

512 W. 180th St. Corp. v Royal Abstract of N.Y. LLC

2007 NY Slip Op 33271(U)

October 9, 2007

Supreme Court, New York County

Docket Number: 0109477/2005

Judge: Barbara Kapnick

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

BARBARA R. KAPNICK

PRESENT: _____ **J.S.C.**
Justice

PART 12

Index Number : 109477/2005
512 WEST 180 STREET
vs
ROYAL ABSTRACT OF NEW YORK
Sequence Number : 001
SUMMARY JUDGMENT

INDEX NO. 109477/05
MOTION DATE _____
MOTION SEQ. NO. 001
MOTION CAL. NO. _____

s motion to/for _____

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

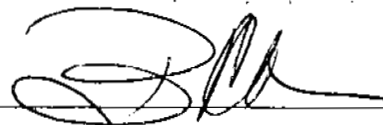
Upon the foregoing papers, it is ordered that this motion *and cross-motions are decided in accordance with the accompanying memorandum decision.*

FILED

OCT 12 2007

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 10/9/07



BARBARA R. KAPNICK *J.S.C.*

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 12

-----X
512 WEST 180th STREET CORP.,

Plaintiff,

-against-

ROYAL ABSTRACT OF NEW YORK LLC and
UNITED GENERAL TITLE INSURANCE CO.,

Defendants.

-----X
ROYAL ABSTRACT OF NEW YORK, LLC,

Third-Party Plaintiff,

-against-

VARIAZIONI-35 LTD., VARIAZIONI-57, LTD,
and NEW YORK MANAGEMENT, LLC,

Third-Party Defendants.

-----X
BARBARA R. KAPNICK, J.:

DECISION/ORDER
Index No. 109477/05
Motions Seq. Nos. 001
and 002

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COUNTY CLERKS OFFICE

Motions sequence numbers 001 and 002 are consolidated for disposition.

This action arises out of the sale by plaintiff 512 West 180th Street Corp. of the building located at 512 West 180th Street in Manhattan on or about January 2, 2002 to the purchaser, New York Management, LLC.

Defendant Royal Abstract of New York LLC ("Royal") was the title company during the transfer/sale of the property. Royal conducted a title search and provided a title report and abstract

on behalf of co-defendant United General Title Insurance Co. ("United"), which issued a title policy on behalf of the purchaser.

Plaintiff claims that Royal accepted the amounts of \$66,221.95 and \$27,000.00 in escrow to pay certain debits of the seller after 90 days. However, plaintiff claims that Royal Abstract breached its escrow agreement by failing to pay some of the debits of the seller and instead using the escrowed funds to erroneously pay debts of the purchaser.

Royal does not dispute that it paid some of the purchaser's expenses out of plaintiff/seller's monies after a non-certified check received by Royal on behalf of the purchaser was returned for insufficient funds.¹

Plaintiff now seeks in its Complaint to recover damages in the total sum of \$93,221.95, plus interest, attorneys' fees and costs, against the defendants Royal and United.

¹ The check dated January 2, 2002 was drawn on the account of "Variazioni" in the amount of \$31,379.35. After that check failed to clear, the purchaser forwarded three post dated replacement checks in the amounts of \$10,000.00, \$10,000.00, and \$11,379.35, respectively. However, only the first check cleared, thus leaving a balance of \$21,379.35.

Royal contends that it should not be required to pay plaintiff funds which were deposited into escrow on behalf of the purchaser but which did not clear. Royal has also commenced a third-party action against New York Management, LLC and its management company, Variazioni-35 Ltd. and Variazioni-57, LTD. (d/b/a Variazioni) seeking to recover the amount of \$21,379.35, with interest from January 2, 2002 plus costs and disbursements.

Plaintiff now moves, under motion sequence number 001, for summary judgment. Defendant United opposes the motion and cross-moves for summary judgment dismissing plaintiff's Complaint against it. Defendant Royal also opposes the motion and cross-moves for summary judgment dismissing plaintiff's Complaint against it.

In addition, Royal moves by Order to Show Cause, under motion sequence number 002, for a default judgment against the third-party defendants.

Based on the papers submitted and the oral argument held on the record on July 18, 2007, that portion of plaintiff's motion seeking summary judgment against defendant United is denied, and the cross-motion by United for summary judgment dismissing plaintiff's Complaint against it is granted, since no privity of contract existed between plaintiff and United, see, Calamari v.

Grace, 98 A,D,2d 74 (2nd Dep't 1983),² and there is no evidence that United acted as Royal's agent.

That portion of plaintiff's motion seeking summary judgment against defendant Royal is granted, and the cross-motion by Royal for summary judgment dismissing plaintiff's Complaint against it is denied, since plaintiff's escrow agreement with Royal pertained solely to the seller's expenses, and Royal has produced no evidence that plaintiff ever authorized it to pay the purchaser's expenses out of its escrow funds.

Plaintiff's damages, however, appear to be limited to the amount of \$21,379.35 improperly paid by Royal out of plaintiff's escrow account.

Finally, Royal's motion for a default judgment against the third-party defendants is granted on default.

² Although a title insurer may be held liable to third parties for damages resulting from negligent performance or errors in or omissions from a prepared abstract, upon a showing of fraud or collusion (see, Sabo v. Brill, P.C., 25 A.D.3d 420 [1st Dep't 2006]), there is no evidence here of any fraud, collusion or other special circumstances. Moreover, this action does not arise out of the negligent performance or errors in or omissions from a prepared abstract.

Accordingly, the Clerk may enter judgment (i) dismissing plaintiff's Complaint against defendant United General Title Insurance Co. with prejudice and without costs or disbursements; (ii) in favor of plaintiff 512 West 180th Street Corp. and against defendant Royal Abstract of New York LLC in the amount of \$21,379.35, together with interest to be calculated by the Clerk from January 2, 2002, and costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and (iii) in favor of defendant Royal Abstract of New York, LLC and against third-party defendants New York Management, LLC, Variazioni-35 Ltd. and Variazioni-57, LTD. in the amount of \$21,379.35, together with interest to be calculated by the Clerk from January 2, 2002, and costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.

This constitutes the decision and order of this Court.

Date: October 9, 2007



 Barbara R. Kapnick
 J.S.C.
BARBARA R. KAPNICK
 J.S.C.

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