

JC Real Estate Fund I, LLC v Berman

2014 NY Slip Op 34007(U)

June 27, 2014

Supreme Court, Rockland County

Docket Number: 030893/2014

Judge: William A. Kelly

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

P R E S E N T:
HON. WILLIAM A. KELLY
SUPREME COURT JUSTICE

-----X
JC REAL ESTATE FUND I, LLC

Plaintiff,

Index No. 030893/2014

-against-

ORDER

ROBERT BERMAN, JOSEPH BERNSTEIN,
AVON ROAD ROCK HILL, LLC, and CARMEL
EQUITIES

Defendants.

-----X

The following papers were read on this motion by the defendant Carmel
Equities for an Order dismissing the action:

Notice of Motion - Affirmation - Memorandum of Law	1-3
Affirmation in Opposition	4
Reply Affirmation	5

Upon the foregoing papers it is hereby ORDERED that the defendant's
motion is granted.

Defendant Berman is the principal shareholder in RH Land Development,

LLC [hereinafter “RH Land”]. In 2005 RH Land Purchased 500 acres of land in Thompson, NY [hereinafter “Thompson property”]. To do so, RH Land granted a mortgage in the amount of \$5,800,000.00. The Thompson property is the sole asset of RH Land.

According to the complaint, RH Land defaulted on the mortgage. Thereafter, it is alleged that defendant Bernstein convinced Jeffrey Camp, the sole owner of plaintiff JC Real Estate Fund I [hereinafter “JC Real Estate”] to invest in RH Land. JC Real Estate invested \$500,000.00 for a 5.85% share in RH Land. According to the complaint, the mortgage default was not made known prior to JC Real Estate’s investment.

The complaint goes on to allege that defendants Berman and Bernstein caused the mortgage to be sold to defendant Carmel Equities at a very substantial discount. In essence, it is alleged that Berman has a close relationship with Carmel Equities which allow him to retain ownership and control of the property at the expense of RH Land.

“In the context of a motion to dismiss pursuant to CPLR 3211, the court must afford the pleadings a liberal construction, take the allegations of the complaint as true and provide plaintiff the benefit of every possible inference” EBC I, Inc. v. Goldman Sachs & Co., 5 N.Y.3d 11, 19 (2005) (citing Goshen v

Mutual Life Ins. Co. of N.Y., 98 N.Y.2d 314, 326 (2002)). Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss. Id.

“Initially, the sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail (citations omitted).” Guggenheimer v Ginzburg, 43 N.Y.2d 268, 275 (1977).

“When evidentiary material is considered, the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one, and, unless it has been shown that a material fact as claimed by the pleader to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it, again dismissal should not eventuate (citations omitted).” Id.

A claim for aiding and abetting a breach of fiduciary duty requires: (1) a breach by a fiduciary of obligations to another, (2) that the defendant knowingly induced or participated in the breach, and (3) that plaintiff suffered damage as a result of the breach. Kaufman v. Cohen, 307 A.D. 113 (1st Dep’t 2003). See also Baron v. Galasso, 83 A.D.3d 626 (2nd Dep’t 2011); AHA Sales Inc. v. Creative Bath Products, Inc., 58 A.D.3d 6 (2nd Dep’t 2008). “Although a plaintiff is not required to allege that the aider and abettor had an intent to harm, there must be an

allegation that such defendant had actual knowledge of the breach of duty. Constructive knowledge of the breach of fiduciary duty by another is legally insufficient to impose aiding and abetting liability.” Id.

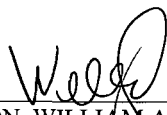
In the instant action, there are no facts plead demonstrating the defendant’s knowledge of the alleged breach of fiduciary duty. Further, there are no facts from which such knowledge could even be inferred.

Accordingly, the motion to dismiss .

This Decision shall constitute the Order of the Court.

ENTER

Dated: New City, New York
 June 27, 2014



HON. WILLIAM A. KELLY
J.S.C.