

Avalon LLC v Coronet Properties Co.

2003 NY Slip Op 30088(U)

November 14, 2003

Supreme Court, New York County

Docket Number: 0060255/2001

Judge: Charles E. Ramos

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

PRESENT

Charles Edward Ramos

PART 53

0602554/2001

AVALON LLC.
vs
CORONET PROPERTIES COMPANY

SEQ 4

DISMISS

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

SCANNED

The following papers, numbered 1 to _____ were read on this motion to/for _____

NOV 24 2003

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

IS DISPOSED OF
IN ACCORDANCE WITH THE ACCOMPANYING
MEMORANDUM DECISION.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE _____

Dated: 11/14/03



J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION
CHARLES E RAMOS

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK:COMMERCIAL DIVISION
-----X
AVALON LLC,

Plaintiff,

INDEX NO.
602554/01

-against-

CORONET PROPERTIES COMPANY, 46 WEST
73RD STREET ASSOCIATES, 48 WEST 73RD STREET
ASSOCIATES, MIDLAND AVENUE ASSOCIATES,
GSR ASSOCIATES, GSR CORP., DERFNER AND
MAHLER LLP, DONALD DERFNER, PETER MAHLER,
MITCHELL GORDON, MICHAEL B. DOYLE, **PC**,
MICHAEL DOYLE, FRIEDMAN ALPREN AND
GREEN, LLP, WELLINGTON SALES, CORP.,
NORMAN DANSKER, GLORIA DANSKER,
ROBERT DANSKER, SUSAN BOGADY
AND JOHN AND JANE DOES,

Defendants.

-----X

Charles Edward Ramos, J.S.C.:

Defendants, Gloria Dansker, Robert Dansker, Norman Dansker,
Susan Bogady, Coronet Properties Company ("Coronet"), 46 West
73rd Associates, 48 West 73rd Associates and GSR Associates
(collectively "movants") move pursuant to CPLR 3215(c) for an
order dismissing this action against them on the ground that
plaintiff failed to take proceedings for the entry of a default
judgment within one year of their default.

Plaintiff cross-moves for an order granting a default
judgment against movants and directing an inquest.

In May 2001, plaintiff commenced this action against
multiple defendants, including movants, alleging that plaintiff
was a judgment creditor of Coronet and that Coronet fraudulently
conveyed funds to the other movants and other defendants which
should have been used to satisfy plaintiff's judgment. According

to plaintiff's affidavits of service, movants were all served with process on May 23 and 24, 2001 by substituted service, followed by mailing (see plaintiff's cross-motion, exhibit 1). Movants did not answer the complaint or otherwise appear.

On January 15, 2003, movants made this motion to dismiss the complaint pursuant to CPLR 3215(c), which provides that "[i]f the plaintiff fails to take proceedings for the entry of judgment within one year after the default, the court shall not enter judgment but shall dismiss the complaint as abandoned, without costs, upon its own initiative or on motion, unless sufficient cause is shown why the complaint should not be dismissed."

In opposition, plaintiff's attorney makes the following arguments: defendant GSR Corp., a related entity controlled by movants, served an answer on August 16, 2001, which was verified by movant Norman Dansker, as president; the law firm representing movants appeared for GSR Corp. as well as other defendants herein; movants have had actual knowledge of this action since its inception; plaintiff has actively pursued this action against other defendants; plaintiff substituted attorneys in July 2002, more than a year after movants' default and "presumably" prior counsel's failure to enter default judgments was due to law office failure. Plaintiff's attorney concludes that plaintiff "plainly" possesses a meritorious claim against movants because this court denied two different motions to dismiss the complaint made by other defendants. Plaintiff's principal has submitted a purported affidavit of merits in which he selectively (focusing

on movants) rehashes the 209 allegations contained in the 28-page complaint.

Plaintiff's attorney's arguments concerning other defendants, movants' attorney, actual knowledge and presumed law office failure of prior counsel are irrelevant in the face of plaintiff's admitted failure to enter a default judgment within a year from movants' default. Plaintiff's reliance on two prior decisions of this court for the proposition that plaintiff "plainly possesses a meritorious claim against [movants]" (see Epstein affirmation in opposition, ¶11) is misplaced. The first decision relied on by plaintiff, dated April 17, 2002 (mot. seq. no. 001), involved three defendants (collectively "D&M") who moved to dismiss seven causes of action asserted against them. The court dismissed two causes of action, but allowed plaintiff's fraudulent conveyance claims (the first through fifth causes of action) to remain because the complaint was being viewed in the liberal context of a motion to dismiss pursuant to CPLR 3211(a) and the court explicitly did not address the factual issues raised by the parties' papers (see Epstein affirmation in opposition, exhibit 2, p 3). The second decision, entered on August 9, 2002 (mot. seq. no. 3, which had been consolidated with mot. seq. no. 2), involved defendants Mitchell H. Gordon and Wellington Sales Corp. ("Wellington"), who, relying on an agreement dated April 14, 1994 among defendants Coronet, 46 West 73rd Street Associates and 48 West 73rd Street Associates on the one hand and Wellington on the other, moved to dismiss

plaintiff's fraudulent conveyance claims arguing that they were barred by the statute of limitations. The court denied this branch of their motion finding that plaintiff had succeeded in raising a factual issue (see Epstein affirmation in opposition, exhibit 3). The Appellate Division disagreed, finding *inter alia* that plaintiff's fraudulent conveyance claims should have been dismissed because "the purported fraudulent conveyance was final and the challenged assignment rights vested on April 14, 1994, more than six years prior to the commencement of this action in 2001" (see Avalon LLC v. Coronet Properties Company, 306 AD2d 62, 63 [1st Dept 2003], lv den — NY2d__ [2003]).

The court concludes that the complaint should be dismissed against movants (see CPLR 3215(c); Perricone v. City of New York, 62 NY2d 661 [1984]; Hoppenfeld v. Hoppenfeld, 220 AD2d 302 [1st Dept 1995]).

Accordingly, the motion by defendants Gloria Dansker, Robert Dansker, Norman Dansker, Susan Bogady, Coronet Properties Company ("Coronet"), 46 West 73rd Associates, 48 West 73rd Associates and GSR Associates to dismiss this action against them pursuant to CPLR 3215(c) **is** granted.

Plaintiff's cross-motion is denied.

The Clerk is directed to enter judgment accordingly. The balance of the action shall otherwise continue.

This constitutes the decision and order of the court.

Dated: November 14, 2003



J.S.C.