

Hutchins v Hutchins
2016 NY Slip Op 30637(U)
March 21, 2016
Supreme Court, Bronx County
Docket Number: 251490/2014
Judge: Julia I. Rodriguez
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**SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: Part IA 27**

-----X
NEIL HUTCHINS,

Plaintiffs,

-against-

PETER HUTCHINS and VIRGINIA LINDSEY HUTCHINS,

Defendants.
-----X

Index No. 251490/2014

DECISION and ORDER

Present:
Hon. Julia I. Rodriguez
Supreme Court Justice

Recitation, as required by CPLR 2219 (a), of the papers considered in review of the parties' respective motions for summary judgment:

Papers	<u>Numbered</u>
Summons, Verified Complaint & Exhibits	1
Plaintiff's Notice of Motion, Affidavit & Exhibits	2
Memorandum of Law	3
Defendant's Notice of Cross-motion, Affirmation & Affidavit	4

The within action involves a dispute between family members. Plaintiff contends that Defendants, his brother and former sister-in-law, have not paid him \$10,000 pursuant to a contract dated December 11, 1984 wherein Plaintiff was named a third-party beneficiary. The complaint alleges causes of action for breach of contract, unjust enrichment, fraud, constructive trust and, alternatively, declaratory judgment.

Defendant Virginia Hutchins interposed an Answer denying all the allegations in the Verified Complaint; Defendant Peter Hutchins also interposed an Answer denying Plaintiff's allegations, in addition to asserting six affirmative defenses.

Plaintiff now moves for summary judgment in his favor, in addition to punitive damages. Defendants cross-move for summary judgment dismissing the complaint.

The contract dated 12/11/84 (hereinafter "the Contract") concerned the construction of an addition to real property owned by Defendants PETER HUTCHINS and VIRGINIA HUTCHINS at 1268 Locust Avenue, Bohemia, NY. The parties to the contract were Defendants and the parties' parents, KEITH HUTCHINS and ELIZABETH

HUTCHINS. Per this contract the parents and Defendants agreed that the value of the house addition was \$35,000; that the parents would continue residing at 1268 Locust Avenue and pay Defendants \$200.00 per month; that Defendants would give the parents 30 days' notice in the event they sold the premises at 1268 Locust Avenue, which would in effect terminate the Contract; and upon termination of the Contract the Defendants would have to pay the parents \$35,000.

The pertinent paragraph relating to Plaintiff's claim reads as follows:

4. Upon the demise of both KEITH HUTCHINS and ELIZABETH HUTCHINS, PETER HUTCHINS and VIRGINIA HUTCHINS may continue to occupy the premises located at 1268 Locust Avenue, Bohemia, including the addition built by KEITH HUTCHINS and ELIZABETH HUTCHINS with no obligation to NEIL HUTCHINS or PATRICIA MICHAUD. However, in the event of the sale of the property at 1268 Locust Avenue, Bohemia, New York by PETER HUTCHINS and VIRGINIA HUTCHINS, the rental of the main house at 1268 Locust Avenue, Bohemia, New York or the apartment constructed by KEITH HUTCHINS and ELIZABETH HUTCHINS, or in the event the premises at 1268 Locust Avenue, Bohemia, New York remain vacant for a period of more than thirty (30) days, PETER HUTCHINS and VIRGINIA HUTCHINS, or the survivor, shall pay to NEIL HUTCHINS and to PATRICIA MICHAUD the sum of TEN THOUSAND and 00/100 (\$10,000.00) DOLLARS each representing the interest of NEIL HUTCHINS and PATRICIA MICHAUD in the addition constructed by KEITH HUTCHINS and ELIZABETH HUTCHINS.

Apparently, the parents and Defendants resided at 1268 Locust Avenue until 1990, after which they all moved to a new home in Blue Point, NY. The father KEITH HUTCHINS passed away in 1998, and the mother ELIZABETH HUTCHINS continued to reside with the Defendants in Blue Point. In 2013 the Defendants divorced and paid the mother \$35,000.00, as memorialized in a statement signed by Defendants and

Elizabeth Hutchins, notarized on Dec. 20, 2013. The Defendants and the mother agreed that the return of the \$35,000 "satisfies and ends all parts of the agreement on 12/11/84" made between the parents and Defendants.

Plaintiff believes that Defendants paid Elizabeth Hutchins the \$35,000, in pertinent part: (1) to benefit themselves in the purchase of a co-op apartment in Patchogue wherein Peter Hutchins will take title upon Elizabeth's death; and (2) to avoid paying Plaintiff \$10,000 pursuant to the 1984 Contract, with the result that "Keith B. Hutchins' right . . . for his son [Plaintiff] to receive \$10,000 from defendants after the last death of himself or his spouse Elizabeth Hutchins', will not be honored" [¶119 of Verified Complaint].

The issue for the court is whether the Defendants owe Plaintiff \$10,000 pursuant to the Contract, and the court finds they do not. The flaw in Plaintiff's belief that his parents bequeathed him \$10,000 is that the Contract did not mandate payment to Plaintiff absolutely without restrictions; rather the obligation to pay Plaintiff \$10,000 would only trigger upon certain condition precedents, *to wit* :

(1) in the event of the sale of the property at 1268 Locust Avenue, Bohemia, New York by PETER HUTCHINS and VIRGINIA HUTCHINS, the rental of the main house at 1268 Locust Avenue, Bohemia, New York or the apartment constructed by KEITH HUTCHINS and ELIZABETH HUTCHINS, or

(2) in the event the premises at 1268 Locust Avenue, Bohemia, New York remain vacant for a period of more than thirty (30) days, PETER HUTCHINS and VIRGINIA HUTCHINS.

The second contingency never came to pass; however, the first contingency arose in 1990 when the property at Locust Avenue was sold. However, rather than ending their relationship with the Defendants in 1990, the Parents moved on to the new property in Blue Point. In 1990 both Parents were alive, and presumably of sound mind, and elected to continue residing with Defendants and did not distribute \$10,000 to any of their

children. Notably, the Contract was not a will or testamentary document affirmatively bequeathing assets to Plaintiff; it was a contract between the Parents and Defendants acknowledging the payment of \$35,000 by the Parents for the cost of the house extension *at property owned by Defendants*, which in turn, secured a residence for the Parents' lifetime.

Plaintiff posits that the issue in this case is whether a contract may be modified after the death of an original party, which he answers in the negative, and contends that the Contract could not be modified after the father's death in 1998. From the court's point of view, the modification of the contract occurred in 1990 when the Locust Avenue house was sold and, rather than distributing any monies to any of their children, the Parents elected to continue residing with Defendants in Defendants' new home. After 1990, the parties ratified any changes to the Contract by their conduct, which was open and notorious to the other family members. After the father's death in 1998 the mother continued to reside with Defendants as she had been since 1990.

The Contract here was between the Defendants and the Parents. Inasmuch as Plaintiff was a *potential* third party beneficiary in 1984, the third party benefit never came to fruition: not because of fraud or ill will, but simply because the parties were free to chart their own course, and the course they chose extinguished the third party benefit at least as of 1990.


The court declines to delve into the Defendants' private affair of paying back the \$35,000 to the mother in the context of their divorce in 2013.

It remains that Plaintiff does not present a viable claim before this court.

For the foregoing reasons, Plaintiff's motion is **denied** in its entirety and Defendants' **motion** is granted, and it is

ORDERED that the complaint is dismissed.

Dated: March 21, 2016


Hon. Julia I. Rodriguez