

Fisher v Goldstein

2007 NY Slip Op 32391(U)

August 1, 2007

Supreme Court, Suffolk County

Docket Number: 0000612/2007

Judge: Melvyn Tanenbaum

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provided the funds necessary to purchase the dwelling. It is defendant's position that the down payment money came from a stock brokerage account that was solely in "GOLDSTEIN's" name. Defendant also claims that the documentary evidence shows that plaintiff had substantial overdue taxes and had failed to file income tax returns for many years. Defendant argues that under such circumstances plaintiff cannot assert a viable constructive trust claim since such equitable claims are not sustainable where a plaintiff comes to court with unclean hands. Defendant denies plaintiff's allegations that she promised to reimburse him when the house was sold and asserts that no valid claim to impose a constructive trust or for unjust enrichment is stated. Defendant also claims that no actionable fraud claim is stated since there is no allegation that the future promise allegedly made by "GOLDSTEIN" could have been false when made. Defendant claims that the notice of pendency filed by plaintiff should be cancelled since the relief sought by "FISHER" is not based on a claim of title or possession of the premises.

In opposition plaintiff submits an affidavit and an affirmation of counsel and claims that no basis exists to dismiss the complaint based upon documentary evidence since the allegations set forth in the complaint concern a confidential relationship, a promise and a transfer in reliance upon a promise which should not be dismissed on the basis of submission of bank statements, security transaction records and real property documents. It is plaintiff's position that no basis exists to grant defendant's motion to dismiss based solely on documents and records since the essence of plaintiff's claims involve promises made in a confidential relationship. Plaintiff claims that defendant promised to reimburse him for the down payment and one-half the net proceeds from the sale of the house and that when defendant indicated she intended not to honor their agreement "FISHER" commenced this action. Plaintiff maintains that viable causes of action for imposition of a constructive trust and unjust enrichment are stated in the complaint and defendant's motion must therefore be denied.

To succeed on a motion pursuant to CPLR §3211(a)(1), the documentary evidence upon which defendant's motion is predicated must be such that it resolves all the factual issues as a matter of law and conclusively and definitively disposes of the plaintiff's claims (SIDDIQUI v. NATIONWIDE, 255 AD2d 30, 687 NYS2d 457 (3rd Dept., 1999); FERNANDEZ v. CIGNA, 188 AD2d 700, 590 NYS2d 925 (3rd Dept., 1992)).

The issue before the Court on a motion to dismiss for failure to state a cause of action is not whether the cause of action can be proved, but whether one has been stated (STAKULS v. STATE, 42 NY 2d 272, 397 NYS 2d 740 (1977)). A pleading does not state a cause of action when it fails to allege wrongdoing by a defendant upon which relief can be granted (HEX BLDG. CORP. v. LEPECK CONSTRUCTION, 104 AD 2d 231, 482 NYS 2d 510 (2nd Dept., 1984)). The Court must accept the facts alleged as true and determine whether they fit any cognizable legal theory (CPLR Sec. 3211(a)(7); MARONE v. MARONE, 50 NY 2d 481, 429 NYS 2d 592 (1980); KLONDIKE GOLD INC. v. RICHMOND ASSOCIATES, 103 AD 2d 821, 478 NYS 2d 55 (2nd Dept., 1984)).

Plaintiff's action seeks to impose a constructive trust upon defendants' property. Generally a constructive trust may be imposed "when property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest." (SHARP v. KOSMALSKI, 40 NY2d 119, 120, 386 NYS2d 72, 74 (1976) citing BEATTY v. GUGENHEIM EXPLORATION CO., 225 NY 380, 386, 122 NE 378, 380 (1919), see also SCIVOLETTI v. MARSALA, 97 AD2d 401, 467 NYS2d 228 (2nd Dept., 1983) aff'd 61 NY2d 806, 473 NYS2d 949 (1984)). To establish a constructive trust it must be shown that there exists 1) a confidential or fiduciary relationship, 2) a promise, 3) a transfer in reliance thereon and 4) unjust enrichment (SHARP v. KOSMALSKI supra; GARGANO v. VC&J CONSTRUCTION CORP., 148 AD2d 417, 538 NYS2d 955 (2nd Dept., 1989); LESTER v. ZIMMER, 147 AD2d 340, 542 NYS2d 855 (3rd Dept., 1980). It is the existence of a confidential relationship which triggers the equitable considerations leading to the imposition of a constructive trust and the parties need not be husband and wife for such a relationship to exist (SHARP v. KOSMALSKI, supra). Moreover the four elements "are not rigid but are flexible considerations for the Court to apply in determining whether to impose a constructive trust" (MENDEL v. HEWITT, 161 AD2d 849, 555 NYS2d 899, 900 (3rd Dept., 1990) citing HORNET v. LEATHER 145 AD2d 814, 535 NYS2d 799 1v. denied 74 NY2d 603, 543 NYS2d 396 (1990); LESTER v. ZIMMER, supra).

Causes of action for quantum meruit and unjust enrichment are quasi-contract doctrines developed to ensure that a party whose work has benefitted another will be paid the worth of his or her services (ZOLOTAR v. NY LIFE INS. CO., 172 AD2d 27 (1st Dept., 1991)). Neither doctrine applies where there is a written document that covers the particular subject matter underlying the parties dispute (CLARK FITZPATRICK, INC. v. LIRR, 70 NY2d 382 (1987); COOPER, BAMUNDO, HECHT & LONGWORTH LLP v. KUCZINSKI, et al., 14 AD3d 644, 789 NYS 2d 508 (2d Dept., 2005)).

Unjust enrichment occurs where a party holds or retains property under such circumstances that in equity and good conscience he ought not to retain it and does not require the performance of any wrongful act by the one so enriched (see SIMONDS v. SIMONDS, 45 NY2d 233, 242 (1979); CHEMICAL BANK v. EQUITY HOLDING CORP., 228 AD2d 338, 644 NYS2d 709 (1st Dept., 1996)).

In order to sustain a valid cause of action for fraud, plaintiff must allege that: 1) defendant made material, false representations to it, 2) which were known to defendant to be false and 3) upon which plaintiff relied to its detriment. (See LYONS v. QUANDT, 91 AD2d 709, 457 NYS2d 615 (3rd Dept., 1982); VITALE v. COYNE REALTY, INC., 66 AD2d 562, 414 NYS2d 388 (4th Dept., 1979); GERVASIO v. DINAPOLI, 126 AD2d 514, 510 NYS2d 634 (2nd Dept., 1987); see also SHARP v. KOSMALSKI, 40 NY2d 119, 386 NYS2d 72 (1976); GARGANO v. VC&J CONSTRUCTION CORP., 148 AD2d 417, 538 NYS2d 955 (2nd Dept., 1989); LESTER v. ZIMMER, 147 AD2d 340, 542 NYS2d 855 (3rd Dept., 1989)). Plaintiff must show not only that he actually relied on the misrepresentations but also that such reliance was reasonable (CPC INTERNATIONAL v. McKESAN CORP., 704 NY2d 268.285 (1988)).

A review of the allegations of the complaint in the light most favorable to the plaintiff reveals that viable causes of action are alleged with respect to the first and second causes of action seeking imposition of a constructive trust and recovery based upon unjust enrichment. Plaintiff's third cause of action based upon fraud must however be dismissed since there is no showing of statements made by the defendant which were known to be false at the time they were made. Defendant's motion to dismiss the complaint must therefore be granted solely to the extent that the third cause of action must be dismissed.

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CPLR Section 6501 provides:

A notice of pendency may be filed in any action in a court of the state or of the United States in which the judgment demanded would affect the title to, or the possession, use enjoyment of, real property, except in a summary proceeding brought to recover the possession of real property.....

Plaintiff equitable claims affect the title to the property in issue and therefore no basis exists to cancel the notice of pendency filed on January 19, 2007. Accordingly it is

ORDERED that defendant's motion for an order pursuant to CPLR Sections 3211 (a)(1)& (7) and 6514 is granted solely to the extent that the third cause of action in the complaint is hereby dismissed. All other requests for relief are denied, and it is further

ORDERED that a preliminary conference shall be held on August 27, 2007 at 9:30 a.m. at the Supreme Court Trial Term Part XIII, 400 Carleton Avenue, Central Islip, New York to resolve all outstanding discovery issues. No appearance shall be required if the parties enter into a preliminary conference disclosure and discovery schedule and submit same to the Court prior to August 27, 2007. A copy of the form is attached to this order for the parties use and convenience. All discovery proceedings must be completed on or before February 27, 2008 .

Dated: August 1, 2007

MELVYN TANENBAUM

J.S.C.

NON-FINAL DISPOSITION