

**Lebovits v Bassman**

2012 NY Slip Op 33704(U)

August 29, 2012

Supreme Court, Orange County

Docket Number: 9453/2008

Judge: Elaine Slobod

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This opinion is uncorrected and not selected for official publication.

**ORIGINAL**

SUPREME COURT-STATE OF NEW YORK  
IAS PART-ORANGE COUNTY

Present: HON. ELAINE SLOBOD, J.S.C.

SUPREME COURT : ORANGE COUNTY

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GEORGE I. LEOVITS, as a Member of  
BLT Monroe, LLC,

Plaintiff,

-against-

To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

GERSHON BASSMAN, BASSMAN FAMILY LLC, and OSCAR TAUBER, Individually and as members of BLT Monroe, LLC, BASSMAN FAMILY, L.P., BLT MONROE, LLC, and SOVEREIGN BANK,

Defendants. Index No. 9453/2008  
Motion Date: August 17, 2012

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The following papers numbered 1 to 6 were read on this motion by defendant Sovereign Bank for an order to dismiss the complaint [CPLR 3211(a)(7)]:

Notice of Motion-Affidavit-Exhibits A-B-Memorandum of Law.....1-3  
Affirmation in Opposition-Exhibits 1-4.....4-5  
Memorandum of Law in Further Support.....6

Upon the foregoing papers it is ORDERED that this motion is granted.

This is an action in which plaintiff claims, *inter alia*, that the fee owner of a shopping plaza in Monroe, New York, defendant Bassman Family, LLC, mortgaged the property without his consent as

required by contractual agreement. The loan in the amount of \$4,800,000.00 was obtained by moving defendant Sovereign Bank. Plaintiff sought leave of the court to amend the complaint and join Sovereign Bank as a party defendant. Leave was granted.

The amended complaint seeks a declaratory judgment that the mortgage Sovereign Bank recorded against the property is void and that defendant Sovereign Bank has no lien or secured interest against the premises.

The third cause of action, which demands this relief, alleges that Bassman Family, LLC failed to inform defendant Sovereign Bank that BLT Monroe, LLC had an interest as prime tenant and sole lessee of the premises and also failed to inform the bank of an existing triple master net lease with BLT Monroe, LLC. Plaintiff claims that "the Sovereign Bank mortgage document is a direct result of knowing and intentional fraud such that it cannot be given any force or effect by the Courts of New York State" [Amended Complaint, paragraph 92(e)].

Defendant Sovereign Bank now moves, pre-answer, to dismiss the amended complaint on the ground that the pleading fails to state a cause of action against it, contending that the amended complaint fails to allege actual knowledge of any fraud on its part and that the third cause of action fails to plead fraud with specificity as required by CPLR 3016(b).

Defendant Sovereign Bank owed no fiduciary duty to plaintiff and BLT Monroe, LLC who were not even its customers (see Oddo Asset Management v Barclays Bank PLC, 19 NY3d 584 [2012]). Hence, any

negligence on defendant Sovereign Bank in investigating the veracity of the facts being presented to them by the mortgagor cannot be the basis of relief to plaintiff. Plaintiff fails to allege with specificity that defendant Sovereign Bank had actual knowledge of BLT Monroe, LLC's existence and fails to allege any logical motive for defendant Sovereign Bank's supposed collusion with Bassman Family, LLC against him.

In opposition to the motion, plaintiff contends that he is not attempting to plead a cause of action for fraud against defendant Sovereign Bank, but rather argues that his request for a declaratory judgment is his cause of action. A judgment containing declaratory relief, however, must have a basis for the declaration. Similarly, Real Property Law § 329, which is not mentioned in the complaint, would afford plaintiff standing if he possessed a valid underlying cause of action (see e.g. Preshaz v Pryzianiuk, 51 AD3d 752 [2008]) but does not provide one. Since plaintiff fails to allege such a basis this branch of the motion is granted.

Plaintiff also attempts to plead two causes of action against defendant Sovereign Bank sounding in unjust enrichment.

Unjust enrichment is a quasi-contract theory and is imposed by equity to prevent injustice in the absence of an actual agreement (see IDT Corp. v Morgan Stanley Dean Witter & Co., 12 NY3d 132 [2009]). The plaintiff must demonstrate 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 (see Mandarin Trading Ltd. v Wildenstein, 16 NY2d 173

[\* 4]

[2011]. A plaintiff must demonstrate that there is a connection or relationship between the parties that could have caused reliance or inducement on plaintiff's part (Id.)

Here, there is nothing contained in the complaint which would lead the court to conclude that defendant Sovereign Bank was unjustly enriched by extending a commercial mortgage loan to the fee owner of real property or that plaintiff relied on anything the bank did. Plaintiff's quarrel is with his former business partners and not defendant Sovereign Bank.

Accordingly, the court grants the motion in its entirety.

Finally, the court notes that in allowing plaintiff to amend his complaint and join a party, it did not pass on the merits of the claims and plaintiff is free to chart his own course in litigation. While defendant Sovereign Bank has not invoked Part 130 of the Rules of the Chief Administrator, plaintiff should be mindful of those Rules in the future.

The foregoing constitutes the decision and order of the court.

Dated: August 29, 2012  
Goshen, New York

E N T E R

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