

Beinstein v Navani

2014 NY Slip Op 32513(U)

September 29, 2014

Supreme Court, New York County

Docket Number: 153575/2013

Judge: Saliann Scarpulla

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 39

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JERRY BEINSTEIN AND LESLIE BEINSTEIN,

Plaintiff,

-against-

Index No. 153575/2013

GAGAN NAVANI, ANGELA SAHI, MICHAEL M.
AMTZIS, ESQ. PLLC AND MICHAEL M. AMTZIS,
ESQ. AS ESCROWEE,

DECISION AND ORDER

Defendants.

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HON. SALIANN SCARPULLA, J.:

In this action seeking, *inter alia*, a declaratory judgment, plaintiffs Jerry Beinstein and Leslie Beinstein (collectively referred to as “Beinsteins”) move to vacate the notice of pendency and to compel defendants Michael M. Amtzis, Esq. PLLC and Michael M. Amtzis, Esq. as escrowee (collectively referred to as “Amtzis”) to release the money held in escrow, payable to the Beinsteins. Defendants Gagan Navani (“Navani”) and Angela Sahi (“Sahi”) cross move to reargue this court’s February 11, 2014 decision and order, and for a modification and stay of the portion of this court’s February 11, 2014 decision and order directing Amtzis to release the money held in escrow.

At the parties’ oral argument on this motion and cross motion on June 26, 2014, this court (1) denied the branch of the motion to compel Amtzis to release the money held in escrow because there is not yet a final unappealable order; (2) granted the branch of the motion to vacate the notice of pendency; and (3) granted the branch of the cross motion to

stay the portion of the February 11, 2014 decision and order directing Amtzis to release the money held in escrow. The court reserved decision on the branch of the cross motion to reargue the February 11, 2014 decision and order.

A motion to reargue is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law. *See Opton Handler Gottlieb Feiler Landau & Hirsch v. Patel*, 203 A.D.2d 72 (1st Dept. 1994). In support of the motion for leave to reargue, Navani and Sahi argue that the February 11, 2004 order misapprehends or ignores the law and facts by concluding that Navani and Sahi had not retracted their purported repudiation of the PSA.

In the February 11, 2004 order, the court held, “any communications that occurred between the parties in October, 2012 did not entitle them to performance on the Contract and cannot be considered a retraction of the repudiation.” Contrary to Navani and Sahi’s contention, the court considered the relevant case law, and properly applied it to the facts in reaching its decision.

The cases referenced by Navani and Sahi, *Bykowsky v. Eskenazi*, (2 A.D.3d 115 [1st Dept. 2003]) and *Dembeck v. Hassler*, (248 A.D.2d 148 [1st Dept. 1998]) do not warrant a different result. Navani and Sahi properly state the well-settled rule, set forth in those cases, that a party that repudiates a contract may retract that repudiation and enforce the agreement if the non-breaching party does not materially change its position before

the retraction occurs. However, here, a retraction of the repudiation did not occur. Rather, the purported “retraction of the repudiation” was actually a conditional request unilaterally imposed by Navani and Sahi to close on the original contract at a future date, but only after the Beinsteins provided additional information, which was not part of their obligation under the original contract of sale or for the original closing. Under these circumstances, the retraction was ineffective and insufficient to warrant enforcement of the original contract of sale.

Inasmuch as Navani and Sahi have not shown any way in which this court misapprehended the relevant facts or misapplied the controlling law, their motion to reargue is denied.

In accordance with the foregoing, it is

ORDERED that plaintiffs Jerry Beinstein and Leslie Beinstein’s motion to vacate the notice of pendency is granted, the notice of pendency is hereby vacated and cancelled, and the Clerk of the Court is directed to vacate and cancel the notice of pendency; and it is further

ORDERED that plaintiffs Jerry Beinstein and Leslie Beinstein’s motion to compel defendants Michael M. Amtzis, Esq. PLLC and Michael M. Amtzis, Esq. as escrowee to release the money held in escrow, payable to the Beinsteins is denied; and it is further

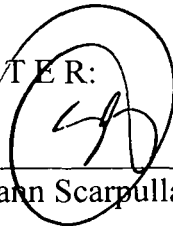
ORDERED that the branch of the cross motion by defendants Gagan Navani and Angela Sahi for leave to reargue this court's February 11, 2014 decision and order is denied; and it is further

ORDERED that the branch of the cross motion by defendants Gagan Navani and Angela Sahi to stay the portion of this court's February 11, 2014 decision and order directing defendants Michael M. Amtzis, Esq. PLLC and Michael M. Amtzis, Esq. as escrowee to release the money held in escrow is granted.

This constitutes the decision and order of the Court.

Dated: New York, New York
September 29, 2014

ENTER:



Saliann Scarpulla, J.S.C.