

Asset Mgt. & Capital Co., Inc. v Nugent

2010 NY Slip Op 31610(U)

June 22, 2010

Supreme Court, Suffolk County

Docket Number: 17764/2005

Judge: Joseph Farneti

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SUPREME COURT - STATE OF NEW YORK
I.A.S. TERM, PART 37 - SUFFOLK COUNTY

copy

PRESENT:

HON. JOSEPH FARNETI
Acting Justice Supreme Court

ASSET MANAGEMENT & CAPITAL CO.
INC. and PATRICK A. NUGENT,

Plaintiffs,

-against-

MICHAEL I. NUGENT and CITIBANK, N.A.,

Defendants.

ORIG. RETURN DATE: FEBRUARY 4, 2010
FINAL SUBMISSION DATE: FEBRUARY 4, 2010
MTN. SEQ. #: 001
MOTION: MG

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Upon the following papers numbered 1 to 7 read on this motion _____
TO REFORM STIPULATION OF SETTLEMENT

Notice of Motion and supporting papers 1-3; Opposing Affidavit and supporting papers 4, 5;
Replying Affirmation and supporting papers 6, 7; it is,

ORDERED that this motion by plaintiffs ASSET MANAGEMENT & CAPITAL CO. INC. ("AMCC") and PATRICK A. NUGENT ("plaintiff," collectively "plaintiffs") for an Order reforming the Stipulation of Settlement entered into by and among plaintiffs and defendant MICHAEL I. NUGENT ("defendant") and directing that defendant refund to AMCC a \$10,000 overpayment, is hereby **GRANTED** for the reasons set forth hereinafter. The Court has received an affidavit in opposition to the instant application from defendant, and a reply thereto from plaintiffs. Defendant has also submitted a sur reply affidavit which has not been considered by the Court.

The factual history of this partition action is as follows: in 1988, plaintiff and defendant purchased a condominium unit together. Plaintiffs inform the Court that after the initial purchase, defendant made most of the mortgage

payments on the condominium unit. Plaintiffs further inform the Court that plaintiff thereafter transferred his interest in the condominium to AMCC, of which plaintiff is the president and sole shareholder. After the parties were unable to resolve a dispute regarding how much each would be entitled to upon a sale of the condominium, this partition action ensued.

Plaintiffs allege that defendant took the position that as he had paid more than half of the mortgage payments, monthly maintenance charges, real estate taxes, utilities and other carrying charges for the condominium, in the aggregate sum of \$83,925, he was entitled to either: (1) a greater percentage of ownership interest in the condominium; or (2) reimbursement of one-half of the amounts he had advanced plus interest thereon.

On March 18, 2008, the instant matter was tried before this Court without a jury, and the Court reserved decision. However, before a decision was rendered, the parties agreed to settle. The settlement was memorialized in a Stipulation of Settlement, dated April 2008, which was executed by plaintiff in his individual capacity as well as his capacity as president of AMCC, by defendant, and by counsel for both plaintiffs and defendant ("Stipulation"). The Stipulation provides that the condominium would be listed for sale forthwith at an initial asking price of \$395,000, and that the proceeds would be disbursed as follows: (1) defendant was to be paid one-half of the "Adjusted Payments Amount," which was defined therein as \$63,925.00, representing the \$83,925 claimed by defendant minus \$20,000 reimbursed to defendant by plaintiff and/or AMCC in 2004; (2) defendant was to be paid one-half of any money he expended subsequent to the date of the Stipulation for monthly maintenance charges, real estate taxes, utilities and other expenses, less any reimbursement to defendant by plaintiff and/or AMCC subsequent to the date of the Stipulation; (3) defendant was to be paid an additional sum of \$25,000 in lieu of the interest defendant claimed he was owed; (4) AMCC was to be paid one-half of any money it expended subsequent to the date of the Stipulation for monthly maintenance charges, real estate taxes, utilities and other expenses, less any reimbursement to plaintiff and/or AMCC by defendant subsequent to the date of the Stipulation; and (5) AMCC and defendant were to split the remaining proceeds in equal shares.

However, plaintiffs claim that when the Stipulation was drafted, "we inadvertently deducted the \$20,000 that [plaintiff] had previously repaid from the \$83,925.00 before it was divided by 2, thereby reducing the number to be divided

by \$20,000, resulting in [defendant] receiving $\frac{1}{2}$ of \$63,925.00 (\$31,9632.50) [sic] plus \$25,000 plus \$3,582.33 ($\frac{1}{2}$ of \$7,164.66) for a total of \$60,544.83, which is \$10,000.00 **more** than he would have received but for the mathematical error” (emphasis in original). Plaintiffs allege that this issue was brought to the attention of defendant’s counsel, but that defendant’s position is that no mathematical mistake had been made. As such, plaintiffs filed the instant application to reform the Stipulation to reflect the true intent of the parties based upon mutual mistake, and for a direction that defendant refund to AMCC the \$10,000 overpayment.

In opposition, defendant contends that this action was settled by Stipulation of the parties almost two years ago and was entered into after consultation and review with their respective attorneys, is without mathematical error, and should not be disturbed.

Defendant alleges that the figures and calculations in the Stipulation were based upon a Condo Analysis Summary which defendant had prepared for the trial of this matter. Defendant argues that plaintiff now seeks preferential treatment for his one-time contribution of \$20,000, which defendant alleges was used to make a \$20,000 mortgage reduction on February 16, 2004. Defendant contends that plaintiff benefitted by the aforementioned payment to the extent of \$10,000, which constituted a reduction of mortgage principal at that time. However, defendant also contends that the \$20,000 was used for joint condominium expenses. Defendant alleges that his out-of-pocket expenses of \$83,925 and plaintiff’s \$20,000 contribution for a mortgage reduction formed the basis for the settlement agreement. Thus, defendant claims that the \$20,000 was deducted from the \$83,925.00, and then the net figure was properly divided by two.

For a party to be entitled to reformation of a contract on the ground of mutual mistake, the mutual mistake must be material, i.e., it must involve a fundamental assumption of the contract (see *Janowitz Bros. Venture v 25-30 120th St. Queens Corp.*, 75 AD2d 203 [1980]). A party need not establish that the parties entered into the contract because of the mutual mistake, only that the “material mistake . . . vitally affects a fact or facts on the basis of which the parties contracted” (*id.* at 214). Moreover, to overcome the heavy presumption that a deliberately prepared and executed written instrument manifested the true intention of the parties, “proof of mistake must be ‘of the highest order’ [and] must ‘show clearly and beyond doubt that there has been a mistake’ and . . . it must show with equal clarity and certainty the exact and precise form and import that

the instrument ought to be made to assume, in order that it may express and effectuate what was really intended by the parties' " (*id.* at 215, quoting 13 Williston, Contracts [3d ed], § 1548, at 125; see *True v True*, 63 AD3d 1145 [2009]; *Friedman v Friedman*, 247 AD2d 430 [1998]; *Surlak v Surlak*, 95 AD2d 371 [1983]). As "the thrust of a reformation claim is that a writing does not set forth the actual agreement of the parties," both the parol evidence rule and the statute of frauds are inapplicable (see *Chimart Assoc. v Paul*, 66 NY2d 570, 573 [1986]). Therefore, a party seeking to reform a contract based on mutual mistake may rely on extrinsic evidence even if the agreement is not ambiguous (*id.* at 573).

Here, the Court finds that plaintiffs have overcome the presumption that the Stipulation manifested the true intention of the parties. The sixth "WHEREAS" clause of the Stipulation recites that "during the time that the parties have owned the PREMISES, [defendant] has paid more than half of the mortgage payments, monthly maintenance charges, real estate taxes, utilities and other expenses of owning and maintaining the PREMISES, aggregating the sum of \$83,925.00 as of the date of this Stipulation; and has taken the position that he is entitled to either (1) a greater percentage of ownership interest in the PREMISES because of the amount of his payments or (2) reimbursement of one half of the amounts he has advanced plus interest thereon." The seventh "WHEREAS" clause in the Stipulation recites that "[plaintiff] and/or AMCC reimbursed [defendant] for \$20,000.00 of the moneys he has expended, so that the amount thereof has been reduced to \$63,925.00 as of the date of this Stipulation (the 'Adjusted Payments Amount')." Moreover, the eighth "WHEREAS" clause then recites that "AMCC and [plaintiff] have taken the position that [defendant] is only entitled to a one half interest in the PREMISES and to reimbursement of only one half of the Adjusted Payments Amount." The Court notes that the Stipulation specifically provides that the aforementioned recitals are an integral part thereof.

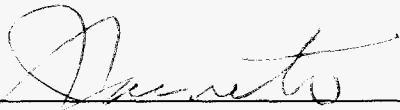
Based upon the foregoing, the Court finds that the intent of the parties was to reimburse defendant for one half of the \$83,925 claimed by defendant, while providing a credit to plaintiff for the \$20,000 contribution he made in 2004. According to the Condo Analysis Summary defendant had prepared, the \$83,925 represented the amount expended by defendant in connection with the condominium, for the period 1989 through 2008, after accounting for the rental income received. Therefore, the Court finds that plaintiff (and/or AMCC) and defendant were each responsible for half of the \$83,925 expended, or \$41,962.50, as the condominium is owned by AMCC and defendant

as tenants in common. Thus, before any reimbursement, plaintiff (and/or AMCC) owed defendant \$41,962.50 for this period. When plaintiff (and/or AMCC) reimbursed defendant \$20,000, that sum reduced the amount owed to defendant to \$21,962.50. However, by deducting \$20,000 from the \$83,925 prior to dividing it by two pursuant to the Stipulation, defendant was reimbursed the amount of \$31,962.50, or an extra \$10,000.

In view of the foregoing, this motion by plaintiffs to reform the Stipulation and to direct that defendant refund to AMCC the \$10,000 overpayment, is **GRANTED**.

The foregoing constitutes the decision and Order of the Court.

Dated: June 22, 2010



HON. JOSEPH FARNETI
Acting Justice Supreme Court