Central Suffolk Hosp. Found. v North Fork Radiology, P.C.
2010 NY Slip Op 33230(U)
November 8, 2010
Supreme Court, Suffolk County
Docket Number: 10768-2010
Judge: Emily Pines
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SHORT FORM ORDER

Index Number: 10768-2010

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

COPY

Present: HON. EMILY PINES
J. S. C.

Original Motion Date: 07-19-2010
Motion Submit Date: 08-31-2010
Motion Sequence .: 001 MGCASEDISP

[X] FINAL DISP
[ ] NON - FINAL DISP

X

CENTRAL SUFFOLK HOSPITAL FOUNDATION d/p/a PECONIC BAY MEDICAL FOUNDATION and CENTRAL SUFFOLK HOSPITAL d/p/a PECONIC BAY MEDICAL CENTER,

Plaintiff,

-against-

NORTH FORK RADIOLOGY, P.C.,

Defendant.

X

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The Peconic Bay Medical Center and its not for profit chief fundraising entity (collectively "Peconic Bay Medical") move , by Notice of Motion (motion sequence # 001) for Summary Judgment pursuant to CPLR § 3212, seeking an order directing the Defendant, North Fork Radiology, P C ("North Fork") to pay the $152,500 current balance of a written pledge by Defendant in connection with Peconic Bay Medical Center's expansion and modernization project. Plaintiff also seeks a declaration that the remaining balance on the pledge of $200,000 amounts to $185,000, the Defendant having paid only $15,000. North Fork asserts that Summary Judgment is inappropriate because no consideration was given for the Pledge, no reliance was had thereon by the

Plaintiff, and Plaintiff's Chairman orally released the Defendant from payment.

Plaintiff asserts that in 2004, through its fundraising arm, it commenced a $50,000,000 expansion and modernization project. Although most of the funds were raised through bonds, approximately $10,000,000 were raised from members of the community, on which the Plaintiff relied. Specifically, the Defendant herein signed a written Pledge Agreement, attached to the motion papers, agreeing to pay $33,500 on a quarterly basis in each year from 2005 through 2009 and $2,500 on such quarterly basis in calendar year 2010. North Fork made one payment in the amount of $15,000 in August 2006. Plaintiff alleges that it has made repeated demands for payment, attaching letters to the Defendant (six such letters were sent in 2009) along with updates on the progress of the project and a telephone call on September 29, 2009. According to the fundraising Chairman, Gordon Huszagh, North Fork provided no excuse for its nonpayment and has simply decided not to fulfill its obligations.

In response to the motion, North Forth asserts that it made the pledge in October, 2004, when it was providing exclusive radiology services at the Peconic Bay Medical Center. However, in October 2007, the hospital terminated the Defendant's services and has not renewed the exclusive services agreement. Thereafter, North Fork asserts that it suffered sever financial setbacks and, although having made one $15,000 payment, was unable to make any more payments on the Pledge Agreement. North Fork asserts that it did not begin to receive letters from the Plaintiff regarding the pledge until early 2009, over 2 and ½ years since its payment was made. Thereafter in the Fall of 2009, Martin Van Dyne, who describes himself as a "partner" in North Fork, alleges that he received a telephone call from J. Gordon Huszagh; that he told Mr. Huszagh about North Fork's financial plight and that Huszagh orally released North Fork from its pledge. In addition to the above, North Fork asserts that the Plaintiff could not possibly have relied on its small pledge as the type of equipment and work that the plaintiffs assert they performed

in reliance thereon cost in the millions of dollars. Finally, North Fork asserts that its Pledge references work done in the Radiology Department and none of Plaintiff's 2009 letters set forth what work was being done in the radiology department. All of the above, according to North Fork, raise issues of fact, precluding Summary Judgement.

In reply, Plaintiffs , although denying the statements attributed to Huszagh, argue that Defendant does not even set forth what consideration, if any, was offered for the so-called oral modification of the enforceable written agreement. With regard to the Defendant's allegation that there was no consideration offered for the Defendant's pledge, Plaintiffs cite to case law standing for the proposition that work performed by charities after a written pledge will be enforced. Plaintiff also submits evidence of over $5 million in improvements to the Radiology Department since this fundraising campaign began in 2004, over $1 million of which had been completed by 2007.

A party moving for Summary Judgment 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. **Winegrad v New York University Medical Center**, 64 NY 2d 85, 487 NYS 2d 316 (1985); **Zuckerman v City of New York**, 49 NY 12d 557, 404 NE 2d 718, 423 NYS 2d 595 (1980). The burden then shifts to the opposing party to produce evidence in admissible form sufficient to establish material issues of fact which require a trial. **State Bank of Albany v McAuliffe**, 97 AD 2d 607, 467 NYS 2d 944 (3d Dep't 1983).

It is well settled that charitable pledges constitute enforceable contracts, since they are viewed as unilateral offers, which when accepted by the charitable organization in reliance thereon, become binding obligations. **Versailles Foundation, Inc. v The Bank of New York**, 202 AD 2d 334, 610 NYS 2d 2 (1st Dep't 1994); **Cohoes Memorial**

Hospital v Moss, 25 AD 2d 476, 266 NYS 2d 501 (3d Dep't 1966). Where money, time or labor has been expended by charitable organizations in reliance upon the pledges by promised donors, the erection of the building or enhancement thereof are considered valid consideration for the promise made. **Cohoes, supra; Keuka College v Ray**, 167 NY 96, 69 NE 325 (1901); **Tioga County General Hospital v Tidd,** 164 Misc 273, 298 NYS 2d 460 (Sup Ct 1937). Thus, while it may be true that consideration is necessary to make a charitable pledge binding, the dictates of public policy have historically afforded courts rather broad latitude in what that constitutes. Therefore, the act of performing the service of building the hospital, educational institution or religious project are generally upheld as sufficient consideration for a pledge. **See, Woodmere Academy v Steinberg**, 41 NY 2d 746, 3636 NE 2d 1169, 395 NYS 2d 434 (1977) . As stated by Judge Fuchsberg, "(t)o lightly withhold judicial sanction from such obligations would be to destroy millions of assets of the most beneficial institutions in our land and to render such institutions helpless to carry out the purpose of their organizations". **Id (citing Brokaw v McElroy**, 162 Iowa 288).

Once a writing is determined to be a valid enforcible contract, it can be modified orally only if the opposing party can demonstrate both the terms of the modification and the consideration given in support of such modification. **See, Credit Suisse First Boston Corp v Cooke**, 284 Ad 2d 365, 724 NYS 2d 395 (2d Dep't 2001); **Northeast Small Business Investment Corp v Waccabuc Investors** Inc, 90 Ad 2d 538, 455 NYS 2d 107 (2d Dep't 1982).

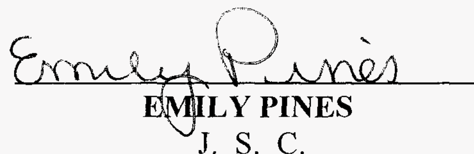
There is no question, in the Court's view, that Peconic Bay Medical has demonstrated, prima facie, its entitlement to Summary Judgment. It has produced a pledge agreement, signed by the Defendant, in connection with a major expansion of a hospital, which has been in progress for many years and has produced expansion and

refurbishing of a hospital facility in many areas, including that of radiology. Based on the dictates of case law over the past hundred years, this court does finds that sufficient consideration has been given for the pledge, since there is no issue as to whether the construction and renovation has, in fact occurred. Having made a unilateral pledge of $200,000 in writing for which the Peconic Bay Medical has provided sufficient consideration, North Fork must be held to its bargain, absent sufficient proof of modification of its obligations. In its answering papers, the Defendant does not even set forth what consideration was tendered in return for its allegation of oral release from its written pledge. Therefore, upon the shift of the burden to the Defendant, that party fails to sustain its burden of demonstrating the existence of a material fact and Summary Judgment must be granted. In the Court's view, even if Plaintiff's fundraising chair has made a verbal release to the Defendant, such would not be enforcible as a matter of law, based on the binding written agreement.

Accordingly, the plaintiff's motion for Summary Judgment is granted, declaring the October pledge by North Fork to be a valid, enforceable , binding contract; declaring that $185,000 remains due and owning to the Plaintiff on such agreement; and granting Plaintiff Judgment in the amount of $152,500 as set forth in Plaintiff's motion papers.

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

Dated: November 8, 2010
Riverhead, New York



EMILY PINES
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