

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D33341
H/prt

_____AD3d_____

Argued - November 29, 2011

REINALDO E. RIVERA, J.P.
RUTH C. BALKIN
RANDALL T. ENG
LEONARD B. AUSTIN, JJ.

2010-05162
2010-07524
2010-07526

DECISION & ORDER

Israel Grossman, et al., appellants, v
New York Life Insurance Company,
respondent (and a third-party action).

(Index No. 2801/07)

Jessica Sokol, New York, N.Y., for appellant Raphael Grossman, and Israel Grossman, Brooklyn, N.Y., pro se (one brief filed).

Pillsbury Winthrop Shaw Pittman LLP, New York, N.Y. (E. Leo Milonas, Maria T. Galeno, and Andrew C. Smith of counsel), for respondent.

In an action, inter alia, to recover damages for breach of contract, the plaintiffs appeal (1) from an order of the Supreme Court, Kings County (Demarest, J.), dated January 26, 2010, which granted the defendant's motion for summary judgment dismissing the complaint, (2), as limited by their brief, from so much of an order of the same court dated June 16, 2010, as denied their motion for leave to renew and reargue their opposition to the defendant's motion for summary judgment dismissing the complaint, and (3) from an order of the same court dated July 6, 2010, which granted the defendant's application to impose a sanction upon the plaintiff Israel Grossman, and directed that plaintiff to pay the sum of \$10,000 to the Lawyers' Fund for Client Protection.

ORDERED that the order dated January 26, 2010, is affirmed; and it is further,

ORDERED that the appeal from so much of the order dated June 16, 2010, as denied

December 27, 2011

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that branch of the plaintiffs' motion which was for leave to reargue is dismissed, as no appeal lies from an order denying reargument; and it is further,

ORDERED that the order dated June 16, 2010, is affirmed insofar as reviewed; and it is further,

ORDERED that on the Court's own motion, the notice of appeal from the order dated July 6, 2010, is treated as an application for leave to appeal from that order, and leave to appeal is granted (*see* CPLR 5701); and it is further,

ORDERED that the order dated July 6, 2010, is affirmed; and it is further,

ORDERED that one bill of costs is awarded to the defendant.

The Supreme Court properly granted that branch of the defendant's motion which was for summary judgment dismissing the complaint insofar as asserted by the plaintiff Israel Grossman (hereinafter Grossman) on the ground that it was barred by the doctrine of res judicata. "[U]nder the transactional approach adopted by New York in res judicata jurisprudence, 'once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy'" (*Marinelli Assoc. v Helmsley-Noyes Co.*, 265 AD2d 1, 5, quoting *O'Brien v City of Syracuse*, 54 NY2d 353, 357). The defendant demonstrated its prima facie entitlement to judgment as a matter of law against Grossman by presenting evidence that the claims asserted by him in the instant action were barred by a prior final determination by an arbitration panel, which adjudicated claims arising out of the same transaction or series of transactions as the claims he asserts herein. In opposition, Grossman failed to raise a triable issue of fact.

The Supreme Court also properly granted that branch of the defendant's motion which was for summary judgment dismissing the complaint insofar as asserted by the plaintiff Raphael Grossman. The cause of action alleging a breach of an oral and implied contract is barred by the integration clauses in his written contracts with the defendant (*see Gebbia v Toronto-Dominion Bank*, 306 AD2d 37, 38), and the existence of valid and enforceable written contracts precludes recovery under the causes of action sounding in promissory estoppel and unjust enrichment, which arise out of the same subject matter (*see Goldman v Metropolitan Life Ins. Co.*, 5 NY3d 561, 572; *Yenrab, Inc. v 794 Linden Realty, LLC*, 68 AD3d 755, 758-759; *Stark v City of New York*, 31 AD3d 530, 531; *Shah v Micro Connections*, 286 AD2d 433, 433-434).

That branch of the plaintiffs' motion which was for leave to renew their opposition to the defendant's motion for summary judgment was properly denied, since the new facts offered on the motion would not have changed the prior determination (*see* CPLR 2221[e][2], [3]).

The Supreme Court providently exercised its discretion in imposing a sanction against Grossman (*see* 22 NYCRR 130-1.1[a], [c]).

We decline the defendant's request for the imposition of sanctions against the

plaintiffs, and the plaintiffs' request for the imposition of sanctions against the defendant, based upon allegedly frivolous conduct on this appeal (*see* 22 NYCRR 130-1.1[a], [c]; *Barns & Farms Realty, LLC v Novelli*, 82 AD3d 689, 691).

The plaintiffs' remaining contentions either are without merit or need not be addressed in light of our determination.

RIVERA, J.P., BALKIN, ENG and AUSTIN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court