Parr v Ronkonkoma Realty Venture I LLC

2008 NY Slip Op 30896(U)

March 12, 2008

Supreme Court, Suffolk County

Docket Number: 0011041/2002

Judge: Jeffrey Arlen Spinner

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK : TRIAL TERM PART XXI

HON. JEFFREY ARLEN SPINNER
Justice of the Supreme Court

RONALD PARR,

Plaintiff,

- against -

RONKONKOMA REALTY VENTURE I LLC, RONKONKOMA REALTY VENTURE II LLC and PITCAIRN PROPERTIES INC.,

Defendants

Index No. **2002-11041**
Calendar No. **2004-01679-CO**

DECISION AFTER TRIAL
(CORRECTED)

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Before this Court is a contentious dispute between parties who are extraordinarily sophisticated in the highly specialized field of real property development. The Plaintiff is a respected member of the local business community who has been engaged in real estate development, construction and related endeavors for almost fifty years. The Defendant Pitcairn Properties Inc. is a long established and well known entity of excellent repute which concentrates its business in the field of real estate development and management. The controversy that is *sub judice* concerns certain real property situated in Suffolk County that was once owned by Plaintiff, the title to which devolved unto two of the Defendants through a series of mesne transactions.

In view of the devolution of title and the inability of the parties to resolve their differences amicably, the Plaintiff filed suit, demanding that a constructive trust be imposed upon two of the properties together with a decree of specific performance or, alternatively, money damages for breach of contract. The Defendants interposed counterclaims sounding in malicious prosecution and damages for abuse of process. Prior to trial, the parties were successful in amicably resolving claims involving the property located in the Town of Islip. The matter was tried to the Court over a period of eighteen days, with the parties resting on November 15, 2007. The Court reserved decision, pending the receipt of post-trial briefs, which were received by Special Term on January 16, 2008 and thereafter forwarded to Chambers.

A brief recitation of the history of the parties' relationship is essential to understand the nature of their respective claims. On or about November 5, 1998, the Plaintiff and the Defendant Pitcairn Properties Inc. ("PPI") formed a Delaware limited liability company known as Pitcairn-Parr LLC ("PPLLC"), the stated intent of which was the acquisition, management and development of real property in Suffolk County, New York, a market area in which the Defendant had no presence. In furtherance thereof, the parties drafted and executed an Operating Agreement [received into evidence as Plaintiff's Exhibit 1] which was intended to govern their respective rights and responsibilities. The parties then successfully and profitably undertook the development of commercial property at 201 Old Country Road, Melville, New York in collaboration with GMAC Mortgage Corporation. They then became involved in protracted (albeit fruitless) negotiations for development of commercial real estate on Long Island with such well-known entities as Genovese Drug Co. (now known as Eckerd) and Northrop Grumman Corp.

Long before the commencement of the instant lawsuit, the Plaintiff was the fee owner of certain undeveloped lots in Ronkonkoma, New York (the Islip property) as well as a 67+ acre parcel in Yaphank, New York (the Brookhaven property). On or about April 1, 1996, pursuant to a forbearance agreement, the Plaintiff delivered deeds to those properties to North Fork Bank as collateral security with the express proviso that the deeds were to be retained in escrow and were not to be recorded. Shortly after delivery of those instruments in escrow, North Fork Bank caused the deeds to be recorded in direct contravention of the forbearance agreement. The Plaintiff became aware of this involuntary devolution of fee title sometime in 1997, retained the services of Rosenberg & Fortuna LLP and promptly brought suit against North Fork Bank (see, *Yaphank Development Corp. etc. v. North Fork Bank*, Suffolk County index no. 1997-26657) which action was settled pursuant to a written agreement dated April 8, 1999 [received into evidence as Plaintiff's Exhibit 2]. A portion of the settlement agreement afforded Plaintiff the opportunity to recover fee title to the properties from North Fork Bank by payment to them of the sum of $ 3,000,000.00 provided that the closing transaction be consummated on or before April 30, 1999. It is undisputed that North Fork Bank was owed at least $ 6,555,843.03 plus interest, advances and attorney's fees, which indebtedness was substantially less than the fair market value of the properties at that time.

The Plaintiff thereupon sought to include the Defendant PPI in this potentially lucrative transaction and, to that end, PPI agreed to advance the monies necessary to complete the acquisition of the properties from North Fork Bank. Plaintiff's understanding was that title to the properties would be vested in PPLLC. However, at some point shortly before the closing, PPI informed the Plaintiff that it

wished to place each property in a separate single purpose entity (a limited partnership) rather than in PPLLC. They cited environmental concerns due to a toxic plume emanating from the Brookhaven National Laboratory, which was situated in close physical proximity to the Brookhaven property and the apprehension that any possible taint from that plume would financially encumber both properties if they were not put into separate legal entities.

Although the Plaintiff reluctantly agreed to this arrangement, he apparently became increasingly uneasy and, at the April 30, 1999 closing, he requested some concrete assurance from the Defendants that he would receive the portion to which they had agreed. At the closing of title, with both parties represented by capable counsel (the Plaintiff was represented by Attorney David Rosenberg, who has continued to represent his interests throughout these proceedings), PPI's Senior Vice-President, one Dennis M. Campbell, prepared and delivered to the Plaintiff a document, drafted in his own hand, which stated verbatim as follows:

> *4-30-99*
>
> *In connection with the acquisition of land by Ronkonkoma Realty Venture I and II on the above date, Pitcairn Properties Incorporated shall issue shares of voting common stock* to Ron Parr or his designee for 50% of the agreed upon residual value-re; the value of the property at closing (4-30-99) less the amount paid for the property together with all related closing costs. The cash invested to acquire the property or amounts paid for related costs shall be handled as set forth in the Pitcairn-Parr LLC agreement.*
>
> *By- Pitcairn Properties Inc.*
> */s/ Dennis M. Campbell*
> *SVP*
>
> **in accordance with value @ 4-30-99*

Plaintiff asserts that he relied, in good faith, upon all of the representations made to him, most especially that he was entitled to a fifty percent share in the properties. The Defendants posit that the Plaintiff is only entitled to a fifty percent share of profits following development of the property and the return to Pitcairn of all sums invested plus an 11% preferred return. While the language of Mr. Campbell's note refers to the operating agreement (presumably the Pitcairn-Parr LLC Operating Agreement), the trial record is replete with instances of continuing and material breaches thereof by Defendants and assertions by Defendants that the operating agreement was of no force and effect because there were no assets, no bank accounts and never any business to undertake (yet Mr. Campbell's document expressly refers to that agreement). The Defendants aver that the Plaintiff has no claims against them nor against the Brookhaven property, stating that, in essence, there is no enforceable agreement between them, that they merely (gratuitously?) helped extricate him from a most unpleasant default situation with North Fork Bank at a substantial savings. They categorically deny the existence of any sort of venture with him yet they have freely published and disseminated various documents which

clearly indicate otherwise (see, for example, (1) Plaintiff's Exhibit 8 in evidence, entitled "Brookhaven Technology Center," which opens with the following language; *"Pitcairn Properties Incorporated ("PPI") of Philadelphia, Pennsylvania along with The Parr Organization of Ronkonkoma, Suffolk County, New York owns eighty acres of developable ground within the Brookhaven Technology Center..."* ; Plaintiff's Exhibit 8-A in evidence demonstrates that this document was prepared by Pitcairn Properties; (2) yet another example can be found in Defendant's Market Value Balance Sheet in the "Pitcairn Properties 5 Year Business Plan," received into evidence as Plaintiff's Exhibit 34, which refers to the Brookhaven property as being *"...developed by Parr Development, a joint venture partner with Pitcairn Properties"*). Indeed in the same 5 Year Business Plan, as of June 30, 1999, the Defendants actually carry the value of the Parr properties at $ 20,412,000.00. The Defendants quite simply cannot have it both ways.

In the opinion of this Court, such a factual scenario presented by the case at bar cries out for the invocation of the ancient principle of estoppel in pais or, as it is sometimes called, equitable estoppel. Estoppel in pais is the doctrine under which a party may be barred from asserting a claim or right to which he might otherwise be entitled, either because of his affirmative conduct or his silence where there exists an obligation to speak out. In order for equitable estoppel to lie, the party to whom its benefit is to inure must have substantially and materially altered his position to his detriment based upon reliance upon the conduct or silence. Chief Judge Beardsley of the Supreme Court of Judicature of New York, in *Frost v. The Saratoga Mutual Insurance Company 5 Denio 154 (1848)*, defined estoppel in pais as that situation *"...where one person is induced by the assertion of another, to do that which would be prejudicial to his own interest, if the person by whom he had been induced to act in this manner, was allowed to contradict and disprove what he had before affirmed." 5 Denio 154 at 157.* In a later opinion by the Court of Appeals of New York, in the matter of *Carpenter v. Stilwell 11 NY 61 (1854)*, Judge W.F. Allen stated that *"The inquiry always is, whether the party against whom an estoppel is alleged, has by his actions or words influenced the conduct of others, so that a wrong will be done to those so influenced, if the party should be permitted to show a state of facts inconsistent with his actions and words." 11 NY 61 at 73.* These principles have been repeatedly invoked and reaffirmed and are an integral part of our jurisprudence, as demonstrated by the rulings in *Mattes v. Frankel 157 NY 603 (1899)*, *Dickinson v. Blake 116 AD 545 (3rd Dept., 1906)*, *Parmely v. Showdy 86 Misc 634 (Sup. Ct. Equity Term, Oneida County, 1914)* , *Kantor v. Cohn 98 Misc 383 (Sup. Ct. Kings County, 1917)* and *Rainbow Commercial Alliance Inc. v. Licciardi 89 Misc 2d 841 (Civil Ct. Queens County, 1976),* to recite but a few decisions.

It is clear from all of the evidence adduced at trial that the Plaintiff did substantially and detrimentally rely upon the promises of the Defendants, based in part upon their prior course of dealing as well as the Pitcairn-Parr LLC Operating Agreement. He brought the potential North Fork transaction to their attention and he was led to understand that he would be entitled to fifty percent thereof. The reliance by Plaintiff is beyond any good faith dispute and the Court is not persuaded, after a review of the evidence *in toto*, that there was no enforceable agreement, as is strenuously urged by Defendants.

Since a portion of the Plaintiff's action sounds in contract, it is necessary to address only the issues of detrimental reliance and foreseeability inasmuch as the existence of an agreement is not in dispute. In order for the Plaintiff to recover from the Defendants on the contract, it must be demonstrated that Plaintiff relied, to his detriment, on the agreement with the Defendants and further, that the damages

flowing from the breach thereof by the Defendants could reasonably have been foreseen by them. It has long been the rule in New York jurisprudence that a party may only recover those damages for breach of contract that could reasonably have been foreseen by the party who is deemed to be in breach of the agreement, *Hadley v. Baxendale 9 Exch. 341, 156 Eng. Rep. 145 (Court of Exchequer, 1854), Booth v. The Spuyten Duyvil Rolling Mill Company 60 NY 487 (1875), The Rochester Lantern Company v. The Stiles and Parker Press Company 135 NY 209 (1892).* The Court has already explored the issue of reliance, above, and has determined that the same did occur. Therefore, the issue of damages is appropriate for consideration herein. In view of all of the evidence adduced, the Court determines that the proper measure of damages can be arrived at by taking the fair market value of the property as of April 30, 1999, deducting therefrom the costs of Defendants to acquire the same and dividing the total thereof in half. The Court finds that the Defendants have presented nothing persuasive that would entitle the Defendants to the claimed 11% preferred return.

Although the Defendants have vociferously and volubly disputed the Plaintiff's assertions as to valuation, they have failed to buttress these plaints with any admissible proof. As previously stated, the Defendants valued the property at $ 20,412,000.00 as of June 30, 1999 as set forth in their 5 Year Business Plan. The Plaintiff's expert witness, Robert Marks, opined, on the record, that the total appraised value of the properties , as of April 30, 1999, was $ 18,510,000.00. Taking all of the evidence into consideration, the Court computes the damages sustained by the Plaintiff as follows:

	$ 18,510,000.00	Appraised Value
-	5,653,591.00	Defendants' cost to acquire properties (per Dennis Campbell)
=	12,856,409.00	Net Value

One half of the net value of $ 12,856,409.00 equals $ 6,428,204.50, the damages to which the Plaintiff is found to be entitled. The Court has considered the prayer for relief wherein the Plaintiff requests shares of stock in the Defendant; however, the Court finds that this would be impractical, since the Court cannot adequately determine the value or apportionment thereof and further, the Defendants' entity is one that is privately held.

The Court turns next to the counterclaims asserted by the Defendants and sounding in malicious prosecution and abuse of process. The Defendants have not adduced so much as a scintilla of evidence to show either that the Plaintiff used legitimate process to obtain a wrongful result or that there was a prior criminal prosecution that was terminated in favor of the Defendants. In essence, the proponent of a claim for abuse of process must plead and prove that proper process was utilized for improper purposes after its issuance coupled with the unlawful interference with property or rights under the color thereof, *Williams v. Williams 23 NY 2d 592 (1969), Hauser v. Bartow 273 NY 370 (1937).* The malicious prosecution counterclaim must be dismissed as there was no showing of any criminal prosecution (or indeed any other action at law or in equity) that was commenced by the Plaintiff and terminated in favor of the Defendants.

In a civil action such as this one, it is incumbent upon the Plaintiff to prove his entitlement to judgment by a fair preponderance of the credible, relevant, material and admissible evidence. It is the province and indeed, the obligation, of the trial court to assess and determine matters of credibility *Morgan v. McCaffrey 14 AD 3d 670 (2nd Dept. 2005), Matter of Liccione v. Michael A. 65 NY 2d 826*

(1985). Here, in this civil matter, it is the burden of the Plaintiff to plead and prove his direct case according to the standard enumerated above, *Prince-Richardson On Evidence § 3-210, Torem v. Central Avenue Rest. 133 AD 2d 25 (1st Dept. 1987)*. The same burden is applicable to the Defendants with respect to proving the right to relief upon the counterclaims that they have interposed. This Court is of the opinion that the Plaintiff has proven his entitlement to the relief that he seeks and further, that the Defendants have failed to sustain their requisite burden of proof with respect to the counterclaims..

Indeed the Court finds, from all of the evidence presented, that equity mandates that the application of the Plaintiff be granted. The Court is constrained to find that the position maintained herein by the Defendants is untenable and is wholly devoid of both legal and factual efficacy and cannot be sustained by any fair reading of the facts and the law.

It is, therefore

ORDERED that the Plaintiff's complaint shall be and the same is hereby sustained after trial; and it is further

ORDERED that the counterclaims of the Defendants shall be and the same are hereby dismissed; and it is further

ORDERED that the Plaintiff shall recover judgment in the amount of $ 6,428,204.50 with interest thereon at the statutory rate from April 30, 1999 plus a bill of costs, as against Ronkonkoma Realty Venture II L.L.C., Pitcairn Properties Inc. And Pitcairn Properties Holdings Inc., jointly and severally and that he shall have execution therefor.

Settle judgment on fifteen days' notice.

This constitutes the Decision and Order of this Court.

Dated: 12 March 2008
Riverhead, New York

ENTER:

JEFFREY ARLEN SPINNER, J.S.C.

_X_ FINAL DISPOSITION

_X_ SCAN

__ NON-FINAL DISPOSITION

__ DO NOT SCAN