

Block v McCaffree

2011 NY Slip Op 33150(U)

November 22, 2011

Sup Ct, Nassau County

Docket Number: 001684-09

Judge: Timothy S. Driscoll

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**SUPREME COURT-STATE OF NEW YORK
DECISION AFTER TRIAL
HON. TIMOTHY S. DRISCOLL
Justice Supreme Court**

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ALLAN HOWARD BLOCK,

**TRIAL/IAS PART: 20
NASSAU COUNTY**

Plaintiff,

-against-

Index No: 001684-09

BENEDICT BRADFORD MCCAFFREE,

Defendant.

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Attorney for Plaintiff

Attorney for Defendant

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DECISION AND ORDER AFTER TRIAL

This action was tried before the Court on July 11 and 12, 2011 as to the following causes of action in Plaintiff's Corrected Verified Amended Complaint: (a) breach of fiduciary duty, (b) breach of contract, and (c) contribution. The parties then submitted post-trial memoranda in August and September, 2011.

Plaintiff's case at trial consisted of his own live testimony, along with various exhibits. Defendant's case at trial similarly consisted of his own live testimony, along with various exhibits. Both witnesses were subject to cross-examination.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Block attended Adelphi University and the University of Pennsylvania. Upon

completing graduate school in 1971, he went to work at MacClean Services Company, Inc. (“MacClean”). MacClean was owned at that time by the family of Block’s then-fiancee, and now wife. Block’s initial responsibilities included estimating new jobs, customer relations, and operations. In approximately 1983 or 1984, Block rose to the rank of Executive Vice President in charge of sales and operations. At its largest, the company did over \$30 million in annual business, and employed over 2,500 people.

As part of a bankruptcy reorganization in 1986, Block’s wife acquired an ownership interest in the company in 1986 by purchasing her father’s ownership interest. In the early 1990s, the company again changed ownership as part of a bankruptcy reorganization, and Block’s wife and her mother became the company’s sole owners. Much of the operating capital of the company was used to finance this ownership restructuring.

MacClean’s fortunes changed for the worse in the early 1990s. This was primarily the result of two factors. First, New York State decided to collect sales tax for services rendered, in addition to items sold. This had a deleterious effect on MacClean’s profit margins. Second, issues with various unions affected the company’s ability to compete for business. The company again sought bankruptcy protection in the late 1990s, but was unable to achieve approval for reorganization and thus sought a potential purchaser.

In the course of meeting potential purchasers, Block was introduced to defendant McCaffree, who is an attorney and who professed to have a background in finance. Block admitted that he had little acumen for the company’s financial matters. The two men discussed a partnership in which McCaffree would handle the legal matters and finances, and Block would handle the operations.

Block and McCaffree eventually created Okland Holdings, LLC (“Okland”) in June

2001. Okland purchased MacClean's assets effective December 1, 2001, with an acquisition price of \$400,000. Financing for the transaction was provided by a \$500,000 loan from Banco Popular through the Small Business Administration (Px 2, 3, 4). Block and McCaffree both guaranteed this loan. Pursuant to Okland's Operating Agreement, Block initially held a five percent ownership interest in Okland, with McCaffree holding the remaining interest. In late 2003, that was changed, and the parties each had a fifty percent interest in the company (Px 5).

Okland's business prospects quickly faded shortly after it was founded, due to its loss of various significant service contracts. Okland failed to make a series of quarterly sales tax payments for the third and fourth quarters of 2002, and the first and second quarters of 2003. As a result, the New York State Department of Taxation and Finance filed a tax lien warrant in 2004 against Block's residence in Muttontown. Block then refinanced the mortgage for his residence in 2006, which allowed for the payment of some \$310,000 for the overdue sales tax payments, as well as nearly \$200,000 in additional tax obligations of MacClean which had survived the sale to Okland. The credible testimony and evidence established that Block's payment of the sales tax was considered a capital contribution to Okland, and thus served as the basis for his ownership stake increase to fifty percent. Okland's operating agreement (Px 1) provided that a party making a capital contribution to the company had no right to demand or receive return of that contribution. The operating agreement further provided that the parties were to seek arbitration to settle any differences in their business relationship.

As Okland continued to fail in late 2005, Block sought to recharacterize his payment of the outstanding sales tax as a "loan" rather than a "capital contribution." Thus, shortly after Block refinanced his residence, Okland eventually provided a promissory note to Block (the "Block Note") for repayment of \$309,000 with compounded annual interest of 7.725% (Px 8).

The debt in the Block Note was unsecured; there is no writing evidencing any obligation on McCaffree's part to repay any of that amount. The Court concludes that there is no writing because the parties, who reduced the essence of their entire business relationship to writing and introduced those writings in evidence, did not intend for McCaffree to repay any of that amount.

Okland was sold for a nominal price on March 31, 2006 (Px 6). Okland had significant debts remaining after the sale, and thus Block and McCaffree executed a promissory note (the "Hudson Note") on March 10, 2007 (Px 9). By the terms of the Hudson Note, Block and McCaffree agreed to retire jointly some \$401,800 in debt owed by Okland. The retirement of debt was to be accomplished through the sale of residential property McCaffree owned in Brooklyn and Block's residence in Muttontown. In essence, the note required Block and McCaffree to share equally the enumerated debt of \$401,800, which was comprised of the following components:

1.	Banco Popular Loan	\$309,000
2.	NY Sales Tax Levy	\$ 29,000
3.	Bianco Legal Debt	\$ 37,000
4.	Marcus Accounting Debt	\$ 11,000
5.	Wells Fargo Lease	\$ 10,800
6.	Miscellaneous Expenses	\$ 5,000

Block and his wife sold their home in March 2007. As part of the proceeds from the sale, Block paid off the SBA Banco Popular loan, which then had a balance of \$324,700.35. McCaffree then sold the Brooklyn property shortly thereafter, and paid Block \$100,000 from the proceeds. Various documents introduced in evidence, along with the credible testimony of McCaffree, established that, in fact, (a) Okland had debt of approximately \$450,000, thereby

exceeding the enumerated amount in the Hudson Note, (b) Block repaid \$224,700 of that debt, and (c) McCaffree repaid the remaining debt, totaling \$237,466.

The law is fairly well-established regarding the causes of action asserted by Block. To establish a cause of action for breach of contract, one must demonstrate: 1) the existence of a contract between the plaintiff and defendant, 2) consideration, 3) performance by the plaintiff, 4) breach by the defendant, and 5) damages resulting from the breach. *Furia v. Furia*, 116 A.D.2d 694 (2d Dept. 1986). The elements of a claim for breach of fiduciary duty are: (1) existence of a fiduciary relationship, (2) misconduct, and (3) damages directly caused by the wrongdoer's misconduct. *Fitzpatrick House III, LLC v. Neighborhood Youth & Family Services*, 55 A.D.3d 664 (2d Dept. 2008); *Kurtzman v. Bergstol*, 40 A.D.3d 588, 590 (2d Dept. 2007).

The credible evidence and testimony before the Court established that Block's claim for breach of contract, which claim is based upon the Block Note and the Hudson Note, must fail. First, the Block Note does not impose any obligations upon McCaffree to pay to Block any of the amount in that note. Nor is there any other document providing a basis for McCaffree to pay to Block any of the amount that resulted in the execution of the Block Note. Finally, inasmuch as the Block Note imposes liability on Okland, there is no basis to pierce the corporate veil and impose Okland's liability upon McCaffree. Thus, because McCaffree is not a party to the Block Note, and there is no writing or other credible evidence that either pierces the corporate veil to render McCaffree liable for that note or independently obligates him to pay any portion of the amount reflected in that note, any claim based on that Note or the amounts reflected in it must fail.

Nor can Block recover on his breach of contract claim based upon the Hudson Note. The credible testimony and evidence established that McCaffree fully complied with the terms of that

note. More specifically, the Hudson Note required McCaffree to pay half of the enumerated debts of Okland. McCaffree paid more than half of these debts. Accordingly, McCaffree has fully complied with the terms of the Hudson Note.

Block also cannot prevail on his claim for breach of fiduciary duty. The essence of Block's claim for breach of fiduciary duty is that McCaffree somehow breached a fiduciary duty to Block by "failing to reimburse Plaintiff for the satisfaction of debts of Okland Holdings LLC to which Plaintiff and Defendant were jointly liable." Complaint para. 26. At the outset, as set forth above, the "satisfaction of debts of Okland" is governed by the Block Note and the Hudson Note. There was no evidence that those notes were the product of any overreaching or improper conduct by McCaffree. Moreover, McCaffree acted entirely in accordance with his obligations under the notes. Put another way, his actions do not constitute "misconduct" that amount to a breach of any fiduciary duty to Block.

Finally, Block is not entitled to recover on his claim for contribution. The principles underlying a party's right to contribution are correctly summarized by Block in his post-trial submission:

The right to contribution . . . is not dependent on contract or joint action or original relationship between the parties. It is based on principles of fundamental justice and equity. [Thus], where through mere chance . . . one security owner has been made to bear a larger proportion of a common burden than was his just share, he is entitled to call for contribution and assistance."

Asylum of St. Vincent dePaul v. McGuire, 239 N.Y. 375 (1925). Here, it is true that Block repaid the entire amount of Okland's outstanding sales tax warrants following the initial refinancing of his home in 2006. This was hardly through "mere chance," however. Indeed, following that payment, Block negotiated a promissory note by which Okland would repay half

of this amount. The amount that Block had paid was initially characterized as a capital contribution to Okland, thereby vesting him with certain rights. Later, that amount was recharacterized as a loan, thereby providing a potential tax advantage to Block. In short, there is hardly a miscarriage of "fundamental justice" nor is it against equitable principles to deny Block any contribution from McCaffree towards any amount that resulted in the execution of the Block Note when the parties' relationship was the result of negotiations, and the various proceedings during that relationship could well have provided tax advantages to Block.

The Court has considered the parties' remaining contentions and concludes that neither party is entitled to relief beyond that granted above. To the extent that McCaffree believes, as set forth in his post-trial memorandum, that he is entitled to attorney's fees, he must file a separate plenary action, inasmuch as his Answer neither included a counterclaim nor otherwise provided notice to Block of the basis for such a claim beyond a bare-bones prayer for relief at the end of his Answer.

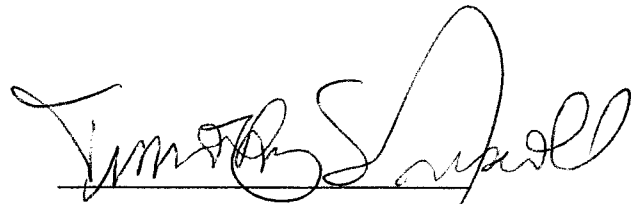
All matters not decided herein are hereby denied.

This constitutes the decision and order of the Court.

ENTER

DATED: Mineola, NY

November 22, 2011



HON. TIMOTHY S. DRISCOLL

J.S.C.

ENTERED
DEC 05 2011 ⁷
NASSAU COUNTY
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