

Abele Tractor & Equip. Co., Inc. v Balfour

2014 NY Slip Op 31363(U)

May 28, 2014

Supreme Court, Albany County

Docket Number: 6752-12

Judge: Joseph C. Teresi

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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

ABELE TRACTOR & EQUIPMENT CO., INC.,

Plaintiff,

-against-

DECISION and ORDER
INDEX NO. 6752-12
RJI NO. 01-13-109061

JOHN BALFOUR and SIOBHAN CORNELL a/k/a
SIOBHAN BALFOUR a/k/a SIOBHAN CORNELL-BALFOUR,

Defendants.

Supreme Court Albany County All Purpose Term, May 16, 2014
Assigned to Justice Joseph C. Teresi

APPEARANCES:

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TERESI, J.:

On December 14, 2012, Plaintiff commenced this fraud action against John Balfour (hereinafter "Balfour") based upon a misrepresentation he made in 1998. Balfour's pre-answer motion to dismiss was denied, and issue was joined. Discovery has been conducted and is complete, with a note of issue filed and a trial date certain set (June 23, 2014). Plaintiff now moves for partial summary judgment, seeking a determination on liability. Balfour opposes the

motion, and cross moves for summary judgment on his statute of limitations defense and on the merits. Plaintiff opposed the cross motion. Because Balfour demonstrated that this action was untimely commenced, and Plaintiff raised no triable issue of fact, his motion is granted and the action is dismissed.

The proponent of a summary judgment motion bears the initial burden of “tender[ing] sufficient evidence to demonstrate the absence of any material issues of fact” (Vega v Restani Const. Corp., 18 NY3d 499, 503 [2012], quoting Alvarez v Prospect Hosp., 68 NY2d 320 [1986]; Larkin v Rochester Hous. Auth., 81 AD3d 1354 [4th Dept 2011]), “by proffering evidentiary proof in admissible form.” (DiBartolomeo v St. Peter's Hosp. of City of Albany, 73 AD3d 1326 [3d Dept 2010]; Ulster County v CSI, Inc., 95 AD3d 1634 [3d Dept 2012]). As is relevant here, only if such showing is made will the burden then shift to the opponent of the motion “to raise an issue of fact as to whether the statute of limitations was tolled or otherwise inapplicable.” (Wilson v Southampton Urgent Med.-Care, P.C., 112 AD3d 499 [1st Dept 2013]; Zuckerman v. City of New York, 49 NY2d 557 [1980]).

Within this shifting burden of proof framework, Balfour established the following material facts.

Plaintiff hired Balfour in September 1995 and, as a benefit of his employment, provided him with single person health insurance coverage. When hired, Balfour executed a “Current Employee Information” sheet that noted his “Marital Status” as “Single.” He left blank its space for listing his “Spouse” and “Children.” While the “Current Employee Information” sheet did name “Maureen Cornell” as his emergency contact, it listed his “Relationship” with her as “none.” At the same time, Balfour checked the “Single/Head of Household” box on his

“Employee’s Withholding Allowance Certificate.” Each of these documents was dated September 13, 1995.

Thereafter, according to Plaintiff’s President Rodney Abele (hereinafter “Abele”), in 1998 Balfour misrepresented his marital status to Plaintiff to obtain a family health insurance plan. Abele explained that Plaintiff relied on Balfour’s assertions that: “he was married to Maureen Cornell and that Siobhan Cornell was his lawful dependent.” At his deposition, Balfour confirmed the misrepresentation; he admitted that he was not married to Maureen Cornell and that Siobhan Cornell was not his dependent. It is uncontested that in 1998 Balfour misrepresented his marital status to Plaintiff and obtained family health coverage for himself, Maureen Cornell and Siobhan Cornell.

Such coverage continued through Plaintiff’s terminating Balfour’s employment in May 2009, but in 2006 Balfour had switched insurance carriers and reiterated his misrepresentation. In his “Enrollment/Change Form,” dated December 14, 2006, he listed his date of marriage as November 20, 1993. Such alleged date of marriage was a blatant fabrication. Moreover, it directly contradicted his earlier September 13, 1995 “Current Employee Information” sheet statement. Specifically, while the 1995 “Current Employee Information” sheet noted that his “Relationship” with “Maureen Cornell” was “none,” the 2006 “Enrollment/Change Form” disclosed a date of marriage that occurred before 1995.

On this record, Balfour established his prima face entitlement to summary judgment on his statute of limitations defense. “The limitations period for a fraud claim is the greater of six years after the cause of action accrued or two years after it could have been discovered with reasonable diligence.” (US Bank Nat. Ass’n v Gestetner, 103 AD3d 962 [3d Dept 2013]; CPLR

§213[8]; Dowlings, Inc. v Homestead Dairies, Inc., 88 AD3d 1226 [3d Dept 2011]; Shalik v Hewlett Assoc., L.P., 93 AD3d 777 [2d Dept 2012]). Plaintiff does not contest that its fraud cause of action against Balfour accrued when Balfour first obtained family health coverage in 1998. This action was clearly not commenced within six years of accrual.

Similarly, Balfour demonstrated that Plaintiff did not commence this action within two years of when it could have, with reasonable diligence, discovered his misrepresentation. By 2006, Plaintiff admittedly possessed both the September 13, 1995 “Current Employee Information” sheet and Balfour’s “Enrollment/Change Form,” dated December 14, 2006. Even a cursory comparison of the two documents reveals Balfour’s obvious contradictory statements. Because these documents and the information contained therein fall directly within the scope of Plaintiff’s employee’s record keeping authority, knowledge of such facts is imputed to Plaintiff (Kirschner v KPMG LLP, 15 NY3d 446, 466 [2010]; Chaikovska v Ernst & Young, LLP, 78 AD3d 1661 [4th Dept 2010]) and Abele’s alleged lack of personal knowledge is irrelevant. As such, Balfour demonstrated that Plaintiff was in possession of facts “from which [the fraud] could be reasonably inferred” in 2006, more than two years before Plaintiff commenced this action in 2012. (Elhannon, LLC v Brenda J. DeLuca Trust, 108 AD3d 911, 912 [3d Dept 2013], quoting Sargiss v Magarelli, 12 NY3d 527 [2009]). With the above proof, Balfour made a prima facie showing that the statute of limitations expired prior to Plaintiff’s commencement of this action.

In opposition and with the burden shifted, Plaintiff failed to raise a triable issue of fact. Plaintiff submits affidavits made by Abele and its Treasurer, along with three non-officer employees. While Abele admitted that he was “a little surprised to learn that [Balfour] was

married,” the Treasurer and other employees each expressed their belief that Balfour was married. In light of the above documentary showing however, such proof raises no issue of fact relative to Plaintiff’s reasonable diligence in uncovering Balfour’s fraud. Nor does Abele’s uncertainty about Plaintiff’s “requir[ing] its employees to provide proof of marriage.” Moreover, Plaintiff’s bookkeeper “recall[ed Balfour] stating on one occasion, rather loudly, that he would never get married to Maureen Cornell.” Shortly after hearing that comment, she recounts hearing that Balfour purchased an engagement ring and was married. Despite Plaintiff’s acquisition of such conflicting information, Plaintiff offered no proof that it investigated the legitimacy of Balfour’s claimed marriage or performed a reasonably diligent inquiry.

Abele, the Treasurer, and bookkeeper’s description of Plaintiff’s record keeping methods is likewise unavailing. They explained that the 1995 documentation was kept in a secure location, separate from the contradictory 2006 health insurance document. This method of record keeping prevented their detection of Balfour’s fraud and was allegedly done to “protect employee privacy and preserve employee records.” Such characterization, however, was not explained. Moreover, the conclusory “protect employee privacy” assertion is contradicted by the documents themselves. Both the 1995 and 2006 documentation included Balfour’s date of birth, home address, and most importantly his social security number.¹ Although the 1995 “Current Employee Information” sheet also included Balfour’s driver’s license number while the 2006 document did not, Plaintiff offered no privacy related explanation for the difference in treatment. Rather than “reasonable diligence” the affidavits demonstrate a lack of cohesion in Plaintiff’s corporate structure.

¹ The social security number was redacted in each exhibit submitted.

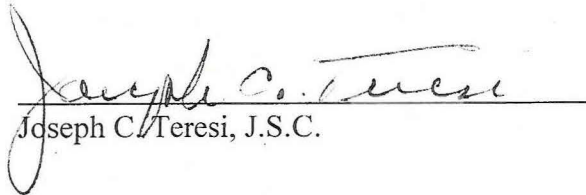
Because Plaintiff offered no reasonable explanation for its failure to detect Balfour's fraud in 2006, it raised no triable issue of fact and this court is constrained to dismiss the complaint based upon Balfour's statute of limitations defense.

Accordingly, Balfour's motion for summary judgment is granted, Plaintiff's motion is rendered moot, and the action is dismissed.

This Decision and Order is being returned to the attorneys for Balfour. A copy of this Decision and Order and all other original papers submitted on this motion are being delivered to the Albany County Clerk for filing. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provision of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: May 28, 2014
Albany, New York


Joseph C. Teresi, J.S.C.

PAPERS CONSIDERED:

1. Notice of Motion, dated April 21, 2014; Affirmation of Linda Mandel Clemente, dated April 21, 2014, with attached Exhibits A-D; Affidavit of Rodney Abele, dated April 15, 2014, with attached Exhibits 1-8.
2. Notice of Cross-Motion, dated May 13, 2014; Affirmation of Daniel Jacobs, dated May 13, 2014, with attached Exhibits A-C; Affidavit of John Balfour, dated May 13, 2014, with attached Exhibit A.
3. Affidavit of Rodney Abele, dated May 16, 2014; Affidavit of Sharon Abele, dated May 16, 2014; Affidavit of Eric Muellecker, dated May 16, 2014; Affidavit of Lee Recheizer, dated May 16, 2014; Affidavit of Michele Francisconi, dated May 15, 2014.