

Brune & Richard LLP v Beyda
2016 NY Slip Op 30110(U)
January 21, 2016
Supreme Court, New York County
Docket Number: 650443/2015
Judge: Saliann Scarpulla
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 39

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BRUNE & RICHARD LLP,

Plaintiff,

Index No. 650443/2015

-against-

DANIEL BEYDA and CDP HOLDINGS
GROUP, LLC,

Defendants.

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Saliann Scarpulla, J.:

This is a declaratory judgment action by plaintiff law firm Brune & Richard LLP (“B&R”), in connection with \$415,000 which was deposited in plaintiff’s trust account pursuant to a settlement agreement. B&R moves, pursuant to CPLR 3212, for an order granting summary judgment declaring that defendant Dr. Daniel Beyda (“Dr. Beyda”) has no claim of any kind against B&R relating to the funds, thereby permitting B&R to dispose of the funds as it deems appropriate. B&R and defendant CDP Holdings Group, LLC (“CDP”) also move, jointly, pursuant to CPLR 3211 (a) (1) and (7), for an order dismissing Dr. Beyda’s counterclaims against B&R and its cross-claim against CDP.

Background

According to the complaint, CDP manages the non-clinical affairs of a business known as Long Island Radiology Associates (“LIRAD”), which is a radiology practice with several locations in Long Island and New York City. Until September 2014, LIRAD had seven partners (the “LIRAD partners”), including Dr. Beyda and his wife.

In September 2014, the LIRAD partners entered into a restructuring transaction with CDP, pursuant to which CDP agreed to buy LIRAD’s assets for more than \$6 million, and to manage its non-clinical affairs, while Dr. Beyda would manage the clinical practice. Pursuant to this transaction, the legal entities underlying LIRAD were transferred to Dr. Beyda’s ownership or control, although he pledged an interest in the shares of those entities back to the companies themselves, which then transferred such interest to the other doctors (the “Doctors”) in the practice.

According to B&R, on December 17, 2014, the Doctors, with the exception of Dr. Beyda’s wife, sent Dr. Beyda a letter urging him to step aside as owner, alleging that he was obstructing the transaction between LIRAD and CDP and was causing negative operational and financial effects on LIRAD.

On January 5, 2015, CDP and Dr. Beyda executed a two-page settlement agreement (Settlement Agreement), addressing the issues raised in the December 17th letter. Pursuant to this agreement, CDP agreed to wire \$415,000 into B&R’s trust account within 10 business days. Within 2 business days thereafter, Dr. Beyda would transfer ownership of the

professional corporations and other legal entities underlying LIRAD as directed by CDP, among others, and he would cease to have any management role with LIRAD. The agreement stated that:

The transfer shall be conditioned on the Shareholders'...agreement that, to date, there do not exist grounds to terminate Dr. Beyda's Employment Agreement or Dr. Victoria Beyda's Employment Agreement and that Dr. Beyda has not to date violated the Stock Purchase Agreement or other documents that were part of the September CDP transaction.

Within 1 business day after the transfer, B&R was required to release the \$415,000 payment to Dr. Beyda.

On January 28, 2015, CDP commenced an action in this court against Dr. Beyda, alleging that he engaged in self-dealing and other misconduct, including using a sham billing company to skim funds from LIRAD and using LIRAD resources to fund a radiology practice that Dr. Beyda and his wife own separately from the other LIRAD doctors. *See CDP Holdings Group, LLC v Daniel Beyda*, Index No. 650261/2015 (“CDP Action”).

On February 11, 2015, Dr. Beyda's attorney sent a letter (the “February Letter”) to B&R stating that the Settlement Agreement could not be consummated by reason of certain of the Doctors having refused to provide consents which were conditions precedent to the completion of the agreement. The attorney also stated that in anticipation of Dr. Beyda becoming an equal partner with the Doctors, Dr. Beyda had given CDP \$415,000 from Dr.

Beyda's personal funds for his share of the ownership of CDP. The attorney further alleged that such funds were being held by B&R "in escrow" and demanded their return to Dr. Beyda. The attorney stated that if such funds were not turned over by February 13, 2015, Dr. Beyda would commence an action against B&R.

B&R commenced this instant action on February 13, 2015. In its amended complaint, it seeks a judicial declaration that Dr. Beyda has no claim of any kind against B&R relating to the \$415,000 that is the subject of the February 11, 2015 letter to B&R.

In his amended answer, Dr. Beyda asserts a cause of action for a declaratory judgment against B&R and CDP, declaring that he is the rightful owner of the \$415,000 held by B&R. Dr. Beyda also asserts causes of action for breach of fiduciary duty and conversion against B&R arising from its failure to turn over the \$415,000 to Dr. Beyda.

Discussion

Failure to State a Cause of Action

B&R and CDP move, pursuant to CPLR 3211 (a) (1) and (7), for an order dismissing Dr. Beyda's counterclaims against B&R and its cross-claim against CDP. Each of these causes of action arise from Dr. Beyda's assertion that he is entitled to the \$415,000 held by B&R.

"A motion to dismiss pursuant to CPLR 3211 (a) (1) will be granted only if the documentary evidence resolves all factual issues as a matter of law, and conclusively

disposes of the plaintiff's claim." *Fontanetta v. Doe 1*, 73 A.D.3d 78, 83 (2d Dept. 2010), (internal quotation marks and citations omitted). "A motion to dismiss under CPLR 3211 (a) (7) assumes the truth of the material allegations and whatever can be reasonably inferred therefrom and should be denied if, from the pleading's four corners, factual allegations are discerned which when taken together manifest any cause of action cognizable at law." *Le Bar Bat, Inc. v. Shallo*, 198 A.D.2d 49, 50 (1st Dept. 1993) (citation omitted).

Here, the documentary evidence and undisputed facts demonstrate that the counterclaims and cross-claims fail to state a cause of action against either B&R or CDP because all of the terms and conditions of the Settlement Agreement were never fulfilled. As such, B&R is not required to remit the \$415,000 to Dr. Beyda.

First, the evidence shows that the \$415,000 was wired to B&R by CDP, not Dr. Beyda. Thus, the money belonged to CDP, not Dr. Beyda, in the first instance. It is also undisputed that, under the plain terms of the Settlement Agreement, the money was only to be transferred to Dr. Beyda after certain conditions precedent were fulfilled, including his transfer of his ownership interests and the receipt of certain representations from the Doctors. Dr. Beyda has consistently asserted that those conditions were never satisfied.

Specifically, in the February Letter to B&R, Dr. Beyda's attorney states that the Settlement Agreement would not be consummated because certain of the doctors "refused to provide the representations and consents which were conditions precedent." Further, one

week later, in an affidavit dated February 18, 2015 which was submitted in the CDP Action, Dr. Beyda stated that “the settlement agreement cannot be consummated because conditions precedent thereto have not and cannot be satisfied by the parties to the settlement agreement.” Beyda February 18th aff., ¶ 4. *See also*, ¶ 2 (“the settlement agreement cannot be consummated”).

Dr. Beyda now asserts that the terms of the Settlement Agreement were, in fact, fulfilled, because he transferred his ownership interests in a letter dated January 21, 2015 in which he instructed the party holding the interests on his behalf to execute the transfer. However, the letter also specifically states that the transfer would be void ab initio if he did not receive the \$415,000 the next day, which he indisputably did not. Further, Dr. Beyda also states in an affidavit dated February 3, 2015, also submitted in the CDP action, that “with full justification....I did not transfer the shares in LIRAD.” Beyda February 3rd aff., ¶ 3.

Based on the foregoing documentary evidence and Dr. Beyda’s sworn affidavits, it is clear that the conditions set forth in the Settlement Agreement were not fulfilled. As such, B&R was not required to transfer the \$415,000 to him pursuant to that agreement.

Despite the foregoing evidence, Dr. Beyda asserts that he is entitled to the \$415,000, because it represents money that he paid to CDP in exchange for a promised 50% ownership interest in CDP. Nothing in the Settlement Agreement discusses such a transaction or suggests that the money had been wired to B&R in connection with a separate transaction.

Therefore, even assuming the truth of this assertion, it does not support Dr. Beyda's claim that he is entitled to the \$415,000 being held by B&R.

In light of the foregoing, I find that Dr. Beyda fails to state a cause of action for a declaration that he is the rightful owner of the \$415,000 held by B&R. Consequently, Dr. Beyda also fails to state a cause of action for either breach of fiduciary duty or conversion against B&R in connection with such funds.

Summary Judgment

B&R also moves for summary judgment declaring that Dr. Beyda has no claim of any kind against B&R relating to the funds. As set forth above, Dr. Beyda has failed to state a cause of action for a declaration that he is the owner of the funds held by B&R and has failed to adequately allege claims for breach of fiduciary duty or conversion. Accordingly, B&R is entitled to a declaration permitting B&R to return the funds to CDP without liability for such return of funds. However, I decline to declare that defendants may not assert any claim at all against B&R, as that relief is overly broad in the context of the many litigations pending and threatened between the parties.

Accordingly, it is

ORDERED that the motion to dismiss by plaintiff Brune & Richard LLP and defendant CDP Holdings Group, LLC to dismiss the counterclaim and cross-claim is granted,

the cross-claim for declaratory judgment and counterclaim of defendant Daniel Beyda are dismissed; and it is further

ORDERED that the motion by plaintiff Brune & Richard LLP for summary judgment is granted to the extent that the Court orders, adjudges, and declares that plaintiff Brune & Richard LLP may return the \$415,000 it is presently holding on account of defendant CDP Holdings Group, LLC to this defendant, and is discharged from any further liability with respect to its custody of those funds, and the remainder of the petition is denied and dismissed.

This constitutes the decision, order and judgment of the Court.

DATED: January 21, 2016

ENTER:

A handwritten signature in black ink, consisting of a large, stylized 'S' and 'C' intertwined, enclosed within a circular flourish. The signature is positioned above a horizontal line.

J.S.C.

HON. SALIANN SCARPULLA