

Sinrich v Fernwood Enters., Inc.
2012 NY Slip Op 32676(U)
October 22, 2012
Sup Ct, NY County
Docket Number: 110948/2010
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

HON. EILEEN A. RAKOWER

PRESENT: _____
Justice

PART 15

Index Number : 110948/2010
SINRICH, PHYLLIS
vs.
FERNWOOD ENTERPRISES, INC.
SEQUENCE NUMBER : 006
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). 1

Answering Affidavits — Exhibits _____ | No(s). 2

Replying Affidavits _____ | No(s). 3

FILED

Upon the foregoing papers, it is ordered that this motion is

OCT 25 2012

NEW YORK
COUNTY CLERK'S OFFICE

**MOTION IS DECIDED IN ACCORDANCE WITH
THE ACCOMPANYING MEMORANDUM DECISION.**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 10/22/12 _____, J.S.C.

HON. EILEEN A. RAKOWER

1. CHECK ONE: ☒ CASE DISPOSED ☐ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ☐ SETTLE ORDER ☐ SUBMIT ORDER
- ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

-----X
PHYLLIS SINRICH,

Plaintiff,

- against -

FERNWOOD ENTERPRISES, INC. and
NICOLA CORNWELL,

Defendant.

-----X
HON. EILEEN A. RAKOWER

Index No.
110948/2010

**DECISION
and ORDER**

Mot Seq. 6

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Phyllis Sinrich ("Plaintiff"), the mother of the late William Sinrich ("Decedent"), commenced this action against Decedent's wife Nicola Cornwell ("Defendant"), seeking to enforce an alleged contract and/or promise by Defendant to pay Plaintiff a share of Sinrich's U.K. estate. Plaintiff's Complaint alleges claims based on breach of contract, unjust enrichment, and promissory estoppel.

Presently before the Court is a motion for summary judgment by plaintiff Phyllis Sinrich. Defendant Nicola Cornwell cross-moves for summary judgment to dismiss the action against her.

Decedent, who died on February 2, 2007, had an estate in the United States worth approximately \$25 million and an estate in the United Kingdom worth approximately \$7 million. Decedent died intestate in the U.S. and his prenuptial agreement with Defendant addressed the distribution of his U.S. assets in the event of death.

Defendant commenced a separate action by way of petition in the Surrogate's Court New York County, seeking to become co-administrator of Sinrich's U.S. estate. Norman Sinrich, Decedent's father, cross-petitioned, seeking to be appointed as the administrator. In January 2008, this proceeding was settled, as memorialized in the Court's transcript (a copy of which was provided by Plaintiff). As per the settlement,

Defendant and her attorney were appointed co-administrators of Decedent's U.S. estate; Norman Sinrich received \$2.6 million as a distribution from the U.S. estate; Plaintiff received \$2 million as a distribution from the U.S. estate; Norman Sinrich withdrew his petition for letters of administration; and Norman Sinrich and Plaintiff released all other claims against the U.S. estate.

With regard to his U.K. estate, Decedent left a will wherein he bequeathed one third of the estate to Plaintiff and two-thirds to Defendant.

On March 13, 2007, Defendant contacted Plaintiff by e-mail concerning Plaintiff's one-third share of Decedent's UK estate. Defendant proposed that, in order to avoid paying an inheritance tax under UK law, Plaintiff could sign a "Deed of Variation", thereby allowing for a legal change to the will, directing that Defendant become the sole beneficiary of the estate. Defendant wrote, "Then once the estate has been disposed of I can then give the money back to you free from Inheritance Tax." The email went on to set forth the "pros and cons" of executing the deed, including: "on the plus side you [Plaintiff] keep more money" and "on the negative, you risk me never giving it back to you and legally you having no right to challenge." Plaintiff effectuated the Deed of Variation.

In October 2007, Defendant informed Plaintiff that the Deed of Variation had unfavorable tax consequences for Defendant. Defendant then asked Plaintiff to revoke her earlier relinquishments and sign a Deed of Disclaimer, which would disclaim Plaintiff's right to take under the will, and would also reduce Defendant's tax obligation. On October 30, 2007, Plaintiff executed a revocation of the Deed of Variation and signed and mailed a Deed of Disclaimer to Defendant's attorney in the U.K. Thereafter, in an e-mail on October 30, 2007, Defendant's counsel advised Plaintiff's counsel that there was no obligation on Defendant's part to pay any share of Sinrich's U.K. estate to Plaintiff. To date, Plaintiff claims that Defendant has not made any payments to Plaintiff directly from the U.K. estate.

Plaintiff contends that both Plaintiff and Defendant entered into a binding agreement, that Plaintiff performed under the agreement, and that Defendant breached the agreement. Defendant contends that the alleged contract between Defendant and Plaintiff is illegal and unenforceable. Defendant further contends that the payment to Plaintiff under the settlement of Decedent's U.S. estate (January 2008) sufficiently provided for Plaintiff and carried out Decedent's intention to provide for his mother.

The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law. That party must produce sufficient evidence in admissible form to eliminate any material issue of fact from the case. Where the proponent makes such a showing, the burden shifts to the party opposing the motion to demonstrate by admissible evidence that a factual issue remains requiring the trier of fact to determine the issue. The affirmation of counsel alone is not sufficient to satisfy this requirement. (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]). In addition, bald, conclusory allegations, even if believable, are not enough. (*Ehrlich v. American Moniger Greenhouse Mfg. Corp.*, 26 N.Y.2d 255 [1970]). (*Edison Stone Corp. v. 42nd Street Dev. Corp.*, 145 A.D.2d 249, 251-252 [1st Dept. 1989]).

The Court finds that Plaintiff has failed to make a prima facie showing of entitled to judgment as a matter of law. Defendant, however, has made such a requisite showing in her cross-motion.

Plaintiff's first claim is based on an alleged breach of contract. "The elements of a breach of contract claim are formation of a contract between the parties, performance by the plaintiff, the defendant's failure to perform, and resulting damage." (*Flomenbaum v New York Univ.*, 2009 NY Slip Op 8975, *9 [1st Dept. 2009]).

Here, however, there is no enforceable contract. The referenced March 13, 2007 e-mail from Defendant to Plaintiff, and subsequent e-mail correspondence between Plaintiff and Defendant, did not constitute an enforceable contract. "The agreement is illusory for lack of mutuality of obligation[.] While mutuality of obligation does not mean equality of obligation, it does mean that each party *must* be bound to some extent." (*Dorman v. Cohen*, 66 A.D.2d 411, 415 [1st Dept. 1979]). In the e-mail, Defendant explains the "pros and cons" of Plaintiff's effectuation of the Deed of Variation including the "negative" of "you risk me never giving [the money] back to you and legally you having no right to challenge." Defendant's statement expressly disclaiming any responsibility, demonstrates that she lacked the requisite intent by her to be bound to any terms of any agreement. Furthermore, "a party to an illegal contract cannot resort to a court of law for help in obtaining its enforcement," (*Valenza v. Emmelle Coutier, Inc.*, 288 A.D.2d 114 [1st Dept. 2001]), and no right of action can arise from an illegal contract. (*Sabia v. Mattituck Inlet Marina and Shipyard, Inc.*, 24 A.D.3d 178 [1st Dept. 2005]). Thus, even if the court were able

to find the March 13 e-mail, and Plaintiff's purported acceptance thereof, to be an otherwise enforceable contract, it would be void due to its illegal purpose of evading U.K. inheritance tax liability. (*See Lau v. HMRC* [2009] UKVAT SPC00740, [2009] STC (SCD) 352 [2009] WTLR 627, at 24). In the *Lau* case, the Commissioner upheld a determination that had invalidated, under British law, an attempted renunciation of an inheritance to evade a tax liability. *Id.*

Plaintiff's other claims also lack merit. To prevail on a claim for unjust enrichment, the "plaintiff must show that the other party was enriched, at plaintiff's expense, and that it is against equity and good conscience to permit [the other party] to retain what is sought to be recovered" (*Georgia Malone & Co., Inc. v. Rieder*, 86 A.D.3d 406 [1st Dept. 2011]). "Without sufficient facts, conclusory allegations that fail to establish that a defendant was unjustly enriched at the expense of a plaintiff warrant dismissal." *Id.* Here, Plaintiff expressly relinquished her one-third portion of Decedent's estate. Furthermore, Plaintiff has already been awarded a portion of Decedent's U.S. estate as part of the settlement of the related matter.

"[In] order to state a viable cause of action for promissory estoppel, the following elements must be established: (1) an oral promise that is sufficiently clear and unambiguous; (2) reasonable reliance on the promise by a party; and (3) injury caused by the reliance." *NYC Health and Hosp. Corp. v. St. Barnabas Hosp.*, 10 A.D.3d 489, 491 [1st Dept. 2004]). As there was no agreement and any alleged promise made was illusory as stated above, Plaintiff's claim based on promissory estoppel fails as a matter of law.

Wherefore it is hereby

ORDERED that Plaintiff Phyllis Sinrich's motion is denied; and it is further

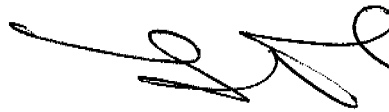
ORDERED that Defendant Nicola Cornell's motion is granted and the Complaint is dismissed; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the court. All other relief requested is denied.

DATED:

10/22/12



EILEEN A. RAKOWER, J.S.C.

FILED

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