

Rovner v TRG-Desert Inn Venture, Ltd

2008 NY Slip Op 30367(U)

February 5, 2008

Supreme Court, New York County

Docket Number: 0600673/2007

Judge: Walter Tolub

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

PRESENT: **WALTER B. TOLUB** Justice

PART 15

Index Number : 600673/2007

ROVNER, GENNADIY

vs

TRG-DESERT INN VENTURE, LTD.

Sequence Number : 001

DISMISS COMPLAINT

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

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

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

IS DECIDED

IS DECIDED

IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

FILED

FEB 07 2008

NEW YORK
COUNTY CLERK'S OFFICE

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

Dated: 2/1/08

WALTER B. TOLUB J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate

DO NOT POST

REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 15

-----x
GENNADIY ROVNER

Plaintiff,

Index No. 600673/07
Mtn Seq.

-against-

TRG-DESERT INN VENTURE, LTD, TRG BEACH
CLUB REALTY, INC., AVENTURA TITLE
INSURANCE CORPORATION, CHICAGO TITLE
INSURANCE COMPANY, JULIA ZILBERQUIT
AKA Z. BEST TECHNOLOGIES,

Defendants.
-----x

WALTER B. TOLUB, J.:

By this motion Defendants TRG-Desert Inn Venture, Ltd and TRG Beach Club Realty (collectively, the "TRG Defendants") seek an order dismissing the Complaint on the ground that (1) a defense is founded upon documentary evidence (CPLR 3211(a)(1)); (2) the complaint fails to state a cause of action (CPLR 3211(a)(7)); and (3) the doctrine of forum non conveniens (CPLR 327(a)).

Facts

In September of 2005, Plaintiff's friend Alexander Goldansky, following up on an ad in a Russian language publication, traveled to Florida. Mr. Goldansky went to the TRG Realty - Ocean Four sales office and purchased a condominium unit. Mr. Goldansky suggested that Plaintiff might also be interested in purchasing a condominium.

There was an exchange of information and Plaintiff asked Goldansky to inform TRG Realty that he would be willing to

purchase unit 1803 at the specified "discounted" price of \$930,000. Since the Plaintiff was not in Florida, the Defendants forwarded the contract of sale to New York. Plaintiff signed the contract and sent it back to the Defendants in Florida along with a \$15,000 check payable to Chicago Title Insurance Company as the first down payment.

Plaintiff claims that the companies who built the condominium fraudulently induced him to enter into the contract, and that the companies violated Florida Statutes setting forth requirements for the sale of Florida condominiums. Plaintiff further claims that the Defendants committed fraud when they failed to disclose that Plaintiff was purchasing the unit from Z Best Technologies and not the Developers-Sponsors.

Discussion

Fraud

CPLR §3211(a)(1) mandates a dismissal where documentary evidence conclusively establishes a defense to the asserted claims as a matter of law. (Leon v. Martinez, 84 NY2d 83 [1994]). The court is required to examine the terms of an agreement between the Plaintiff and Defendants to determine whether the terms of an agreement bar Plaintiff's claims. (Wallach v. Hinckley, 12 AD3d 893 [3rd Dept 2004]).

Here, The contract clearly indicates that Plaintiff was purchasing the unit from Z Best Technologies, the unit owner and

not the developer. Additionally, Plaintiff also initialed the paragraph in the contract which acknowledged, in capital letters, that he received the documents which he now claims he did not receive. More particularly, paragraph 10 of the contract states:

THE BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS BEEN PROVIDED A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION OF THE ASSOCIATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT MORE THAN THREE (3) DAYS, EXCLUDING SATURDAYS, SUNDAYS AND LEGAL HOLIDAYS, PRIOR TO THE EXECUTION OF THIS CONTRACT.

Plaintiff's claims of fraud fail because Plaintiff could not have reasonably relied on alleged statements made by TRG Realty that he was purchasing from the developer-sponsor, because the contract explicitly discloses that he was purchasing the property from Z Best Technologies. Reasonable reliance is a necessary element of every fraud claim. (River Glen Assoc., Ltd., v. Merrill Lynch Credit Corp., 295 AD2d 274 [1st Dept 2002]). Where an "express provision in a written contract contradicts a claimed oral representation in a meaningful fashion, the conflict between the contract provision and the oral representation negates the claim of reliance upon the later." (Mac-Gray Servs., Inc. v. DeGeorge, 913 So. 2d 630, 634 [Fla. 4th Dist. Ct. App 2005])¹

¹Under New York choice of law principles, where "conduct regulating laws are at issue, the law of the jurisdiction where the tort occurred will generally apply because that jurisdiction has the greatest interest in regulating behavior within its borders." (Cooney v. Osgood Machinery, Inc., 81 NY2d 66 72 [1993]).

As indicated in the very first line of the contract, the Plaintiff was purchasing the condominium from Z Best Technologies. Both the Plaintiff and Ms. Zilberquit, the principal of Z Best, initialed every page of the contract. The contract states that the Buyer understand and agrees that the Seller does not own the Unit but has entered into a purchase agreement to purchase the Unit from the developer. (Contract (B)(2)). Accordingly, Plaintiff's claims for fraud must be and is dismissed.

State Law Claims

Plaintiff also claims that TRG failed to provide him with the required documents when he signed his contract as TRG was required to do under Florida law. However, as stated above, the contract states in capital letters, and the Plaintiff placed his initials next to said paragraph, that the Buyer acknowledges that he has been provided with all of the required documents. (Contract, para. 10). The rule is that one who signs a contract is presumed to know its contents. (Swift v. North America Co. for Life and Health Ins., 677 F.Supp. 1145 [SD Fla. 1987]). Here, Plaintiff's allegations are conclusory and are contradicted by the documentary evidence. Accordingly, Plaintiff's claims based on the Florida disclosure statute² is dismissed.

²Fla. Stat. §§ 718.503, 718.504 and 718.111

Declaratory Relief

It follows that Plaintiff's third cause of action for declaratory judgment based on the Fraud and State Law claims must also be dismissed.


Accordingly it is

ORDERED that the Defendants' motion to dismiss is granted and the Complaint is dismissed; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 2/1/08



HON. WALTER B. TOLUB, J.S.C.

FILED
FEB 07 2008
NEW YORK
COUNTY CLERK'S OFFICE