

Mompalo v Prinzi

2011 NY Slip Op 33332(U)

September 30, 2011

Supreme Court, Richmond County

Docket Number: 101179/2009

Judge: Philip G. Minardo

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

WALTER MOMPALO and LINDA MOMPALO,

Plaintiff(s),

-against-

RICHARD M. PRINZI, JR. a/k/a RICHARD
PRINZI,

Defendant(s).

DCM PART 6

HON. PHILIP G. MINARDO

DECISION AND ORDER

Index No.: 101179/2009

Motion No. 867-002

The following papers numbered 1 to 3 were fully submitted on the 30th day of June, 2011.

	Papers Numbered
Defendant’s Notice of Motion, dated April 7, 2011, with Exhibits _____	1
Plaintiffs’ Affirmation in Opposition, dated June 1, 2011, with Exhibit _____	2
Defendant’s Attorney Affirmation in Reply, dated June 21, 2011 with Exhibits _____	3

Defendant RICHARD M. PRINZI, JR.’s motion, pursuant to CPLR 3212, for summary judgment and, pursuant to CPLR 3211(1), (2), and (5), to dismiss plaintiffs’ complaint is granted.

Defendant RICHARD M. PRINZI, JR. (hereinafter PRINZI) is a certified public accountant who is alleged to have provided services to plaintiffs including the preparation of delinquent tax returns. PRINZI is also alleged to have prepared a “financial plan” in order to assist plaintiffs with their financial difficulties. PRINZI denies that a “financial plan” ever existed.

Plaintiffs’ allege that the “financial plan” included PRINZ’s purchase of plaintiffs’ residence in Pennsylvania and plaintiffs’ lease of, with an option to buy, PRINZ’s home in Staten Island, New

York. The “financial plan” is also alleged to have included plaintiffs’ leaseback (including an option to purchase) of the Pennsylvania property after the sale to PRINZI. The terms of the alleged “financial plan” were not reduced to writing.

Plaintiffs’ causes of actions are grounded in allegations that PRINZI committed fraud and/or breached a fiduciary duty owed to plaintiffs in executing these transactions.

On or about May 1, 2007, plaintiffs entered in to a lease agreement with defendant for PRINZ’s Staten Island property which included a requirement that plaintiffs provide PRINZI with a \$100,000 down payment for plaintiffs to secure an option to purchase the home within two years. The down payment would be applied to the purchase price if plaintiffs exercised the option. If the plaintiffs did not purchase his residence within the two year period, they would forfeit the down payment to PRINZI as it was “non-refundable”.

Shortly after entering the lease agreement for the Staten Island property, plaintiffs signed a contract to sell their Pennsylvania residence to PRINZI for the sum of \$260,000. The \$100,000 down payment for the Staten Island option was due to PRINZI from plaintiffs upon the sale of the Pennsylvania property. Thereafter, plaintiffs also executed a lease with an option to buy the Pennsylvania residence. Plaintiffs are alleged to have netted approximately \$118,000 from the sale of the Pennsylvania home.

Plaintiffs did not exercise the option to buy either the Staten Island or Pennsylvania property. PRINZI retained the \$100,000 option payment from the Staten Island contract and was compelled to bring eviction proceedings in order to have plaintiffs vacate the Pennsylvania property.

Plaintiffs’ second, third, sixth and eighth causes of action as set forth in their complaint all relate to PRINZI’s purchase of plaintiffs’ Pennsylvania property. These claims include conversion,

unjust enrichment, improper holding of deed, and rescission. PRINZI moves to dismiss these claims based upon a forum selection/choice of law clause as contained in the contract of sale of the Pennsylvania residence. Plaintiffs claim that the Pennsylvania transaction is part of a “fraudulent scheme” perpetuated by PRINZI and that the forum/choice of law clause contained in the contract should be disregarded.

A “forum selection clause is prima facie valid and enforceable unless it is shown by the challenging party to be unreasonable, unjust, in contravention of public policy, invalid due to fraud or overreaching, or it is shown that a trial in the selected forum would be so gravely difficult that the challenging party would, for all practical purposes, be deprived of its day in court” (*Bernstein v. Wysoki*, 77 AD3d 241, 248-49 [2010], quoting *Stravalle v. Land Cargo, Inc.*, 39 AD3d 735,736 [2007], quoting *LSPA Enterprise, Inc. V. Jani-King of N.Y., Inc.*, 31 AD3d 394, 395 [2006]).

“Absent a strong showing that it should be set aside, a forum selection agreement will control” (*Bernstein, supra.*, 249).

The terms of the duly executed Pennsylvania contract include the following provision:

26. GOVERNING LAW, VENUE & PERSONAL JURISDICTION (9-05)

(A) The validity and construction of this Agreement, and the rights and duties of the parties, will be governed in accordance with the laws of the Commonwealth of Pennsylvania.

(B) The parties agree that any dispute, controversy or claim arising under or in connection with this Agreement or its performance by either party shall be decided exclusively by and in the state or federal courts sitting in the Commonwealth of Pennsylvania.

At no time do the plaintiffs allege that the inclusion of the forum selection clause in the Pennsylvania contract was a product of fraud or overreaching. As set forth above, plaintiffs have not contested the validity of the contract but seek to recover the proceeds from the sale which they allege were, among other things, wrongfully converted by PRINZI. Additionally, plaintiffs have failed to

demonstrate that the forum selection/choice of law clause was unconscionable. Accordingly, PRINZI's motion to for summary judgment and for the dismissal of plaintiffs' second, third, sixth, and eighth causes of action as set forth in the complaint are granted.

PRINZI also moves to dismiss plaintiffs' remaining causes of action related to the Staten Island property and alleged "financial plan" by raising the defense of the statute of frauds and/or parol evidence rule.

Plaintiffs claim that PRINZI had misrepresented to them that he would assist them in obtaining a mortgage for their purchase of the Staten Island property. Plaintiffs claim that PRINZI's representation that he could obtain a mortgage for plaintiffs despite their financial distress was a ruse because knew that plaintiffs would never qualify for such financing. Plaintiffs also claim that PRINZI had agreed, in the event that plaintiffs did not exercise the option, they would jointly make improvements to the Staten Island property, sell the property, and, thereafter, split the proceeds. However, none of these terms as alleged by plaintiffs are included in the Staten Island lease or any other written agreement.

It is unquestioned that the option to purchase clauses as contained in the addendum to the Staten Island lease agreement do not contain any representation or obligation by PRINZI to assist, guarantee, or otherwise secure a mortgage for plaintiffs to purchase the property. Accordingly, plaintiffs claims that PRINZI orally agreed to obtain a mortgage in connection with plaintiffs' purchase of the Staten Island property are barred by the statute of frauds (*Monter v. Massachusetts Mutual Life Insurance Company*, 12 AD3d 651 [2004]).

Lastly, although the parol evidence rule does not bar plaintiffs from asserting a claim of fraud, plaintiffs have failed to present sufficient facts to support their contention that a "financial plan" was

created by PRINZI in order to induce plaintiffs to enter into the Staten Island lease agreement (*see, Harris v. Hallberg*, 36 AD3d 857 [2007]).

ORDERED that the motion by defendant defendant RICHARD M. PRINZI, JR.'s motion, pursuant to CPLR 3212, for summary judgment and, pursuant to CPLR 3211(1), (2), and (5), to dismiss plaintiffs' complaint is granted.

This shall constitute the decision and order of the court.

ENTER

Dated: September 30, 2011

/s/ Philip G. Minardo
J. S. C.