

Rissetto v Solow Realty and Development Co.

2004 NY Slip Op 30002(U)

February 5, 2004

Supreme Court, New York County

Docket Number: 0602219

Judge: David Friedman

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. MARCY S. FRIEDMAN

PART 57

Justice

RISSETTO, ROBERT A.

INDEX NO. 602219/03

- v -

SOLOW REALTY & DEVELOPMENT Co.

MOTION DATE _____

MOTION SEQ. NO. 01

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion tofor dismiss

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

FILED
1
2

Cross-Motion: Yes No

FEB 10 2004
COUNTY CLERK'S OFFICE
NEW YORK

Upon the foregoing papers, it is ordered that this motion

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION/ORDER.**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

Dated: 2/5/04

Marcy S. Friedman
J.S.C. 1

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK – PART 57

PRESENT: Hon. Marcy S. Friedman, JSC

_____ x

ROBERT A. RISSETTO,

Plaintiff,

- against -

SOLOW REALTY AND DEVELOPMENT
COMPANY, et al.,

Defendants.

Index No.: 602219/00

DECISION/ORDER

_____ x

In this action alleging breach of an employment contract, among other causes of action, defendants move, pursuant to CPLR 3211(a)(1) and (7), to dismiss the complaint.

The motion is denied as to the first cause of action for breach of contract. Contrary to defendants' contention, the Confidentiality Agreement does not supersede the October 19,2000 employment agreement. The determination of whether a contract is ambiguous is one of law to be resolved by the court. (Matter of Wallace v 600 Partners Co., 86 NY2d 543, 548 [1995]; W.W.W. Assocs.. Inc. v Giancontieri, 77 NY2d 157 [1990].) It is well settled that “[a]ll parts of an agreement are to be reconciled, if possible, in order to avoid inconsistency.” (National Conversion Corn. v Cedar Bldg. Corp., 23 NY2d 621,625 [1969].) Thus, “where two seemingly conflicting contract provisions reasonably can be reconciled, a court is required to do so and to give both effect.” (HSBC Bank USA v National Equity Corn., 279 AD2d 251, 253 [1st Dept 2001][internal quotation marks and citations omitted].) Applying these principles, the court holds as a matter of law that paragraph 10 of the Confidentiality Agreement contemplates that a


separate employment agreement may exist, and paragraph 11 of the Confidentiality Agreement is consistent with paragraph 10 in that it supersedes only separate agreements "with respect to the subject matter covered" – i.e., confidentiality. Moreover, it is axiomatic that any ambiguity must be construed against defendant who was concededly the drafter.

The motion is granted as to the remaining causes of action. The second cause of action for breach of an oral contract and the fifth cause of action for quantum meruit must be dismissed as it is undisputed that a written contract governed plaintiffs employment. The third cause of action for tortious interference fails to state a cause of action because it does not allege interference by a third party. (See Kosson v Algaze, 203 AD2d 112 [1st Dept 1994], aff'd 84 NY2d 1019 [1995].) The fourth cause of action for unpaid wages pursuant to Labor Law § 198 fails based on documentary evidence because it appears from the face of the employment agreement that plaintiff was an executive. The sixth cause of action for fraud is based on allegations of a scheme to create cause for plaintiffs firing which do not state a cognizable cause of action for fraud but, rather, bear on the issue of whether there was or was not cause for plaintiffs firing and thus on whether plaintiff is entitled to recover on his breach of contract claim.

It is accordingly hereby ORDERED that defendants' motion is granted to the extent of dismissing plaintiffs second through sixth causes of action. Defendants' request for sanctions is denied as without merit.

This constitutes the decision and order of the court.

Dated: New York, New York
February 5, 2004


MARCY FRIEDMAN, J.S.C.