

Annunziata v North Shore Homefinders Ltd.

2008 NY Slip Op 32066(U)

July 7, 2008

Supreme Court, Suffolk County

Docket Number: 0038244/2007

Judge: Emily Pines

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SUPREME COURT - STATE OF NEW YORK
COMMERCIAL DIVISION, PART 46, SUFFOLK COUNTY

Present:

HON. EMILY PINES
J. S. C.

Original Motion Date: 03-25-2008
Motion Submit Date: 05-28-2008
Motion Sequence No.: 001 MD

JOSEPH ANNUNZIATA

Plaintiff,

Attorney for Plaintiff
Certilman Balin
1393 Veterans Memorial Highway,
Suite 301S
Hauppauge, New York 11788

-against-

NORTH SHORE HOMEFINDERS LTD. and
CLARE SANTANGELO,

Attorney for Defendant
Solferino & Solferino, LLP
15 Roslyn Road
Mineola, New York 11501

Defendants.
_____X

ORDERED, that the motion (motion sequence no. 002) by defendant for summary judgment dismissing the complaint and canceling the notice of pendency is denied.

This is an action by plaintiff seeking to impose a constructive trust on property located in Coram, Town of Brookhaven, Suffolk County, New York, and described on the Suffolk County Tax Map as District 0200, Section 495, Block 05, Lots 5 and 6.1 (the "subject premises"). The subject premises is comprised of approximately 27 acres on which an equestrian center, warehouse, church and three (3) rental dwellings are located.

THE PLEADINGS

Plaintiff commenced this action by the filing of a Summons and Verified Complaint on December 10, 2007 and also filed a Notice of Pendency against the property. Issue was joined by defendants' service of a Verified Answer containing

affirmative defenses and a counterclaim dated February 1, 2008. Plaintiff served a Verified Reply to Counterclaim dated February 1, 2008. The sole cause of action of the Complaint seeks the imposition of a constructive trust on the subject premises. Plaintiff alleges that since before 2000, he and defendant Clare Santangelo (“Santangelo”), president of corporate defendant, North Shore Homefinders, Ltd. (“North Shore”), maintained a close and confidential personal relationship. Plaintiff alleges that prior to incorporating North Shore, he and Santangelo had an oral agreement whereby Santangelo would contribute capital to North Shore and plaintiff would contribute work, labor and services to further the interests of North Shore. Thereafter, in November of 2001, North Shore entered into a contract to purchase the subject premises from Lino Manzoni. Plaintiff alleges that at the time of the purchase of the subject premises, defendants promised plaintiff he would be a fifty (50%) percent owner of the subject premises.

Subsequent to the purchase of the subject premises, in or about 2006, defendants entered into a contract of sale with Suffolk County for the purchase of the development rights to approximately 20 acres of the subject premises. Plaintiff alleges that while the contract with Suffolk County was being negotiated, Santangelo represented to him that North Shore would split the net proceeds of the sale of the development rights and that North Shore would sell to plaintiff the underlying fee ownership of the subject premises after the sale of the development rights to the County. Plaintiff asserts that he has contributed time, labor and services to the maintenance, improvement and value of the subject premises and that defendants will be unjustly enriched in the amount of at least \$800,000.00. Plaintiff argues that in reliance on defendants’ promises, he managed the subject premises and coordinated the sale of the development rights to Suffolk County and he is thus entitled to a the imposition of a constructive trust on the subject premises.

Defendants served a Verified Answer with affirmative defenses and a counterclaim. Defendants assert the affirmative defenses of statute of limitations, lack of the elements of a constructive trust and insufficiency of allegations to warrant disregarding the corporate form. With regard to the counterclaim, defendants assert that prior to December of 2007, they loaned to plaintiff the sum of \$237,800.00 and that no part of said sum has been repaid although duly demanded. In the Verified Reply, plaintiff denies the allegations regarding the counterclaim and asserts that the

counterclaim is barred by the doctrine of laches. Plaintiff further asserts that the counterclaim fails to state a cause of action and is barred by the statute of limitations.

THE MOTION FOR SUMMARY JUDGMENT

Defendants now move for summary judgment dismissing the Complaint and canceling the Notice of Pendency. In support of the motion, defendants submit an affirmation of counsel, a copy of the pleadings, an affidavit of Santangelo and a Memorandum of Law. In sum, defendants argue that plaintiff cannot satisfy the requirements for the imposition of a constructive trust, and thus, the complaint must be dismissed. Defendants assert that what plaintiff is really seeking is to enforce an alleged promise by defendant to give him a 50% interest in North Shore or recovery in *quantum meruit* for services allegedly rendered. Defendants argue that these claims are insufficient to justify imposition of a constructive trust and filing of Notice of Pendency. Specifically, defendants assert that plaintiff has failed to show any cognizable transfer in reliance on their alleged promise to give him half of the profits from the sale of the subject property and moreover, that plaintiff had no interest in the subject premises prior to North Shore's purchase of the property in 2002. Defendants argue that North Shore paid all of the expenses of the purchase of the subject premises, as well as all the carrying charges since the acquisition, including the mortgage, real property taxes, insurance and maintenance. Thus, defendants assert that plaintiff contributed nothing of value to the subject premises which justifies the imposition of a constructive trust.

Additionally, defendants claim that even if the Court finds there was a promise, plaintiffs cannot demonstrate either a transfer in reliance on such promise or the existence of a confidential and/or fiduciary relationship. Defendants argue that plaintiff's claim that he and Santangelo had a "close, confidential relationship since before 2000" is conclusory and unsupported by any of the other allegations in the complaint. Instead, Santangelo asserts that she and plaintiff were merely co-workers and social friends prior to the formation of North Shore. Finally, defendants argue that plaintiff has not alleged or shown that North Shore would be unjustly enriched at plaintiff's expense if allowed to retain unencumbered title to the subject premises.

In her affidavit in support of the motion, Santangelo states that she met plaintiff in 1998 when he became employed as a real estate broker at Coldwell Banker where she was working. She states that she founded North Shore in or about January of 2000 and plaintiff is not an officer, director or shareholder of this corporation. Santangelo states that prior to her purchase of the subject premises, it is her understanding that plaintiff initially wished to purchase the property with his girlfriend, Annie Mucaria (“Mucaria”), who operates a horse farm, Coram Equestrian, LLC, thereon. Santangelo states that prior to her purchase of the subject premises, she had several discussions with plaintiff as to whether he wanted to purchase the property or alternatively, whether he wanted to purchase it jointly with her and share in the expenses. She states that she believes that plaintiff did not have the financial resources to purchase the property, so in 2002, North Shore purchased the property. She further states that after the purchase, she promised plaintiff that if the subject premises could be subdivided and homes built thereon, that North Shore would pay him a commission for each home sold through his efforts. However, Santangelo states that this agreement was never reduced to writing and never materialized because of a moratorium placed on building by the Town of Brookhaven. Subsequently, in 2006, Santangelo states that Suffolk County expressed an interest in acquiring a portion of the subject and a contract of sale was entered between North Shore and the County.

Santangelo avers that she was never in a confidential or fiduciary relationship with plaintiff and that he has borrowed hundreds of thousands of dollars from her over the past seven years and failed to repay said sums. She states that plaintiff has not contributed anything toward the maintenance of the subject premises and further that Coram Equestrian has failed to pay any rent since 2005. Santangelo states that she never promised plaintiff he would own half of either the subject premises or North Shore or that she would split the profits of the sale of the subject premises to the County. Thus, she argues that the imposition of a constructive trust and the filing of the Notice of Pendency is not warranted.

PLAINTIFF’S OPPOSITION

Plaintiff submits an affidavit in opposition, a Memorandum of Law and exhibits in opposition to the motion for summary judgment and canceling the Notice of Pendency. Plaintiff states that he and Santangelo had a “very close relationship” since

1998 and became “partners in the sale of real estate during the spring of 1999 while they were both employed by Coldwell Banker”. He claims that he and Santangelo discussed the possibility of purchasing property together to build and sell houses and that Santangelo would finance the purchase and he would search for the real estate, obtain the permits for construction and undertake any additional work to obtain a profit. Plaintiff alleges that he was initially going to purchase the subject premises with Mucaria and another individual, Donald Monti (“Monti”), who was going to finance the transaction.¹ Plaintiff claims that he told Santangelo he was going to purchase the property with Mucaria and Monti and that she told him she wanted to provide the financing instead of Monti, but she did not want to purchase the property with Mucaria. Plaintiff avers that he agreed to allow her to finance the transaction, but that he and Santangelo agreed that although North Shore was taking title to the property, it was to be jointly owned with plaintiff. He claims it was always the parties’ intention that plaintiff would be a 50% owner of the property. In support of this assertion, plaintiff annexes a purchase money mortgage in the amount of \$875,000.00 which was personally guaranteed by Santangelo and plaintiff. He states that he personally guaranteed the purchase money mortgage because of his express understanding that he was a joint owner of the subject premises.

Plaintiff asserts that after the acquisition of the subject premises, he undertook the daily tasks of maintaining the subject property and investigated the possibility of subdividing it for residential development. Additionally, plaintiff states that the subject premises does not solely consist of the horse farm, but also three single-family rental homes, a warehouse, an Olympic Fiber facility and a vacant church. Plaintiff claims he obtained tenants for two of the houses, performs maintenance and management tasks and removed a tenant for their failure to pay rent. He states that he estimates he spends approximately twenty hours per week addressing issues related to the subject premises upon the belief he was a 50% owner of the property. Plaintiff claims he was intricately involved in the negotiations with Suffolk County, culminating in their offer to purchase the development rights. Additionally, he states that he applied to the Suffolk County Farmland Committee for permission to hold horse shows after the development rights

¹Plaintiff also submits an affidavit in opposition from Monti, wherein he confirms he was going to purchase the subject premises with plaintiff and Mucaria. Monti states that he was going to finance the transaction and plaintiff and Mucaria would manage the property and be part owners.

were sold and the approval for same was sent to him, as evidenced by correspondence annexed to his affidavit.

Plaintiff further states that prior to the execution of the contract of sale with Suffolk County, he requested that Santangelo enter into a written agreement with him regarding his 50% ownership interest in the subject premises but she refused to do so. However, he states that Santangelo continued to privately acknowledge they had an agreement. Additionally, plaintiff annexes correspondence from Santangelo's attorney dated January 22, 2007 in which they discuss a potential sale of the property to a third party and the distribution of the proceeds thereon, and/or the sale of the property directly to plaintiff. Additionally, plaintiff annexes correspondence from the attorney representing North Shore on the sale of the development rights to Suffolk County, in which approval of the contracts for said sale is sought from plaintiff. Finally, plaintiff annexes an email correspondence from Santangelo dated September 29, 2007, in which she wrote that "we shook hands on my agreeing to give you 50%, after I receive my money. I totally agree with that and always did." Plaintiff asserts that this email represents an admission by Santangelo that he has a 50% interest in the subject premises. Plaintiff argues that he filed the Notice of Pendency to preserve his interest in the property so he could continue to operate a horse farm with Mucaria and not to hold up the sale of the development rights to the subject premises to Suffolk County. Thus, he argues that the motion for summary judgment and cancelling the lis pendens should be denied in its entirety.

THE LAW

To obtain summary judgment, the moving party must make a prima facie showing of entitlement to judgment as a matter of law, offering sufficient evidence to demonstrate the absence of any material issues of fact. ***Goldberger v. Brick & Ballerstein, Inc.***, 217 A.D.2d 682, 629 N.Y.S.2d 813 (2d Dept. 1995) (internal citations omitted). The burden then shifts to the party opposing the motion to come forward with proof in admissible form demonstrating there are genuine issues of material fact which preclude the granting of summary judgment. ***Zayas v. Half Hollow Hills Cent. School Dist.***, 226 A.D.2d 713, 641 N.Y.S.2d 701 (2d Dept. 1996).

The law is well settled that the elements of a constructive trust, are a confidential or fiduciary relationship, a promise, a transfer in reliance thereon and unjust enrichment. **Williams v. Eason**, 49 A.D.3d 866, 854 N.Y.S.2d 477 (2d Dept. 2008); **Osborne v. Tooker**, 36 A.D.3d 778, 828 N.Y.S.2d 492 (2d Dept. 2007); **Doxey v. Glen Cove Community Development Agency**, 28 A.D.3d 511, 813 N.Y.S.2d 743 (2d Dept. 2006). Courts have held that a constructive trust is a “fraud rectifying remedy generally available where, in the context of a confidential relationship, a promisee, in reliance on a promise, transfers something of value, thereby unjustly enriching the promisor.” **Schwab v. Denton**, 141 A.D.2d 714, 529 N.Y.S.2d 825 (2d Dept. 1988)(internal citations omitted). Usually, a constructive trust may be imposed when “property has been acquired in such circumstances that the holder of the legal title might not in good conscience retain the beneficial interest.” **Rocchio v. Biondi**, 40 A.D.3d 615, 835 N.Y.S.2d 401 (2d Dept. 2007)(internal citations omitted).

Turning to the elements of a constructive trust, the Court of Appeals has explained that a confidential or fiduciary relationship may be found where a bond of trust and confidence exists between the parties and thus, the defendant must be charged with an obligation not to abuse the trust and confidence placed in him by the defendant. **Sharp v. Kosmalski**, 40 N.Y.2d 119, 386 N.Y.S.2d 72, 351 N.E.2d 721 (1976). A confidential relationship may arise between parties engaged in a joint venture. **Rocchio, supra**. The transfer requirement may be satisfied in instances where “funds, time and effort were contributed in reliance on a promise to share in the result.” **Sylvester v. Sbarra**, 268 A.D.2d 424, 702 N.Y.S.2d 90 (2d Dept. 2000), **quoting, Terrille v. Terrille**, 171 A.D.2d 906, 566 N.Y.S.2d 789. Finally, unjust enrichment has been described as a situation where a person has received a benefit, the retention of which would be unjust. That is, it is a legal inference drawn from the circumstances surrounding the transfer of property and the relationship between the parties. **Sharp, supra**.

Under CPLR §6501, a notice of pendency is authorized to be filed in an action seeking a judgment that would affect title to, or possession, use, or enjoyment of, real property. An action seeking to impose a constructive trust over real property qualifies as an action in which the filing of a notice of pendency is permitted. **Nastasi v. Nastasi**, 26 A.D.3d 32, 805 N.Y.S.2d 585 (2d Dept. 2005).

CONCLUSION

In the case at bar, defendants have met their prima facie burden of demonstrating entitlement to summary judgment by the submission of the affidavit by Santangelo wherein she states that she and plaintiff were merely social friends and coworkers and not in a fiduciary relationship and that she did not promise him that he would be 50% owner of the subject premises. Moreover, her claims that plaintiff did not make any contributions toward the acquisition of the subject premises or have a prior ownership interest therein, could defeat the transfer element of a constructive trust. *See, Dutcher v. Shaver*, 40 A.D.3d 1192, 835 N.Y.S.2d 763 (3d Dept. 2007). *See also, Ruiz v. Meloney*, 26 A.D.3d 485, 810 N.Y.S.2d 216 (2d Dept. 2006); *Spitz v. Klein*, 33 A.D.3d 988, 823 N.Y.S.2d 487 (2d Dept. 2006); *Cerabono v. Price*, 7 A.D.3d 479, 775 N.Y.S.2d 585 (2d Dept. 2004).

However, in opposition to the motion, and at this pre-discovery stage, plaintiff has raised issues of fact warranting a trial. Specifically, plaintiff has annexed documentary evidence, to wit, his personal guarantee of the purchase money mortgage, which clearly supports plaintiff's claim that he and defendants were engaged in a partnership or joint venture² which is sufficient to find a confidential or fiduciary relationship between the parties. A question of fact exists as to whether, plaintiff would have executed an \$875,000.00 personal guarantee if he did not believe he had an ownership interest in the subject premises. Defendants' claim that plaintiff believed he had an ownership interest in North Shore as opposed to the subject premises is belied by the documentary evidence in the record. Defendant has submitted evidence that, while he did not contribute financially toward the purchase of the subject premises, he managed the property and made contributions toward obtaining approvals for the use of the property as a horse farm subsequent to the sale of the development rights. Moreover, the submissions reflect that he may have foregone the opportunity to purchase the property with Monti, in

²As very recently described by the Second Department, a joint venture is "an association of two or more persons to carry out a single business enterprise for profit, for which purpose they combine their property, money, effects, skill and knowledge. The essential elements of a joint venture are an agreement manifesting the intent of the parties to be associated as joint venturers, a contribution by the coventurers to the joint undertaking (i.e., a combination of property, financial resources, effort, skill or knowledge), some degree of joint proprietorship and control over the enterprise; and a provision for the sharing of profits and losses." *Kaufman v. Torkan*, __ A.D.3d __, __ N.Y.S.2d __, 2008 WL 2209704 (2d Dept. 2008).


reliance on Santangelo's promise that he would be a 50% owner. Additionally, the email correspondence from Santangelo, and her attorney's correspondence describing the distribution of the proceeds of the sale, as well as the request for plaintiff's approval of the contract of sale with Suffolk County, all raise issues of fact warranting a trial.

Based on the foregoing, defendants' motion for summary judgment and cancelling the Notice of Pendency is denied in its entirety.

Counsel are reminded that a status conference is scheduled for July 16, 2008 at 9:30 a.m. before the undersigned.

This constitutes the **DECISION** and **ORDER** of the Court.

Dated: July 7, 2008
Riverhead, New York


EMILY PINES
J. S. C.