

Astor Bridge 2019, LLC v Sterling Bank

2021 NY Slip Op 30408(U)

February 11, 2021

Supreme Court, Kings County

Docket Number: 514432/2019

Judge: Debra Silber

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : PART 9

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ASTOR BRIDGE 2019, LLC,
Plaintiff,

DECISION / ORDER

-against-

Index No. 514432/2019

STERLING BANK, f/k/a ASTORIA FEDERAL
SAVINGS AND LOAN ASSOCIATION,
ABRAHAM WALDMAN, TED T. MOZES,
PETER SEIDEMAN, HERMAN STARK,
OLYMPIA STARCO, LLC and
167 TAAFFE PLACE LLC,

Motion Seq. No. 2
Date Submitted: 2/11/21
Cal No. 8

Defendants.

_____X

Recitation, as required by CPLR 2219(a), of the papers considered in the review of defendants' motion to dismiss

Papers	NYSCEF Doc.
Notice of Motion, Affirmation and Exhibits Annexed.....	<u>35-45 (or 78-86?)</u>
Affirmation in Opposition and Exhibits Annexed.....	<u>103-109</u>
Reply Affirmation.....	_____

Upon the foregoing cited papers, the Decision/Order on this application is as follows:

Defendants Sterling Bank and Peter Seideman, the sole remaining defendants in this action, move to dismiss the complaint as against them, pursuant to CPLR 3211 (a) (1), (5) and (7). For the reasons which follow, the motion is granted, and the complaint is dismissed.

The complaint asserts five causes of action. With regard to the movants, the plaintiff claims all five are asserted against them. They are: breach of contract; interference with contract; declaratory judgment; constructive trust; and the fifth cause of action claims monetary and punitive damages. This is not a cause of action but a claim for damages.

Defendant Sterling Bank was the holder of a note and mortgage against a property in Brooklyn. Title is no longer held by the borrower, and there have been several deed transfers since 2005 when the loan documents were signed in favor of Sterling's predecessor in interest, Astoria Federal Savings Bank. These banks have merged. In 2019, Sterling apparently was approached by at least two parties who were interested in purchasing the note and mortgage. Defendant Seideman is outside counsel for Sterling Bank, and he was one of the persons who was negotiating with the prospective purchasers.

At some point, someone at Sterling, an Assistant Vice President named Thomas Strychalsky, executed an assignment of mortgage and an allonge to the note. The assignment is dated June 19, 2019 and is notarized on that date. It was subsequently recorded against the property.

Plaintiff, a limited liability company formed, according to the New York State Department of State Division of Corporations website, on June 21, 2019, commenced this action on June 30, 2019. Plaintiff claims Sterling Bank had agreed to sell the note and mortgage to it, did not do so, and thus, breached the contract, entitling plaintiff to a declaratory judgment that it is the rightful holder of the note and mortgage, the imposition of a constructive trust against (dismissed) defendant Olympia Starco, LLC, and monetary damages.

The movants assert that there was no contract, just negotiations, and plaintiff's failure to obtain the note and mortgage is not actionable. Plaintiff opposes the motion and claims there was a contract. However, there is nothing in plaintiff's opposition which demonstrates a meeting of the minds was ever achieved. There are only e-mails and an affirmation from then-counsel for plaintiff who authenticates them. However, all of the

emails were sent after the assignment and allonge were executed by Sterling's Assistant Vice President. Thus, while Seideman may have erroneously continued to negotiate with plaintiff after June 19, 2019, the date the assignment was executed, there is no indication that a contract was ever made. In fact, it could not have been made, because the note and mortgage no longer belonged to the Bank, nor did Seideman obtain his client's approval to move forward on plaintiff's offer and to accept it. While plaintiff's attorney did wire funds to Seideman, he returned the funds as soon as he received them.

In determining a motion to dismiss pursuant to CPLR 3211 (a)(7), the court's role is ordinarily limited to determining whether the complaint states a cause of action. *Frank v Daimler Chrysler Corp.*, 292 AD2d 118 [1st Dept 2002]. On such a motion, the court must accept as true the factual allegations of the complaint and accord the plaintiff all favorable inferences which may be drawn therefrom. *Dunleavy v Hilton Hall Apartments Co., LLC*, 14 AD3d 479, 480 [2nd Dept 2005]. See also *Leon v Martinez*, 84 NY2d 83, 87-88; *Guggenheimer v Ginzburg*, 43 NY2d 268, 275; *Dye v Catholic Med. Ctr. of Brooklyn & Queens*, 273 AD2d 193 [2nd Dept 2000].

The standard of review on such a motion is not whether the party has artfully drafted the pleading, "but whether deeming the pleading to allege whatever can be reasonably implied from its statements, a cause of action can be sustained." *Offen v Intercontinental Hotels Group*, 2010 NY Misc. LEXIS 2518 [Sup Ct NY Co 2010] quoting *Stendig, Inc. v Thorn Rock Realty Co.*, 163 AD2d 46 [1st Dept 1990]; See also *Leviton Manufacturing Co., Inc. v Blumberg*, 242 AD2d 205 [1st Dept 1997]; *Feinberg v Bache Halsey Stuart*, 61 AD2d 135, 137-138 [1st Dept 1978]; *Edwards v Codd*, 59 AD2d 148, 149 [1st Dept 1977]. If the plaintiff can succeed upon any reasonable view of the allegations, the complaint may not be dismissed. *Dunleavy v Hilton Hall Apartments Co. LLC*, 14

AD3d 479, 480 [2d Dept. 2005]; *Board of Educ. of City School Dist. of City of New Rochelle v County of Westchester*, 282 AD2d 561, 562. The role of the court is to “determine only whether the facts as alleged fit within any cognizable legal theory” *Dee v Rakower*, 2013 NY Slip Op 07443 (2d Dept), citing *Leon v Martinez*, 84 NY2d 83 at 87 (1994). Finally, when considering a motion to dismiss for failure to state a cause of action, the pleadings must be liberally construed. *Offen v Intercontinental Hotels Group*, 2010 NY Misc LEXIS 2518.

Here, this action was commenced a year and a half ago. While defendants did not move for summary judgment, there has been some discovery. At oral argument, plaintiff’s attorney argued that it was premature to grant the motion, because when a deposition of the defendant Bank was held, they would be able to prove the existence of a contract. This is not enough.

The court concludes that there is no indication that any written or oral agreement had ever been made, that Peter Seideman is an attorney in private practice and is not an employee of the defendant Bank, that he had no ability to contract on the bank’s behalf without the bank’s approval, and that plaintiff (or his prior attorney) seems to have misunderstood the fact that other people were also negotiating to purchase the same note and mortgage, perhaps directly with an officer of the bank. There is no indication that Sterling’s or Seideman’s conduct constituted a breach of a contract, interference with a contract, or was in any way actionable.

Accordingly, the motion is granted and the complaint is dismissed.

Dated: February 11, 2021

ENTER:



Hon. Debra Silber, J.S.C.