

Gronowicz v Perla

2007 NY Slip Op 33493(U)

October 23, 2007

Supreme Court, New York County

Docket Number: 0115995/2006

Judge: Marcy S. Friedman

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

PRESENT: MARCY S. FRIEDMAN
Justice

PART 57

Index Number : 115995/2006

GRONOWICZ, ANTHONY

INDEX NO. _____

vs

PERLA, NISSAN

MOTION DATE _____

Sequence Number : 001

MOTION SEQ. NO. _____

SUMMARY JUDGMENT

MOTION CAL. NO. _____

the following papers _____

motion to/for _____

PAPERS NUMBERED

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

1

Answering Affidavits — Exhibits _____

2

Replying Affidavits _____

3

Merge to Law Supplemental Memos
Cross-Motion: Yes No

M1, M2, M3

Upon the foregoing papers, it is ordered that this motion

FILED
OCT 26 2007
NEW YORK
COUNTY CLERKS OFFICE

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

Dated: 10-23-07

Marcy S. Friedman
MARCY S. FRIEDMAN 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
NEW YORK COUNTY - - PART 57

ANTHONY GRONOWICZ and
BARBARA GRONOWICZ,
Plaintiff(s),

Index No.: 115995/2006

against

DECISION/ORDER

NISSAN PERLA,
Defendant(s).

Present: HON. MARCY FRIEDMAN
Justice, Supreme Court

FILED
OCT 26 2007
NEW YORK
COUNTY CLERK'S OFFICE

In this action, plaintiffs allege that they were fraudulently induced to enter into an agreement to vacate and surrender possession of their rent-controlled apartment. Defendant now moves for summary judgment dismissing the complaint and for partial summary judgment as to liability on his counterclaim for attorney's fees.

The standards for summary judgment are well settled. The movant must tender evidence, by proof in admissible form, to establish the cause of action "sufficiently to warrant the court as a matter of law in directing judgment." (CPLR 3212[b]; Zuckerman v City of New York, 49 NY2d 557, 562 [1980]). "Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers." (Winegrad v New York Univ. Med. Ctr., 64 NY2d 851,853 [1985].) Once such proof has been offered, to defeat summary judgment "the opposing party must 'show facts sufficient to require a trial of any issue of fact' (CPLR 3212, subd. [b])." (Zuckerman v City of New York, *supra*, at 562.)

The underlying facts of this case are largely undisputed. Defendant is the owner of a building located at 132 East 82nd Street in Manhattan ("subject premises") in which plaintiffs were rent-controlled tenants. In August 2001, defendant submitted to the Division of Housing

and Community Renewal (“DHCR”) an Owner’s Application for an Order Granting Approval to Refuse Renewal of Lease and/or to Proceed for Eviction on the basis of demolition. (“Owner’s Application,” Ex. A to Aff. in Opp. of Antony Gronowicz.) The application was granted by DHCR order dated September 27, 2002. (Ex. A to Aff. of Brian Epstein in Support of Defendant’s Motion for Summary Judgment [“Epstein Aff.”].) Plaintiffs filed a Petition for Administrative Review (“PAR”), which was denied, on the grounds, among others, that defendant had demonstrated that the New York City Department of Buildings had approved demolition plans in February 2002, and that defendant had submitted proof that he had sufficient funds to cover the cost of the project. (Order and Opinion Denying Tenants’ Petition for Administrative Review, Ex. B to Epstein Aff.) Plaintiffs then brought an Article 78 proceeding seeking to annul DHCR’s order, which was denied by decision and order of this court (Madden, J.) dated April 12, 2005. This decision found that DHCR had a rational basis for its determination that defendant had complied with the requirements for seeking an eviction based on a planned demolition. (Decision and Order [Ex. D. to Epstein Aff.] at 9.)

Defendant subsequently commenced a holdover proceeding against plaintiffs (there respondents) in Civil Court. Plaintiffs, who were represented by counsel, settled the holdover proceeding by stipulation dated November 2, 2005. (See Stipulation of Settlement, Ex. G to Epstein Aff. [“Stipulation”].) Under the terms of the Stipulation, in consideration for payment of \$275,000 by defendant, plaintiffs agreed to vacate their apartment, agreed to discontinue litigation appealing the DHCR decision and to withdraw any claim pending before administrative agencies and/or courts, admitted that they had no defenses to the holdover proceeding, and agreed to entry of a final judgment of possession. (Id., ¶¶ 2-5, 8, 17.) Paragraph 29 of the

Stipulation provided:

This stipulation supercedes and revokes all previous negotiations, arrangements, letters of intent, representations, and information conveyed, whether oral or in writing, between Petitioner and Respondents or their respective representatives or any other person purporting to represent Petitioner or Respondents. Except as otherwise provided in this Stipulation, no subsequent alteration, amendment, change or addition to this Stipulation shall be binding upon Petitioner and Respondents unless in writing and signed by the party against whom enforcement of the alteration, amendment, change or addition is sought.

Upon their vacatur of the apartment on January 30, 2006, each plaintiff also signed a release discharging defendant “from any liability or responsibilities to me, and from any claims or damages which I may have in connection with the premises or arising out of my tenancy, including but not limited to, any claims that I have vacated the Apartment by any other than voluntary surrender of possession.” (See Ex. I to Epstein Aff.)

Defendant now seeks summary judgment dismissing the complaint based on the terms of the Stipulation and the releases signed by plaintiffs. Defendant argues that the Stipulation was fully complied with and that plaintiffs therefore released defendant from any liability for any claims related to their tenancy. Plaintiffs claim that they were fraudulently induced to enter into the Stipulation. In particular, plaintiffs claim that defendant procured a Certificate of Eviction from the DHCR based on the representation that he intended to demolish the building; that this representation was false, as defendant has not to date demolished the building; and that they would not have agreed to enter into the Stipulation giving up their rent-controlled tenancy had it not been for defendant’s misrepresentation. (See Complaint, ¶¶ 21-24.) Plaintiffs further contend that they are not challenging the prior related administrative and judicial decisions, but

are asserting a claim of fraud against defendant based on defendant's failure, subsequent to the execution of the Stipulation, to demolish the building.

It is well settled that in view of the "[s]trong policy considerations" supporting the enforcement of settlement agreements (Denburg v Parker Chapin Flatteau & Klimpl, 82 NY2d 375, 383 [1993]), "[s]tipulations of settlement are favored by the courts and not lightly cast aside." (Hallock v State, 64 NY2d 224, 230 [1984].) However, "where there is cause sufficient to invalidate a contract, such as fraud, collusion, mistake or accident, * * * a party [may] be relieved from the consequences of a stipulation made during litigation." (Id.)

It is further settled that a general merger clause is ineffective to defeat a claim of fraud in inducing the agreement. (See Danann Realty Corp. v Harris, 5 NY2d 317, 320 [1959]; Sabo v Delman, 3 NY2d 155, 162 [1957].) "[W]here the complaint states a cause of action for fraud, the parol evidence rule is not a bar to showing the fraud - - either in the inducement or in the execution - - despite an omnibus statement that the written instrument embodies the whole agreement, or that no representations have been made." (Danann Realty Corp., 5 NY2d at 320.) Unlike a general merger clause, however, a "specific disclaimer" that a plaintiff "is not relying on any representations as to the very matter as to which it now claims it was defrauded * * * destroys the allegations in plaintiff's complaint that the agreement was executed in reliance upon these contrary * * * representations." (Id. at 320-321. See Citibank, N.A. v Plapinger, 66 NY2d 90 [1985].) Similarly, when "the language of a release is clear and unambiguous, the signing of a release is a 'jural act' binding on the parties." (Booth v 3669 Delaware, Inc., 92 NY2d 934, 935 [1998].) Although a release obtained through fraud may be rendered invalid (id.), "a valid release constitutes a complete bar to an action on a claim which is the subject of the release."

(Global Minerals & Metals Corp. v Holme, 35 AD3d 93, 98 [1st Dept 2006], lv denied 8 NY3d 804 [2007].)

In the instant case, while the Stipulation by its terms revokes all prior “letters of intent” and representations, it does not refer specifically to defendant’s representation before the DHCR and the courts that he intended to demolish the building. However, even assuming arguendo that the clause is a general merger clause and therefore does not bar plaintiffs’ claim of fraudulent inducement, plaintiffs are unable to establish the reliance element of this claim. “In an action to recover damages for fraud, the plaintiff must prove a misrepresentation or a material omission of fact which was false and known to be false by defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury.” (Lama Holding Co. v Smith Barney Inc., 88 NY2d 413, 421 [1996]; First Nationwide Bank v 965 Amsterdam, Inc., 212 AD2d 469, 470-471 [1st Dept 1995].)

As noted above, the parties’ Stipulation contains not only general provisions revoking prior letters of intent and representations, but also specific provisions by which plaintiffs withdrew all challenges to the DHCR determination and acknowledged they had no defenses to the eviction proceeding. (Stipulation, ¶¶ 2, 3.) In addition, although the DHCR had conditioned defendant’s application for a certificate of eviction on either relocation of plaintiffs to a suitable housing accommodation or payment of a stipend in the amount of \$77,826.24 (DHCR Sept. 27, 2002 Order at 2), the Stipulation provided for a payment to plaintiffs of \$275,000 in consideration for their termination of the litigation and vacatur of the premises. (Stipulation, ¶ 17.) The Stipulation as a whole thus demonstrates that plaintiffs accepted a substantial payment for voluntarily vacating and terminating their challenge to defendant’s proceeding for a certificate

of eviction for purposes of demolishing the building. Significantly, had plaintiffs been willing to accept the \$275,000 payment and to vacate only if defendant proceeded with the demolition, they could have conditioned the settlement on the truth of the representation that defendant would demolish the building. (See Global Minerals & Metals Corp., 35 AD3d at 101; Schwartz v Ross, 233 AD2d 229 [1st Dept 1996].) The Stipulation contains no such condition. The substance of the Stipulation as a whole thus forecloses any claim that plaintiffs reasonably relied on defendant's intent to demolish. (See generally Citibank, N.A. v Plapinger, 66 NY2d 90; Global Minerals & Metals Corp., 35 AD3d at 99; First Nationwide Bank, 212 AD2d at 471.)

Finally, plaintiffs had engaged in extensive litigation with defendant over the bona fides of defendant's intent to demolish the building. "In light of that dispute, plaintiff cannot adequately allege that it reasonably relied on a representation by defendant, in ensuing settlement negotiations, as to that exact point." (See Caribe v Fresh Del Monte Produce, Inc., 11 AD3d 296 [1st Dept 2004].)

The court has considered plaintiffs' remaining contentions and finds them to be without merit. Defendant is accordingly entitled to summary judgment dismissing the complaint.

Turning to defendant's counterclaim for attorneys' fees, it is well settled that " 'attorney's fees are incidents of litigation and a prevailing party may not collect them from the loser unless an award is authorized by agreement between the parties, statute or court rule.' " Baker v Health Mgt. Sys., Inc., 98 NY2d 80, 88 [2002], citing Hooper Assocs. v AGS Computers, Inc., 74 N.Y.2d 487, 491 [1989].) Further, as the common law disfavors any award of attorneys' fees to the prevailing party in a litigation, a party's entitlement to attorneys' fees will be narrowly construed. (See Gottlieb v Laub & Co., 82 NY2d 457, 464 [1993]; Murphy v Vivian Realty Co.,

199 AD2d 192 [1st Dept 1993].) Thus, when a party claims entitlement to attorneys' fees under a contractual provision which abrogates the common law rule, the provision will be carefully scrutinized to ensure that the particular fees sought fall within its scope. (See, e.g., Hooper Assocs., 74 N.Y.2d 487, supra; Minick v Park, 217 AD2d 489 [1st Dept 1995]; Paroff v Muss, 171 AD2d 782 [2d Dept 1991].)

Defendant claims that he is entitled to recover fees pursuant to paragraph 10 of the Stipulation. Paragraph 10 provides that "each Party agrees to indemnify and hold the other harmless for any and all costs and expenses that may incur [sic] due to a failure by the breaching party to abide by all of the terms and conditions of this Stipulation, including, but not limited to, reasonable attorneys' fees." In this case, plaintiffs claim that they were fraudulently induced to enter into the Stipulation, not that the Stipulation was breached. Nor has defendant claimed that plaintiffs breached the terms of the Stipulation. Defendant's claim for attorneys' fees for the defense of this action therefore is not within the scope of paragraph 10 of the Stipulation. Thus, the branch of defendant's motion which seeks summary judgment on his claim for attorneys' fees is denied.

The motion accordingly is granted to the extent that it is ORDERED that the complaint is dismissed, and the Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the court.

Dated: New York, New York
October 23, 2007

Marcy Friedman
MARCY FRIEDMAN, J.S.C.

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