

Sovereign Bank v President St. Assoc., LLC
2010 NY Slip Op 32575(U)
September 13, 2010
Supreme Court, Nassau County
Docket Number: 026289/2009
Judge: Ira B. Warshawsky
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SHORT FORM ORDER

**SUPREME COURT: STATE OF NEW YORK
COUNTY OF NASSAU**

P R E S E N T :
HON. IRA B. WARSHAWSKY,
Justice.

TRIAL/IAS PART 8

SOVEREIGN BANK,

Plaintiff,

INDEX NO.: 026289/2009
MOTION DATE: 07/19/2010
MOTION SEQUENCE: 001

- against -

PRESIDENT STREET ASSOCIATES, LLC,
30 HUNTINGTON REALTY, LLC, and
SOLOMON J. STEINLAUF,

Defendants.

The following papers read on this motion:

Notice of Motion, Affidavits & Exhibits Annexed	1
Memorandum of Law in Support of Plaintiff's Motion for Partial Summary Judgment and Amendment to Caption	2

PRELIMINARY STATEMENT

Plaintiff moves for summary judgment based upon responses of defendant to the complaint, and for leave to amend the caption so as to identify Solomon J. Steinlauf as also being known as Solomon Steinlauf. The motions are unopposed.

BACKGROUND

Plaintiff alleges an overpayment of \$332,511.39 at the closing of a March 29, 2006 loan modification and consolidation transaction. Plaintiff's predecessor-in-interest, Independence Community Bank, agreed to refinance a pre-existing \$345,000 loan transaction from June 7, 2004. As of March 29, 2006, the unpaid balance was \$332,511.37, which was intended to be increased by \$1,212,488.63, making a total principal balance of \$1,545,000. Unfortunately,

instead of advancing the additional \$1,212,488.62, the bank advanced the full \$1,545,000, meaning that defendants received an additional \$332,511.37, which they were not obligated to pay in accordance with the modification and extension agreement.

The note signed at the closing was for \$1,212,488.63, not the full amount advanced. It is signed above the name “Solomon J. Steinhauf”, as sole member and manager of both President Street Associates, LLC and 30 Huntington Realty, LLC.

Plaintiff did not recognize its error until September 30, 2009, the date upon which the original 2004 loan matured. It asserts that from the date of closing on March 29 through September 30, 2009 defendants continued to make payments on the original loan, although it had been consolidated into the 2006 loan, received monthly statements on the original loan, remitted separate payments on the 2006 loan, and paid into real estate tax escrow funds simultaneously on both loans.

The complaint includes causes of action for fraud; monies had and received; unjust enrichment; conversion; and, against Steinlauf only, aiding and abetting a conversion.

DISCUSSION

Summary Judgment

When presented with a motion for summary judgment, the function of a court is “not to determine credibility or to engage in issue determination, but rather to determine the existence or non-existence of material issues of fact.” (*Quinn v. Krumland*, 179 A.D.2d 448, 449 — 450 [1st Dept. 1992]); See also, (*S.J. Capelin Associates, Inc. v. Globe Mfg. Corp.* 34 N.Y.2d 338, 343, [1974]).

To grant summary judgment, it must clearly appear that no material and triable issue of fact is presented. (*Stillman v. Twentieth Century-Fox Corp.*, 3 N.Y.2d 395, 404 [1957]). It is a drastic remedy, the procedural equivalent of a trial, and will not be granted if there is any doubt as to the existence of a triable issue. (*Moskowitz v. Garlock*, 23 A.D.2d 94 [3d Dept. 1965]); (*Crowley’s Milk Co. v. Klein*, 24 A.D.2d 920 [3d Dept. 1965]).

The evidence will be considered in a light most favorable to the opposing party. (*Weill v. Garfield*, 21 A.D.2d 156 [3d Dept. 1964]). The proof submitted in opposition will be accepted as true and all reasonable inferences drawn in favor of the opposing party. (*Tortorello v. Carlin*, 260

A.D.2d 201, 206 [1st Dept. 2003]). On a motion to dismiss, the court must “ ‘ accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory’ ”. (*Braddock v. Braddock*, 2009 WL 23307 [N.Y.A.D. 1st Dept. 2009]), (citing *Leon v. Martinez*, 84 N.Y.2d 83, 87 — 88 [1994]). But this rule will not be applied where the opposition is evasive or indirect. The opposing party is obligated to come forward and bare his proof, by affidavit of an individual with personal knowledge, or with an attorney’s affirmation to which appended material in admissible form, and the failure to do so may lead the Court to believe that there is no triable issue of fact. (*Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 [1980]).

Documentary Evidence

Defendants’ answer denies information sufficient to form a belief as the truth of the allegations contained in ¶¶ 17 — 19, which specifically allege that borrowers agreed to an increased loan amount of \$1,212,488.63; that the lender actually advanced \$1,545,000; and that the amount paid out was \$332,511.37 in excess of the amount to which defendants were entitled. Despite plaintiff’s contention to the contrary, defendants have not admitted the essential claim of the complaint alleging monies had and received, much less fraud, unjust enrichment or conversion.

Nevertheless, summary judgment is appropriate where an action turns on the construction of a contract, and the contract language is unambiguous. (*Vermont Teddy Bear Co. v. 528 Madison Realty Co.*, 1 N.Y.3d 470 [2004]). The loan documents, specifically the Consolidation, Extension and Modification Agreement, annexed as Exh. “B” to the motion papers, makes it abundantly clear that borrowers were to receive an additional \$1,212,488.63 at closing, bringing the total principal of the loan to \$1,545,000. Exh. “G”, however, reflects distribution of \$1,545,000, \$332,511.37 in excess of the amount due.

Claim for Monies Had and Received

In order to succeed on a claim for money had and received, a party must show (1) that defendant received money belonging to plaintiff; (2) defendant benefitted from the receipt of the money; and (3) under principles of good conscience defendant should not be allowed to retain that money. (*Board of Edu. Of Cold Spring Harbor Cent. School Dist. V. Terttaliata*, 78 N.Y.2d

128, 138 [1991]). The statute of limitations for such a claim, quasi-contractual in nature, is six years. (*37 Park Drive South v. Duffy*, 63 A.D.3d 1040 [2d Dept. 2009]).

The same period of limitations applies to a claim for unjust enrichment. *Id.* The essence of a claim for unjust enrichment is analogous, in that it requires a showing that the defendant has been enriched at the cost of the plaintiff, and that principles of equity preclude the retention of the benefit. (*Abacus Federal Savings Bank v. Lim*, 75 A.D.3d 472 [1st Dept. 2010]).

Conversion

Conversion is an unauthorized exercise of dominion and control over personal property which interferes with a superior possessory right of another. Under circumstances in which money is conveyed to another, under a mistake of fact, the absence of contributory negligence of the recipient is not a defense to the claim for conversion. (*Citibank, N.A. v. Warner*, 113 Misc.2d 748 [Sup. Ct. NY County, 1981]).

In *Banque Worms v. Bankamerica International*, 77 N.Y.2d 362, 366 (1991), the Court was responding to a certified question from the Second Circuit as to whether or not New York recognized the doctrine of “discharge for value”, which concept has no relevance in this action. In the course of its analysis, the Court noted that New York has long recognized in the area of restitution, that if one mistakenly pays money to another, they are entitled to reimbursement whether the claim is denominated one for money had and received, unjust enrichment or quasi contract (internal citations omitted).

Irrespective of the terms used by plaintiff, be they “money had and received”, “unjust enrichment”; “quasi contract”; or conversion, defendant has not shown a material change of position in reliance upon the mistaken payment. Neither can retention be justified on a claim that payment was made, albeit erroneously, to a third party creditor of the party to whom payment was intended, invoking the doctrine of “discharge for value”.

CONCLUSION

Plaintiff seeks summary judgment on the Second, Third, and Fourth Causes of Action, asserting, money had and received, unjust enrichment and conversion. Plaintiff has adequately set forth grounds for the grant of such relief, and defendants have not established any basis on which they should be entitled to retain the mistakenly paid funds. Plaintiff is entitled to

judgment against defendants President Street Associates, LLC and 30 Huntington Realty, LLC. The Second and Third Causes of Action are asserted against all defendants, but plaintiffs have not shown that Steinlauf personally received, or benefitted from the erroneous payment.

In the Fifth Cause of Action, upon which they do not request summary judgment, plaintiff claims that Steinlauf "aided and abetted" the conversion of funds. This is essentially an effort to pierce the corporate veil, which is not a separate cause of action, but rather an assertion of facts which will cause the Court to impose liability for the obligations of the entity upon the individual who dominates and controls it. Plaintiffs have pointed out that Steinlauf is the sole member and principal of the two companies, but this is insufficient to warrant piercing of the corporate veil. (*Meisels v. Schon Family Foundation*, 28 Misc.3d 1205(A) [Sup.Ct. Kings Co. 2010]).

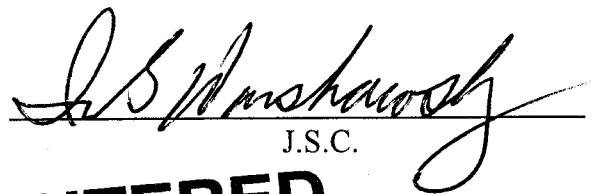
The motion for Summary Judgment on the Second, Third and Fourth Causes of Action is granted against President Street Associates, LLC and 30 Huntington Realty, LLC but denied as against defendant Steinlauf.

The motion to amend the caption to identify the individual defendant as a/k/a Solomon Steinlauf is granted.

Submit Judgment.

This constitutes the Decision and Order of the Court.

Dated: September 13, 2010


J.S.C.

ENTERED

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COUNTY CLERK'S OFFICE