

<b>Mimosa Equities Corp. v ACJ Assoc. LLC</b>
2014 NY Slip Op 33181(U)
December 4, 2014
Supreme Court, New York County
Docket Number: 150017/2014
Judge: Ellen M. Coin
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SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY  
 PRESENT: HON. ELLEN M. COIN PART 63

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 MIMOSA EQUITIES CORP.,

Plaintiff,

-against-

ACJ ASSOCIATES LLC and  
 JADAM EQUITIES LLC,

Defendants.  
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INDEX NO. 150017/2014  
 MOTION DATE July 18, 2014  
 MOTION SEQ. NO. 001  
 E-FILED

**Appearances:**

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Papers

Notice of Motion-Affidavits-Exhibits  
 Answering Affidavits-Exhibits  
 Reply Affidavits

Papers Numbered

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**ELLEN M. COIN, J.:**

Plaintiff Mimosa Equities Corp. ("Mimosa") brought this action against ACJ Associates LLC ("ACJ") and Jadam Equities LLC ("Jadam") to recover \$40,797.96 held in escrow by ACJ's agent, Jadam.

ACJ and Jadam move to dismiss the action pursuant to CPLR §3211(a)(1) on the grounds that a written release specifically barred actions against ACJ and its agents, including Jadam.

The following facts are not in dispute. Mimosa is a cooperative housing corporation, and ACJ is the sponsor to the

offering plan creating the coop and a mortgagee of the premises. Jadam is a real estate management company engaged by ACJ to act as an escrow agent by collecting and remitting mortgage payments and requisite taxes. From January 1, 2011 to February 28, 2012, Jadam performed its duties as escrow agent. On February 28, 2012, pursuant to a letter agreement between Mimosa and ACJ, the parties agreed that in exchange for Mimosa's payment of \$60,000 to ACJ, Mimosa's mortgage to ACJ would be satisfied. The third paragraph of the agreement between Mimosa and ACJ was a release that barred actions against one another and their respective agents as to the loan and/or wraparound mortgage ("the Release") (Exh. C to Affirmation of Sheri Shulman, dated March 17, 2014).

The Release reads as follows:

Upon the undersigned's receipt of said \$60,000 payment and your receipt of said Satisfaction of Mortgage, each of us (the "Releasor") fully and unconditionally releases and discharges the other (the("Releasee") [sic], and the Releasee's members, directors, officers, principals, shareholders, employees, agents, and attorneys (collectively, "Releasees") from and against all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, admiralty or equity, which against the Releasees, the Releasor, ever had, now have or hereafter can, shall or may have, for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the date hereof with respect to only or arising from only the Loan and/or Wraparound Mortgage(emphasis in text).

Mimosa paid the \$60,000 to ACJ and ACJ executed a satisfaction of mortgage. Jadam still maintains an escrow account balance of \$40,797.96, comprised of unexpended funds for payment of real estate taxes (Affirmation of Geoggrey R. Mazel, dated May 2, 2014, ¶8). Mimosa seeks return of the full escrow account balance. ACJ and its agent, Jadam, contend that the release bars Mimosa's claim.

### **Discussion**

On a motion to dismiss pursuant to CPLR 3211, the court must accept as true the facts as alleged in the complaint and the submissions in opposition to the motion, accord plaintiffs the benefit of every possible favorable inference and determine only whether the facts as alleged fit within any cognizable legal theory (*Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 414 [2001]; see also *Leon v Martinez*, 84 NY2d 83 [1994]). "Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss" (*Ginsburg Dev. Cos., LLC v Carbone*, 85 AD3d 1110, 1111 [2d Dept 2011], quoting *EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11, 19 [2005]). A motion brought pursuant to CPLR §3211(a)(1) "may be granted where 'documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law'" (*Held v Kaufman*, 91 NY2d 425, 430-31 [1998], quoting *Leon*

*v Martinez*, 84 NY2d at 88; *Foster v Kovner*, 44 AD3d 23, 28 [1<sup>st</sup> Dept 2007] ["[t]he documentary evidence must resolve all factual issues and dispose of the plaintiff's claim as a matter of law" [citations omitted]].

"The meaning and coverage of a release necessarily depends upon the controversy being settled and upon the purpose for which the release was given, and the release may not be read to cover matters which the parties did not intend to cover" (*Apfel v Prestia*, 41 AD3d 520, 521 [2<sup>nd</sup> Dept 2007] [citations omitted]). "A release may not be read to cover matters which the parties did not intend to cover" (*Kaminsky v Gamache*, 298 AD2d 361, 362 [2d Dept 2002], quoting *Gale v Citicorp*, 278 AD2d 197 [2d Dept 2000]). "It has long been the law that where a release contains a recital of a particular claim, obligation or controversy and there is nothing on the face of the instrument other than general words of release to show that anything more than matters particularly specified was intended to be discharged, the general words of release are deemed to be limited thereby" (*Morales v Solomon Management Co.*, 38 AD3d 381, 382 [1<sup>st</sup> Dept 2007] [internal quotation marks and citations omitted] [a release granted in a settled action did not extinguish a related action as it did not reference it]).

Here, the release is expressly limited to any claims "with respect to only or arising from only the Loan and/or Wraparound

Mortgage." The complaint alleges that the funds Jadam held in escrow were for payment of real estate taxes. Neither the Loan agreement nor the Wraparound Mortgage contains any reference to collection of funds for payment of real estate taxes. Nor is it likely that the parties intended that such a substantial amount of money, corresponding to almost 68% of the \$60,000.00 settlement, would simply be gifted. The Release then may not be read to cover the funds for payment of real estate taxes of which the parties did not desire or intend to dispose (*Morales*, AD3d at 382[citations omitted]). Therefore, the Release does not conclusively bar this action to recover funds in the escrow account comprised of unexpended mortgage and real estate taxes.


In accordance with the foregoing, it is hereby

ORDERED that the motion of defendants ACJ Associates LLC and Jadam Equities LLC pursuant to CPLR §3211(a)(1) to dismiss the complaint is denied; and it is further

ORDERED that defendants shall answer the complaint within 20 days of the date of this order.

**This constitutes the decision and order of the Court.**

Dated: December 4, 2014

  
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Ellen M. Coin, A.J.S.C.

NON-FINAL DISPOSITION