

**Xiaoqian Gu v Lehmann-Maupin L.L.C.**

2023 NY Slip Op 31553(U)

May 5, 2023

Supreme Court, New York County

Docket Number: Index No. 657157/2020

Judge: Louis L. Nock

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
 NEW YORK COUNTY**

**PRESENT: HON. LOUIS L. NOCK PART 38M**

*Justice*

-----X

XIAOQIAN GU,

Plaintiff,

- v -

LEHMANN-MAUPIN L.L.C. and RACHEL LEHMANN,

Defendants.

-----X

INDEX NO. 657157/2020

MOTION DATE 10/18/2022

MOTION SEQ. NO. 004

**DECISION + ORDER ON  
 MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 004) 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, and 78

were read on this motion to DISMISS AFFIRMATIVE DEFENSES.

LOUIS L. NOCK, J.

Upon the foregoing documents, the plaintiff’s motion to dismiss the defendants’ second affirmative defense of fraudulent inducement and third affirmative defense of unilateral mistake is denied, per the following memorandum. The court assumes familiarity with the background facts and prior history of this action as set forth in its prior decision and order (NYSCEF Doc. No. 60), as well as on the record by counsel for the parties before the court (transcript of proceedings, NYSCEF Doc. No. 79).

*Standard:*

“A party may move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no merit” (CPLR 3211 [b]). It is the movant’s burden to establish that the defense lacks merit as a matter of law (*534 E. 11th St. Hous. Dev. Fund Corp. v Hendrick*, 90 AD3d 541, 541 [1st Dept 2011]). The party raising the defense “is entitled to the benefit of every reasonable intendment of the pleading, which is to be liberally construed” (*id.*, at 542). “A defense should not be stricken where there are questions of fact requiring trial” (*id.*).

Here, plaintiff moves to dismiss the second affirmative defense of fraudulent inducement and the third affirmative defense of unilateral mistake.

*Fraudulent Inducement:*

A claim of fraudulent inducement requires allegations of “a false representation, made for the purpose of inducing another to act on it, and that the party to whom the representation was made justifiably relied on it and was damaged” (*Perrotti v Becker, Glynn, Melamed & Muffly LLP*, 82 AD3d 495, 498 [1st Dept 2011]). Defendants claim that plaintiff, in purchasing the artwork at the center of this case, misrepresented both the capacity in which she was buying the artwork and her intended use for it, namely, that rather than keeping it for her personal collection she would attempt to resell it on behalf of her employer, the Almine Rech Gallery (answer to second amended complaint, NYSCEF Doc. No. 70, ¶¶ 66-69; letter, NYSCEF Doc. No. 71 at 1). Specifically, defendants allege that, when defendant Lehmann-Maupin L.L.C. (the “Gallery”) displayed the artwork at the Abu Dhabi Art Fair, it intended “to ensure that any purchaser wanted the work for his or her own collection” (*id.*, ¶ 65). When plaintiff entered the Gallery’s booth, defendants alleged she made the following misrepresentations: she was “passionate about MR.’s work and that she had wanted to purchase one of his pieces for some time” (*id.*, ¶ 66); she was a “personal collector” (*id.*, ¶ 68); she would be using “family funds” to buy the artwork (*id.*); and she provided “a personal email address” to the Gallery (*id.*, ¶ 69). Plaintiff argues that, because she never directly made a representation as to whether she was going to retain the artwork for her personal collection or not, defendants cannot successfully plead that they reasonably relied on a misrepresentation to that effect. However, defendants adequately plead that plaintiff was portraying herself as a personal collector, and that fact induced the Gallery to deal with her in the first instance. A duty to inquire of plaintiff what her intentions with the

artwork were after purchase would only arise if defendants had some “hints of . . . falsity” (*Centro Empresarial Cempresa S.A. v America Movil, S.A.B. de C.V.*, 17 NY3d 269, 279 [2011]). No such indicia are presently apparent such that the defense of fraudulent inducement could be said to be unsustainable.

Plaintiff also argues that the Gallery’s “internal system” identified plaintiff as an employee of the Amine Rech Gallery (letter, NYSCEF Doc. No. 71 at 1), and, therefore, the Gallery cannot claim that it thought she was buying the artwork for her personal collection. The fact that plaintiff was then employed by an art gallery does not establish that this is the only capacity in which she could have purchased the artwork. As set forth above, at the CPLR 3211(b) stage, the allegations of the answer must be liberally construed, and the answer given “every reasonable intendment” (*534 E. 11th St. Hous. Dev. Fund Corp., supra*). Moreover, as a general matter, dismissals of fraudulent inducement claims based on a failure to plead reasonable reliance are disfavored due to the fact-intensive nature of the inquiry (*ACA Fin. Guar. Corp. v Goldman, Sachs & Co.*, 25 NY3d 1043, 1045 [2015] [“the question of what constitutes reasonable reliance is not generally a question to be resolved as a matter of law on a motion to dismiss”]).

*Unilateral Mistake:*

Defendants’ answer to the second amended complaint (NYSCEF Doc. No. 64) contains the second affirmative defense titled “Fraudulent Inducement” (discussed above) and, after several background-factual paragraphs (*id.*, ¶¶ 62-75), prays for rescission of the contract (*id.*, ¶ 76 [“The Gallery was entitled to rescind its contract with Plaintiff due to her fraudulent inducement”]). That answer also contains a third affirmative defense titled “Unilateral Mistake”

which, in terser fashion, states that “Plaintiff’s breach of contract claim is barred by the doctrine of unilateral mistake” (*id.*, ¶ 77).

The doctrine of unilateral mistake enables two alternative modes of recovery: one, for rescission of the contract altogether, much like the defense of fraudulent inducement to contract, which challenges the very *bona fides* of the contract (*see, Kotick v Shvachko*, 130 AD3d 472, 473 [1<sup>st</sup> Dept 2015] [“A unilateral mistake induced by fraud is a sufficient basis for rescission”]); or, alternatively, for reformation of the contract, which preserves the contract under different terms (*see, Greater N.Y. Mut. Ins. Co. v United States Underwriters’ Ins. Co.*, 36 AD3d 441, 443 [“A claim for reformation of a written agreement must be grounded upon either mutual mistake or fraudulently induced unilateral mistake”]). Defendants’ tersely-pled third affirmative defense of unilateral mistake does not designate which mode of recovery is being sought – rescission, as with the second affirmative defense; or reformation. But in the face of that seeming lack of clarity, this court applies the understanding that defendants’ affirmative defense of unilateral mistake seeks rescission, as does their immediately preceding affirmative defense of fraudulent inducement, which provides a factual backdrop for the defenses that follow (*see, 534 E. 11th St. Hous. Dev. Fund Corp. v Hendrick, supra*, at 542 [the party raising the defense in opposition to a motion to dismiss the defense “is entitled to the benefit of every reasonable intendment of the pleading, which is to be liberally construed”]).

The law is well-settled that “a unilateral mistake induced by fraud will support a claim for rescission” (*Angel v Bank of Tokyo-Mitsubishi, Ltd.*, 39 AD3d 368, 369-370 [1<sup>st</sup> Dept 2007]; *see also, Kotick, supra*). Thus, the court’s analysis above, preserving the second affirmative defense of fraudulent inducement, applies equally toward preservation of the third affirmative defense of unilateral mistake – at this pleading stage of the action.

Accordingly, it is hereby

ORDERED that the plaintiff's motion to dismiss the defendants' second and third affirmative defenses is denied.

This constitutes the decision and order of the court.

ENTER:

*Louis L. Nock*

<u>5/5/2023</u>				<u>LOUIS L. NOCK, J.S.C.</u>	
	DATE				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
			DENIED		OTHER
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