

Avalon LLC v Coronet Properties Co.

2005 NY Slip Op 30096(U)

January 10, 2005

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

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

SEQ 10

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

	<u>PAPERS NUMBERED</u>
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

FILED
JAN 12 2005
NEW YORK
COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 1/10/05

[Signature]
NON-FINAL DISPOSITION 1/10/05

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

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

Plaintiff,

v.

Index No. 602554-2001

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 H. GORDON, MICHAEL
B. DOYLE, P.C., MICHAEL B. DOYLE, FRIEDMAN
ALPREN AND GREEN, LLP, WELLINGTON SALES
CORP., NORMAN DANSKER, GLORIA DANSKER,
ROBERT DANSKER, SUSAN BOGADY and JOHN and
JANE DOES ("1 through 20"),

Defendants.

-----X

Charles Edward Ramos, J.S.C.:

Motion sequence numbers 010 and 011 are consolidated for disposition.

In motion sequence number 010, defendants Derfner & Mahler, LLP, Donald A. Derfner, and Peter A. Mahler (collectively referred to as "Derfner") move for reargument of this court's order, entered on May 18, 2004, which denied their motion to dismiss plaintiff's remaining claims against them.

Similarly, in motion sequence number 011, defendants Michael B. Doyle, P.C. and Michael B. Doyle (collectively referred to as "Doyle") move for reargument of the May 18, 2004 order, which also denied their motion to dismiss all remaining claims against them.

The relevant facts are as follows: plaintiff is the judgment creditor of Coronet Properties Company ("Coronet"), a real estate

developer and converter of cooperative apartments. Derfner and Doyle represented Coronet in unrelated litigation involving the FDIC concerning its properties in the 1990s (the "FDIC litigation").

In this action, plaintiff seeks to recover \$550,000 in proceeds paid to Derfner and Doyle from their representation of Coronet in the FDIC litigation. The complaint alleges that the transfer of funds from Coronet to Derfner and Doyle constituted fraudulent conveyances, actual fraud, and constructive fraud under Article 10 of the Debtor and Creditor Law, and was made in violation of restraining notices served upon them.

Both Derfner and Doyle made motions to dismiss. In an order entered on April 22, 2002, this court, *inter alia*, granted Derfner's motion to dismiss to the extent of dismissing plaintiff's restraining notice claims against Derfner. In an order entered on August 9, 2002, this court, *inter alia*, granted Doyle's motion to dismiss to the extent of dismissing the restraining notice claims against Doyle under the "law of the case" doctrine. In that same order, this court granted a motion for summary judgment by defendants Mitchell Gordon and Wellington Sales Corp. ("Wellington") to the extent of dismissing the restraining notice claims against them, but denied the motion as to plaintiff's fraud claims against Gordon and Wellington. Gordon and Wellington subsequently appealed to the Appellate Division, First Department.

By decision dated June 10, 2003, the Appellate Division

modified this court's August 9, 2002 order, finding that summary judgment should have been granted to Gordon and Wellington, because plaintiff's actual and constructive fraud claims against them were time-barred. The Appellate Division determined that the claims against Gordon and Wellington accrued pursuant to an April 14, 1994 assignment agreement. See Avalon LLC v Coronet Props. Co., 306 AD2d 62, 63 (1st Dept 2003).

Derfner and Doyle renewed their motions to dismiss before this court in light of the Appellate Division's decision, arguing that plaintiff's fraud claims against them also accrued on April 14, 1994, the date of the assignment, under the "law of the case" doctrine. Notably, the assignment agreement was not annexed to the moving papers. Derfner also requested imposition of sanctions upon plaintiff, its principal, and its counsel for failing to discontinue the action.

By decision and order entered on May 18, 2004, this court denied Derfner and Doyle's motions to dismiss. This court found that Derfner and Doyle failed to show how Coronet, Wellington, or plaintiff could have asserted a claim against them as early as April 14, 1994. In doing so, this court noted that the Appellate Division determined that plaintiff's claims against Gordon and Wellington accrued pursuant to the April 14, 1994 assignment agreement, and that both Derfner and Doyle were not signatories to that agreement. This court denied Derfner's request for sanctions. Thereafter, Derfner and Doyle made the present

motions to reargue their motions to dismiss the complaint.¹

A motion for reargument, addressed to the discretion of the court, is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the facts or the law. William P. Pahl Equip. Corp. v Kassiss, 182 AD2d 22, 27 (1st Dept 1992); CPLR 2221(d)(2). Its purpose is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided. Nor may an unsuccessful party advance arguments different than those made on the original motion. Pro Brokerage, Inc. v Home Ins. Co., 99 AD2d 971 (1st Dept 1984); Foley v Roche, 68 AD2d 558, 567-68 (1st Dept 1979).

Here, Derfner and Doyle argue that this court overlooked or misapprehended the April 14, 1994 assignment agreement submitted by plaintiff in opposition to the underlying motions to dismiss. Specifically, Derfner and Doyle contend, for the first time, that they are named in that agreement as professionals that provided services to Coronet. According to Derfner and Doyle, the remaining fraud claims against them must be dismissed under the "law of the case" doctrine because these claims are identical to plaintiff's claims against Gordon, another professional in that agreement.

The motions must be denied. These arguments were never

¹ Derfner and Doyle previously made motions (008 and 009) for reargument of this court's May 18, 2004 order, which were denied by this court on the ground that a true copy of this court's opinion was not annexed to the moving papers. This court directed counsel to obtain a copy of this court's opinion from the record room, which counsel submitted with these motions.

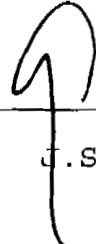
raised on the underlying motions and Derfner and Doyle may not now raise them (see Foley, 68 AD2d at 568). Furthermore, Derfner and Doyle have not established that the court overlooked or misapprehended any relevant facts or law in finding that they failed to show how plaintiff's claims against them accrued as early as April 14, 1994 (see William P. Pahl Equip. Corp., 182 AD2d at 27).

Accordingly, it is

ORDERED that the motion by defendants Derfner & Mahler, LLP, Donald A. Derfner, and Peter A. Mahler for reargument is denied; and it is further

ORDERED that the motion by defendants Michael B. Doyle, P.C. and Michael B. Doyle for reargument is denied.

Dated: January 10, 2005



J.S.C.
HON. CHARLES E. RAMOS

Counsel are hereby directed to obtain an accurate copy of this Court's opinion from the record room and not to rely on decisions obtained from the internet which have been altered in the scanning process.

FILED
FJAN 12 2005
NEW YORK
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