

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

702

CA 22-01720

PRESENT: SMITH, J.P., MONTOUR, GREENWOOD, NOWAK, AND DELCONTE, JJ.

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SUSAN A. BAIRD, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

ROBERT M. BAIRD, DEFENDANT-APPELLANT.

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JOEL R. BRANDES, NEW YORK CITY, FOR DEFENDANT-APPELLANT.

BENNETT SCHECHTER ARCURI & WILL LLP, BUFFALO (KRISTIN L. ARCURI OF COUNSEL), FOR PLAINTIFF-RESPONDENT.

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Appeal from an order of the Supreme Court, Erie County (Paul Wojtaszek, J.), entered August 4, 2022. The order denied the motion of defendant to dismiss the complaint and for summary judgment.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiff commenced this postjudgment matrimonial proceeding seeking to reform the parties' Property Settlement and Parenting Agreement (agreement), which was incorporated but not merged into their judgment of divorce. Plaintiff asserted that the agreement should be reformed to include an equitable distribution of her marital interest in defendant's pension, which she alleged was omitted from the agreement due to mutual mistake or fraud. Defendant moved to dismiss the complaint pursuant to CPLR 3211 and for summary judgment dismissing the complaint pursuant to CPLR 3212. Supreme Court denied the motion, and defendant appeals.

Defendant contends, as limited by his brief, that the court erred in denying his motion insofar as it sought dismissal of the complaint because the complaint failed to sufficiently plead a cause of action for reformation based on fraud or mutual mistake and because the allegations lack the specificity required by CPLR 3016 (b). We reject that contention.

" 'A claim for reformation of a written agreement must be grounded upon either mutual mistake or fraudulently induced unilateral mistake' " (*EGW Temporaries, Inc. v RLI Ins. Co.*, 83 AD3d 1481, 1481 [4th Dept 2011]; see *Greater N.Y. Mut. Ins. Co. v United States Underwriters Ins. Co.*, 36 AD3d 441, 443 [1st Dept 2007]). "A mutual mistake exists where the parties have reached an oral agreement and, unknown to either, the signed writing does not express that agreement" (*EGW Temporaries, Inc.*, 83 AD3d at 1481-1482 [internal quotation marks

omitted]; see *Greater N.Y. Mut. Ins. Co.*, 36 AD3d at 443). "When an error is not in the agreement itself, but in the instrument that embodies the agreement, equity will interfere to compel the parties to execute the agreement which they have actually made, rather than enforce the instrument in its mistaken form" (*Hadley v Clabeau*, 161 AD2d 1141, 1141 [4th Dept 1990] [internal quotation marks omitted]).

We conclude that the complaint sufficiently states a cause of action for reformation of the agreement based on mutual mistake by alleging that the parties agreed to "the distribution of all assets owned jointly or in the individual name of either party" and then omitted the distribution of plaintiff's marital interest in a defined benefit pension that defendant was entitled to because neither party was aware of defendant's entitlement to those benefits at the time the agreement was negotiated and executed (see *Walker v Walker*, 67 AD3d 1373, 1374-1375 [4th Dept 2009]; see also *Mancuso v Graham*, 173 AD3d 1808, 1809 [4th Dept 2019]). Those allegations contain sufficient detail to satisfy the particularity requirement of CPLR 3016 (b) (*cf. Hilgreen v Pollard Excavating, Inc.*, 193 AD3d 1134, 1136-1138 [3d Dept 2021], *appeal dismissed* 37 NY3d 1002 [2021]).

We also conclude that the complaint sufficiently states a cause of action for reformation of the agreement based on fraud. "[A] fraud cause of action must allege that the defendant: (1) made a representation to a material fact; (2) the representation was false; (3) the defendant intended to deceive the plaintiff; (4) the plaintiff believed and justifiably relied on the statement and in accordance with the statement engaged in a certain course of conduct; and (5) as a result of the reliance, the plaintiff sustained damages" (*Heckl v Walsh* [appeal No. 2], 122 AD3d 1252, 1255 [4th Dept 2014]). Here, the complaint alleges that defendant represented during the divorce negotiations that he did not have a defined benefit plan due to his employer's bankruptcy; that defendant's representation was false; that defendant intended to deceive plaintiff; that plaintiff justifiably relied on defendant's misrepresentation in negotiating the agreement; and that, as a result of her reliance, plaintiff did not receive her marital share of defendant's pension. Those allegations "sufficiently pleaded the elements of fraud . . . and supplied sufficient detail to satisfy the specific pleading requirements of CPLR 3016 (b)" (*Kaufman v Kaufman*, 135 AD2d 786, 787 [2d Dept 1987]; see *Gaines v Gaines*, 188 AD2d 1048, 1048-1049 [4th Dept 1992]).