue that public information existed at the time and was available to plaintiff that would have either verified or disproved Mr. Godbout’s statements. Regardless, the Court finds that plaintiff has not demonstrated that the Settlement and Release was not entered into fairly and knowingly. The cases plaintiff relies on speak to circumstances of unfairness where a plaintiff enters into a release without time to investigate or deliberate, does not have access to counsel, or is disproportionately unsophisticated. Many of these cases are also premised on the unique vulnerability of a plaintiff with a personal injury. None of those circumstances are present in this business contract dispute. Plaintiff has not alleged any time pressure, coercion, or lack of access to counsel.

Finally, the Court notes that while plaintiff is seeking rescission of the Settlement and Release in its Second Cause of action, plaintiff was offered the opportunity to void the Settlement and Release in open court. See Transcript of January 8, 2020 at 24: 10- 21. Plaintiff rejected that offer. See Transcript of January 8, 2020 at 32 – 33. In short, the plaintiff is unwilling to part with the consideration it received in exchange for the release in order to return to the *status quo ante*.

In light of the broad language of the Settlement and Release, the finding that the Settlement and Release was fairly and knowingly made, and the plaintiff’s unwillingness to rescind the release transaction, the Court finds that the Settlement and Release bars this action.

Accordingly, it is hereby

ORDERED that the Clerk of Court dismiss the Complaint in its entirety.

1/29/2020
DATE



BARRY R. OSTRAGER, J.S.C.

**BARRY R. OSTRAGER
JSC**

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED DENIED

GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE