

Lehrer v Society for the Advancement of Educ., Inc.
2009 NY Slip Op 31341(U)
June 11, 2009
Supreme Court, New York County
Docket Number: 8477/08
Judge: Stephen A. Bucaria
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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEPHEN A. BUCARIA

Justice

STANLEY LEHRER and LAUREL LEHRER,

Plaintiffs,

TRIAL/IAS, PART 3
NASSAU COUNTY

INDEX No. 8477/08

MOTION DATE: April 16, 2009
Motion Sequence # 001

-against-

SOCIETY FOR THE ADVANCEMENT OF
EDUCATION, INC. and WAYNE BARRETT,

Defendants.

The following papers read on this motion:

Notice of Motion..... X
Affirmation in Opposition..... X
Reply Affidavit..... X

This motion, by plaintiff Stanley Lehrer, for an order dismissing defendants' First, Second, Third and Fourth Affirmative Defenses and defendants' First and Second Counterclaims pursuant to CPLR §3211(a)(5) and (6) because defendants' alleged causes of action did not accrue within the time limited by the law for commencement of such actions, and that defendant Society for the Advancement of Education, Inc., (hereinafter referred to as "SAE") executed a General Release on February 11, 1999, releasing plaintiff Stanley Lehrer, of any and all claims made herein by defendants, and for such other, further and different relief as to the Court may seem just, proper and equitable under the premises, is determined as hereinafter set forth.

LEHRER**Index no. 8477/08****FACTS**

The plaintiffs, Stanley and Laurel Lehrer are husband and wife. Stanley Lehrer was an employee of defendant Society for the Advancement of Education, Inc. ("SAE") for approximately forty-six years. By the time of his retirement on February 15, 1999 he was the publisher and founder of SAE's USA Today magazine. In 1996, the SAE board of trustees issued the Supplemental Medical and Dental Care Plan resolution ("Resolution") providing employees who have worked at least forty years, including the plaintiff, lifetime supplemental health coverage upon their retirement. The Resolution provided that should SAE, by willful negligence or casual disregard, allow the coverage to lapse, it must reimburse the retired officer for payments made to satisfy the outstanding medical bills incurred during the previous of lapse and reinstate the coverage. Additionally, the resolution stated that it was binding upon, and cannot be cancelled by, any successor administration.

CONTENTIONS

In 1999, defendant Wayne Barrett ("Barrett") was appointed Trustee of SAE, and by 2003 he was promoted to President and Treasurer of SAE. Defendant was hired by the plaintiff fourteen years prior to his appointment as President and Treasurer. The plaintiffs contend that while Barrett was President and Treasurer, he "individually and maliciously" terminated plaintiffs' medical coverage under the 1996 resolution. The plaintiffs bring this action sounding in tortious interference with contractual relations and breach of contract based on these contentions. The defendants contend that they discontinued the plaintiffs' insurance upon discovering that the plaintiff had committed fraud and breached his fiduciary duty to the company from May of 1995 until February of 1999. Defendants assert a counterclaim and an affirmative defense in breach of fiduciary duty/fraud and a conversion counterclaim on the grounds that Lehrer misappropriated, concealed and fraudulently transferred and converted funds, totaling approximately \$750,000, for his own personal use, benefit and gain. Defendants claim that had this information been disclosed, the Resolution would not have been passed; thus, the Resolution was obtained by deceit and fraud. In addition, the defendants claim that awarding the plaintiffs compensation for breach of a Resolution procured through fraud would result in unjust enrichment of the plaintiffs. Defendants also allege an estoppel defense, claiming that the plaintiffs should be estopped from claiming breach when they have made no claim to the defendant for reinstatement of the insurance. The defendants assert a statute of

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limitations defense, claiming that the plaintiffs contractual obligation action is time barred.

The plaintiffs move to dismiss all claims and affirmative defenses under CPLR § 3211(a)(5) and (6). The plaintiffs contend that the claims and defenses are barred by the statute of limitations and by a mutual General Release signed by SAE and Mr. Lehrer on February 11, 1999. The release provides:

“Stanley Lehrer agrees not to institute any legal proceedings against the Society for the Advancement of Education, Inc., concerning the terms and conditions of his vacating the above-listed positions or for any other matter whatsoever. The Society for the Advancement of Education, Inc., agrees not to institute any legal proceedings against Stanley Lehrer for any matter whatsoever”.

Further, plaintiffs contend that defendants’ estoppel defense should be dismissed because the plaintiffs were under no obligation to demand reinstatement of their benefits before bringing legal action. Plaintiffs also move to dismiss defendants’ statute of limitations defense because they commenced the breach of contract action within the six year statute of limitations; therefore, it was not time barred.

The defendants oppose the motion to dismiss on the grounds that the actions were not time barred pursuant to CPLR § 203; that the doctrine of recoupment, and that the General Release is inapplicable because the plaintiff initiated the legal proceedings. The plaintiffs argue that § 203 is inapplicable because the defendants counterclaims and defenses do not arise out of the same transactions and occurrences as the claims in the plaintiffs’ pleading. Further, the plaintiffs contend that the General Release does apply to bar the defendants’ claims because the claims are based on events that occurred prior to signing the release, and the plaintiffs’ claim is based on a breach that occurred after the signing.

DECISION

In deciding whether the defendants’ conversion counterclaim is time barred, it is crucial to determine whether the conversion claim arose out of the same “transaction or occurrence” as the claims in the complaint so as to defeat the statute of limitations. CPLR § 203(d) states that even if a counterclaim would have been time barred at the time

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of complaint, “if the...counterclaim arose from the transactions, occurrences or series of transactions or occurrences, upon which a claim asserted in the complain depends, it is not barred to the extent of the demand in the complaint.” The defendant’s conversion claim rests upon allegedly-concealed monetary transactions and secret bank accounts opened by the defendant during his employment. The plaintiffs’ claim arises out of an entirely different transaction regarding reimbursement of medical insurance which took effect upon the plaintiff’s retirement. The claims arise out of completely unrelated transactions; therefore, the counterclaim is time barred by the three year statute of limitations imposed on actions in conversion. (CPLR § 214(3)) This Court **grants** the plaintiffs’ motion to dismiss.

In the alternative, the motion is **granted** based upon the mutual General Release signed by the parties. The defendants’ argument, that they are relieved of their obligations under the General Release because the plaintiffs instituted legal proceedings, is flawed because the General Release does not provide for relief under those circumstances. “A release will not be treated lightly and will be set aside by a court only for duress, illegality, fraud or mutual mistake.” (**Shklovskiy v. Kahn**, 273 A.D.2d 371, 709 N.Y.S.2d 208, 2nd Dept., 2000). While the defendant does bring a counterclaim and defense sounding in fraud, both are entirely unrelated to the drafting and signing of the General Release; therefore, the fraud allegations cannot be used to set aside the General Release. The motion to dismiss defendants’ counterclaims is **granted** on the grounds that they are barred by the General Release.

The defendants’ affirmative defenses are not precluded by the General Release because the release states that the parties agree not to “initiate legal proceedings” against each other, and raising a defense does not constitute initiating a legal proceeding. Further, the fraud/breach of fiduciary duty and unjust enrichment defenses are not barred by the statute of limitations. CPLR 203(d) allows for a time barred defense that can be used to offset liability, if the defense arises out of the same transactions and occurrences as the plaintiffs’ complaint. (See **Matter of the Application of Kurt. W Watson**, 8 A.D.3d 1092, 778 N.Y.S.2d 658, 4th Dept., 2004). In the pleading, the defendants state that there was a breach of the Resolution because it was obtained through fraud on the part of the plaintiff. Absent evidentiary support to the contrary, the Court must deem the allegations in the defendants’ pleadings true. (**Island ADC, Inc. V. Baldassano Architectural Group, P.C.**, 49 A.D.3d 815, 854 N.Y.S.2d 230, 2nd Dept., 2008). Therefore, since the Resolution was allegedly breached as a result of the plaintiff’s fraud, the court concludes that fraud defense arises out of the same occurrence as the breach of

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contract claim. The unjust enrichment defense is based on the fraud defense and also arises out of the same occurrence as the plaintiffs' claim. Hence, CPLR § 203(d) is applicable to both the fraud/breach of fiduciary duty and unjust enrichment affirmative defenses. The motion to dismiss these defenses is **denied**.

With respect to the statute of limitations defense, pursuant to CPLR 213(2) an action upon a contractual obligation must be commenced within six years from the time the action accrued. The action accrued at the time of breach in June of 2004; therefore, plaintiffs claims are not time barred. The motion to dismiss this defense is **granted**.

The estoppel defense is not barred by the statute of limitations, nor is it barred by the General Release; however, the affirmative defense is flawed because the Resolution does not provide that the plaintiff must make a claim to the defendant for reinstatement before commencing legal action on the breach. "An unambiguous and clear contract should be enforced according to its terms." (Krystal Investigations & Security Bureau, Inc., v. United Parcel Service, Inc., 35 A.D.3d 817, 826 N.Y.S.2d. 727, 2nd Dept., 2007). Since the Resolution is not ambiguous, the terms must be enforced as they appear in the contract, which does not include the provision that the defense relies upon. The motion to dismiss the estoppel defense is **granted**.

This Court **grants** plaintiffs' motion to dismiss both counterclaims sounding in fraud and conversion, and the defendants' second and third affirmative defenses, i.e., statute of limitations and estoppel. The Court **denies** that part of plaintiffs' motion to dismiss defendants' first and fourth affirmative defenses sounding in fraud and unjust enrichment.

A status conference is scheduled for July 17, 2009 at 9:30 a.m. in Chambers of the undersigned.

Dated JUN 11 2009


J.S.C.

ENTERED
JUN 15 2009
NASSAU COUNTY
COUNTY CLERK'S OFFICE