

Princeton Bedford LLC v Backer

2013 NY Slip Op 31053(U)

May 10, 2013

Supreme Court, New York County

Docket Number: 154402/12

Judge: Charles E. Ramos

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SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: CHARLES E. RAMOS Justice

PART 53

PRINCETON

INDEX NO. 154402/12

- V -

MOTION DATE

YEHUDA BACKER

MOTION SEQ. NO. 001

MOTION CAL. 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)

Answering Affidavits - Exhibits No(s)

Replying Affidavits No(s)

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

is decided in accordance with accompanying memorandum decision and order.

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

DATED: 5/10/13

CHARLES E. RAMOS J.S.C. (with signature)

- 1. CHECK ONE : [x] CASE DISPOSED [] NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE : MOTION IS: [x] 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: COMMERCIAL DIVISION

-----x
PRINCETON BEDFORD LLC and BEDFORD JV LLC,

Plaintiffs,

Index No. 154402/12

-against-

YEHUDA BACKER and RUTHE BACKER,

Defendants.

-----x

CHARLES E. RAMOS, J.S.C.:

In motion sequence 001, defendants Yehuda Backer ("Yehuda") and Ruthe Backer ("Ruthe") (together, the "Backers") move pursuant to 3211(a)(1) and 3211(a)(5) to dismiss plaintiffs Princeton Bedford LLC ("Princeton Bedford") and Bedford JV LLC's ("Bedford JV") (together, the "Plaintiffs") amended complaint (the "Complaint").

Background¹

This case arises from a dispute over an attempt by Plaintiffs to buy certain commercial real estate located in Brooklyn owned by Sky Lofts, LLC ("Sky Lofts") and S&Y Enterprises, LLC ("S&Y") (together, the "Debtors").

Yehuda is the managing member of Sky Lofts and S&Y, both New York limited liability companies. Ruthe is also a member of S&Y. Princeton Bedford and Bedford JV are Delaware limited liability

¹ The facts set forth herein are taken from the parties' pleadings, and are assumed to be true for the purposes of disposition.

companies with their principal office located at c/o Princeton Holdings LLC, 375 Park Avenue, Suite 3401, New York, New York 10152.

Prior to the sale that is the subject of this action, Sky Lofts owned commercial real property located at 242-246 Bedford Avenue, Brooklyn, New York (the "Sky Lofts Property"), and S&Y owned commercial real property located at 130 North 4th Street, Brooklyn, New York (the "S&Y Property") (together, the "Properties").

On July 12, 2010, non-party CA Holdings LLC, the parent of CAB Bedford LLC ("CAB"), entered into a purchase and sale agreement ("CAB Sale Agreement") with the Debtors by which CAB agreed to purchase the Properties for \$20 million. On November 11, 2010 and December 8, 2010, respectively, amidst negotiations to develop the Properties, S&Y and Sky Lofts each filed a voluntary petition for bankruptcy relief pursuant to Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of New York (the "Bankruptcy Court").

Despite the bankruptcy filings, CAB and the Debtors continued to develop the Properties and to work towards closing the sale of the Properties to CAB. On February 24, 2011, Sky Lofts and S&Y filed disclosure statements and proposed plans of

reorganization, which contemplated Bankruptcy Court approval of the sale of the Properties to CAB (the "First Plan").

While the First Plan was awaiting approval by the Bankruptcy Court, the Backers entered into negotiations with Princeton Holdings LLC to sell the Properties to Bedford JV. The negotiations resulted in a purchase and sale agreement, dated May 8, 2011, pursuant to which Sky Lofts and S&Y agreed to sell the Properties to Bedford JV for \$21 million. Concurrently, Plaintiffs and the Backers entered into an operating agreement pursuant to which Princeton Bedford and The Backer Group LLC became 65% and 35% members, respectively, in Bedford JV. At this time, Plaintiffs and the Backers also entered into a letter agreement (the "Letter Agreement") which obligated the Backers to support the sale of the Properties to Bedford JV.

On May 11, 2011, Sky Lofts and S&Y filed a second proposed plan of reorganization and disclosure statements pursuant to which the proposed sale to Bedford JV would be accomplished (the "Second Plan"). On May 26, 2011, CAB filed an objection to the Second Plan, asserting that the sale of the Properties to Bedford JV would give rise to a substantial damages claim under the Bankruptcy Code due to the Debtors' rejection of the CAB Sale Agreement. In light of this dispute, the Bankruptcy Court adjourned the plan confirmation hearing and ordered discovery.

Following the conclusion of discovery, which included document production, multiple depositions, and an unsuccessful mediation in which all parties participated, the Backers decided, once again, to sell the Properties to CAB rather than Bedford JV. As a result, on or about January 18, 2012, the Debtors proposed a new plan of reorganization (the "Third Plan"). On February 23, 2012, Plaintiffs filed an objection to confirmation of the Third Plan. The objection, however, did not object to the release or exculpation provisions contained therein (the "Release"). The Release provides that:

"S&Y, Sky Lofts and CAB..., and each such parties' respective present or former members, officers, directors, employees...shall not have or incur, and are hereby released from, any Claim, obligation, cause of action or liability to one another or to any holder of a Claim or Interest or to any other party in interest...for any act or omission in connection with, related to, or arising out of, the Debtor[s] or the Debtor[s']... Chapter 11 case[s], including but not limited to: ...(ii)...any contract, instrument, release or other arrangement entered into or any action taken or not taken in connection with...the Debtor[s']...Chapter 11 case[s]..."

"[I]n exchange for the consideration provided by, and the obligations of the Debtor[s] and CAB...as provided in the...Plan[s] and the Third Amended Disclosure Statement[s], each Holder of a Claim or Interest will be deemed to forever release, waive and discharge all claims, obligations, suits, judgments, damages, demands, debts, rights causes of action and liabilities ...whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising in law, equity or otherwise, that are based in whole or in part on any act, omission, transaction or

other occurrence taking place on or prior to the Effective Date [as defined in the Plans] in any way relating to the Debtor[s], the Debtor[s']...Chapter 11 case[s] or the...Plan[s] that such entity has, had or may have against either the Debtors and CAB..., and each of their respective present or (solely to the extent such party served after the commencement of the Debtor[s']...Chapter 11 case[s]) former members, officers, directors, employees...acting in such capacity, and any such parties' successors and assigns..."

(See Vullo Aff. Exs. K-1, K-2 §§ 10.11, 10.12).

Plaintiffs simultaneously filed a substantial contribution claim seeking payment from the Debtors' estates for \$1.38 million in reimbursement of expenses allegedly incurred (the "Substantial Contribution Claim").

On March 2, 2012, the Debtors, CAB, and the Backers filed a joint memorandum of law in response to Plaintiffs' objection. On March 8, 2012, the Debtors filed a proposed confirmation order which incorporated approval of the release and exculpation provisions. Plaintiffs did not file any additional objections to the proposed provisions.

On March 9, 2012, the Bankruptcy Court held a confirmation hearing regarding the Third Plan. All parties in interest, including Plaintiffs, were provided copies of the Third Plan, notice, and an opportunity to be heard, present evidence, and cross-examine witnesses. Plaintiffs did not take the opportunity to submit evidence in support of their objection or to cross-

examine the defendants and, consequently, the Bankruptcy Court found that Sky Lofts' and S&Y's confirmation submissions were "uncontroverted." The Bankruptcy Court held that the "objections suggested...[were] not supported by the record, not persuasive, or no longer relevant" (See Vullo Aff. Ex. P, 74:2-17). At the conclusion of the hearing, the Bankruptcy Court entered confirmation orders formally confirming the Third Plan (the "Confirmation Orders"). The Confirmation Orders provide that:

"Pursuant to section 1141 of the Bankruptcy Code...the provisions of the Third Amended Plan...and this Confirmation Order shall be binding on (i) the Debtor, (ii) Reorganized Sky Lofts [or Reorganized S&Y], (iii) all parties in interest, holders of Claims against and Interests in the Debtor, (iv) each person acquiring property under the Third Amended Plan, (v) Ruthe and Yehuda Backer, (vi) any person or entity making an appearance in the Chapter 11 Case, and (vii) the Affiliates, successors and assigns of all of the above-listed entities."

(See Vullo Aff. Exs. O-1, O-2 ¶ 41).

Following the Bankruptcy Court's entry of the Confirmation Orders, the Debtors consummated the sale of the Properties to CAB. The Confirmation Orders were never appealed and the Substantial Contribution Claim was denied on the grounds that Plaintiffs failed to establish that its status as a competing bidder entitled it to receive reimbursement of attorneys' fees from the Debtors. As relevant here, the Bankruptcy Court stated that "the record shows that Bedford JV's activities in [the

bankruptcy cases] were principally in furtherance of its efforts to acquire the Debtors' properties" (See Reply Aff. Ex. C at 20). The Bankruptcy Court held that the "record [fell] short" of a finding that Plaintiffs provided services that "yielded a direct and significant benefit to the bankruptcy estate or the parties as a whole" (*Id.* at 20-21).

On July 9, 2012, Plaintiffs instituted this action asserting breach of contract and unjust enrichment.

Standard of Review

Dismissal under CPLR 3211 (a)(1) is warranted "only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law" (*511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 152 [2002]). Dismissal under CPLR 3211(a)(5) is warranted where the cause of action may not be maintained because of a release or *res judicata* (*Ins. Co. of State of Penn. v HSBC Bank USA*, 882 NE2d 381, 385 [NY 2008]).

Discussion

The Backers move to dismiss on the grounds that this action is barred by *res judicata* and by the Release set forth in the Third Plan and Confirmation Orders. Plaintiffs counter that the Release only covers claims against the Backers in their "fiduciary" but not "individual" capacities, the Bankruptcy Court did not have the authority to approve such a "broad" Release, and

because the specific claims now asserted under the Letter Agreement were not raised before the Bankruptcy Court, such claims cannot be held barred by the doctrine of *res judicata*.

The doctrine of *res judicata* "gives 'binding effect to the judgment of a court of competent jurisdiction and prevents the parties to an action, and those in privity with them, from subsequently re-litigating any questions that were necessarily decided therein'" (*Ferris v Cuevas*, 118 F3d 122, 126 [2d Cir 1997] quoting *Watts v Swiss Bank Corp.*, 27 NY2d 270, 277 [1970]).

The doctrine of *res judicata* applies with full force to matters decided by the bankruptcy courts, including those concerning Chapter 11 reorganization (*Jerome J. Steiker Co., Inc. v Eccelston Props. Ltd.*, 593 NYS2d 394, 398 [1st Dept 1992]; see also *RM 18 Corp. v Bank of N.Y. Mellon Trust Co.*, 104 AD3d 752 [2d Dept 2013]; *In re Adelpia Recovery Trust*, 634 F3d 678, 694 [2d Cir 2011]; *Sure-Snap Corp. v State St. Bank & Trust Co.*, 948 F2d 869, 873 [2d Cir 1991]).

Under both New York state and federal law, the doctrine of *res judicata* applies not only to issues actually litigated, but also to issues that "could have been raised" in the prior action (*HSBC Bank*, 882 NE2d at 385; *Joseph v Athanasopoulos*, 648 F3d 58, 59 n.1 [2d Cir 2011]). Thus, "[i]f a valid and final judgment has been entered on the merits of a case, 'the claim extinguished

includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose'" (*Duane Reade, Inc. v St. Paul Fire & Marine Ins. Co.*, 600 F3d 190, 196 [2d Cir 2010] quoting Restatement [Second] of Judgments § 24(1) [1982]).

Here, Plaintiffs seek to assert claims that are expressly barred under the clear and unambiguous language of the Release contained within the Third Plan and Confirmation Orders which the Bankruptcy Court approved as "fair, equitable, reasonable and consistent with the applicable provisions of the Bankruptcy Code" (See *Vullo Aff. Exs. Q-1, Q-2 ¶ 9*).

Pursuant to the clear language in the Release, Plaintiffs' claims in the Complaint arise out of or relate to the Debtors' bankruptcy proceedings and thus are covered by the foregoing Release. As such, the Backers, as members of S&Y and Sky Lofts, have been released from any and all such claims in their capacities as individuals and fiduciaries.

The Confirmation Orders bind all parties in interest, holders of claims against Sky Lofts and S&Y, all persons and entities making an appearance in Sky Lofts' and S&Y's Chapter 11 cases, and the affiliates, successors and assigns of such entities. Accordingly, Bedford JV, as a "party in interest" and

the holder of the Substantial Contribution Claim, and Princeton Bedford, as both a "party in interest" in the bankruptcy cases and an "affiliate" of Bedford JV, are fully bound by the Third Plan and Confirmation Orders, which, as described above, exculpate and release Sky Lofts and S&Y's members, including the Backers in their individual capacity, from any and all claims under the Letter Agreement, or otherwise.

Plaintiffs arguments that the Release is "overly broad" and that *res judicata* does not apply to the Bankruptcy Court's Confirmation Orders are without merit. The time for Plaintiffs to have raised any concerns regarding the breadth or scope of the Release was before the Bankruptcy Court or on direct appeal from the Confirmation Orders.

"[Q]uestions of the propriety or legality of the bankruptcy confirmation order are...properly addressable on direct appeal" and "confirmation of the [p]lan in which creditors failed to object nor take an appeal thereof bar[s] further suit against the guarantors regardless of the correctness of that decision" (*Jerome J. Steiker Co., Inc.*, 593 NYS2d at 398 citing *Republic Supply Co. v Shoaf*, 815 F2d 1046, 1050 [5th Cir 1987] [unchallenged release in confirmed plan given *res judicata* effect]).

Plaintiffs appeared at the March 9, 2012 hearing where they

had a full and fair opportunity to litigate their claims before the Bankruptcy Court. Despite vigorously contesting approval of the Third Plan and negotiating an exception in the Release for the Substantial Contribution Claim, Plaintiffs failed to raise any objection to the scope of the Release or its application to the Backers (See *In re Flushing Hosp. & Med. Ctr.*, 395 BR 229, 244-45 [Bankr ED NY 2008] [rejecting arguments regarding exculpation provisions "made for the first time" in context of motion to dismiss where party had "notice and opportunity to be heard with respect to [provisions set forth in] the [p]lan and [c]onfirmation [o]rder," and holding that "similar provisions are often approved in the context of plan confirmation" and "[c]onfirmation orders are given *res judicata* effect and may not be subject to collateral attack."]).

Therefore, it is the determination of this Court that the claims in the Complaint are barred by the doctrine of *res judicata* and must be dismissed.

Accordingly, it is

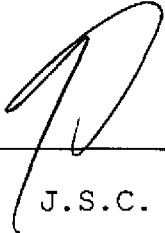
ORDERED that defendants Yehuda Backer and Ruthe Backer's motion to dismiss is granted and the action is hereby dismissed with prejudice and the clerk is directed to enter judgment accordingly; and it is further

ORDERED and ADJUDGED that defendants Yehuda Backer and Ruthe

Backer are not in breach of the Agreement and have not been unjustly enriched at the expense of plaintiff Bedford JV LLC.

Dated: April 24, 2013

ENTER:



J.S.C.

CHARLES E. RAMOS