

Peterson v DiBenedetto

2008 NY Slip Op 30338(U)

January 24, 2008

Supreme Court, Greene County

Docket Number: 0020070/9911

Judge: Joseph C. Teresi

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STATE OF NEW YORK
SUPREME COURT

COUNTY OF GREENE

CHERYL E. PETERSON,

Plaintiff,

-against-

DECISION and ORDER
INDEX NO. 07-0991
RJI NO. 19-07-3325

WENDY DIBENEDETTO, DINO DIBENEDETTO,
ALAN LIPPOLIS, ALDD, LLC, VICKI ECKER, and
PEGGY QUIGLEY, individually, and doing business as
CENTURY 21 HEART LAND REALTY and
CENTURY 21 HEART LAND REALTY,

Defendants,

Supreme Court, Greene County, All Purpose Term, December 7, 2007
Assigned to Justice Joseph C. Teresi

APPEARANCES:

JOHN J. CARUSONE, JR.
Attorney for Plaintiff
Carusone and Carusone
491 Broadway
P.O. Box 478
Saratoga Springs, NY 12866

DANIEL HIRSCHL, ESQ., P.C.
Attorney or Defendants
30 South Central Avenue
Suite 100A
Valley Stream, NY 11580

TERESI, J.:

Defendants Dino DiBenedetto and Alan Lippolis bring a motion to dismiss for failure to

state a cause of action pursuant to CPLR §3211. Plaintiff opposes the motion.

Plaintiff Cheryl E. Peterson (“Plaintiff”) owned 76.43 acres of land on River Road in the Town of New Baltimore. Plaintiff decided to sell the River Road property and spoke with Defendant Wendy DiBenedetto (“Wendy”), a real estate agent with Century 21 Heart Land Realty, regarding the sale of the property. On March 24, 2007, Plaintiff entered into a listing agreement with Wendy to list Plaintiff’s property for \$1,900,000.00. Nine days after the listing agreement was signed, Defendant Alan Lippolis (“Lippolis”) offered \$1,000,000.00 for the Plaintiff’s property. On April 12, 2007, after brief negotiations, Plaintiff and Lippolis signed a contract where Plaintiff agreed to sell the property for \$1,100,000.00. By this time, the name of the purchaser was changed from Lippolis to ALDD, LLC.

Although the agreed upon selling price was significantly lower than what the property was listed for, Plaintiff claims that Wendy urged Plaintiff to take the offer because it was a cash offer with no contingencies. A few days after the closing, Plaintiff’s neighbor informed Plaintiff that Defendant Dino DiBenedetto, Wendy’s husband, owned the property that Plaintiff just sold. Plaintiff also discovered that “ALDD” stands for Alan Lippolis and Dino DiBenedetto, who are the sole members of ALDD, LLC. In addition, Plaintiff learned that Alan Lippolis is Wendy’s brother-in-law. Plaintiff alleges that she was unaware at the time of the sale that there was a familial relationship between her real estate agent and the purchaser of her property. Defendants do not deny that this information was not conveyed to Plaintiff at any time during their dealings. While Defendants Dino DiBenedetto and Lippolis claim that the property was bought with the intention to residentially develop the property, a few weeks after ALDD, LLC purchased the property, it was re-listed through Century 21 Heart Land Realty for \$1,950,000.00.

Plaintiff filed suit against Defendants alleging fraud and breach of fiduciary duty. This

action arises from Defendants Dino DiBenedetto and Lippolis' motion to dismiss the case for failure to state a cause of action. Defendants also claim that Plaintiff failed to plead fraud with specificity and particularity as required by CPLR § 3016(b). Plaintiff, however, does state in her pleading that the alleged fraud arises from Wendy neglecting to inform Plaintiff that the company she was selling her property to for \$800,000.00 less than the listing price was owned by Wendy's husband and brother-in-law. "It is impossible to state in detail the circumstances constituting fraud where those circumstances are peculiarly within the knowledge of the party against whom the defense is being asserted." Jered Contracting Corp. v. New York City Transit Authority, 22 N.Y.2d 187, 292 N.Y.S.2d 98 (NY 1968). CPLR § 3016(b) requires pleadings to give sufficient detail of the transactions and occurrences that constitute the alleged wrong. The purpose of requiring this detail is to give adequate notice to the defendant as to what wrong is being alleged against the defendant. CPLR § 3016(b). Here, the complaint gives Defendants sufficient notice that Plaintiff is alleging that the Defendants were trying to scheme Plaintiff into selling her property at a significantly discounted rate by not telling Plaintiff that there was a relationship between the purchaser and the real estate agent.

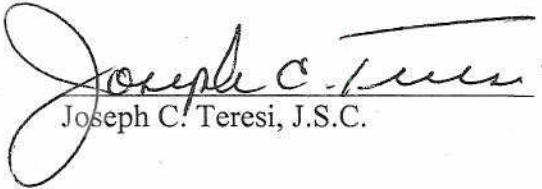
Defendants further allege that no cause of action was stated against Defendants Dean and Lippolis. Plaintiff's complaint alleges that Defendants Dino DiBenedetto and Lippolis engaged in a scheme to defraud the Plaintiff. Defendants Dino DiBenedetto and Lippolis argue that they cannot be held personally liable as members of a limited liability company. Members of limited liability companies, however, can be held personally liable for committing a tort in the furtherance of company business. Rothstein v. Equity Ventures, LLC, 299 A.D.2d 472, 474, 750 N.Y.S.2d 625, 627 (2nd Dep't 2002). In addition, corporate officers and employees could be held personally liable if they act outside the scope of their employment or for personal profit. Freyne

v. Xerox Corp., 98 A.D.2d 965, 965, 470 N.Y.S.2d 187, 187, (4th Dep't 1983). Therefore, it is plausible here for Defendants Dino DiBenedetto and Lippolis to be held personally liable, regardless of their status as members of a limited liability corporation. The Defendants' motion to dismiss is denied.

All papers, including this Decision and Order are being returned to the attorneys for the Plaintiff. The signing of this Decision and Order shall not constitute entry or filing under CPLR 2220. Counsel are not relieved from the applicable provisions of that section respecting filing, entry and notice of entry.

SO ORDERED!

Dated: January 24, 2008
Albany, New York


Joseph C. Teresi, J.S.C.

PAPERS CONSIDERED:

1. Motion to Dismiss, dated October 26, 2007.
2. Affirmation in Support of Defendants' Dino DiBenedetto, Allan Lippolis & ALDD, LLC Motion to Dismiss, dated October 26, 2007, with Attached Exhibits A - C.
3. Affidavit of Allan A. Lippolis, dated October 25, 2007.
4. Affidavit of Charles Dean DeBenedetto, dated October 25, 2007.
5. Affidavit in Opposition, dated November 20, 2007.
6. Reply Affirmation in Further Support of Defendants' Dino DiBenedetto, Allan Lippolis & ALDD, LLC Motion to Dismiss, dated December 5, 2007.