Bramos v Bienefeld
2016 NY Slip Op 32186(U)
October 25, 2016
Supreme Court, New York County
Docket Number: 159466/2014
Judge: Robert R. Reed

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 43

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ERENA BRAMOS,

Plaintiff,

-against-

Index No. 159466/2014
DECISION/ORDER

SCOTT BIENEFELD and
LAURENCE M. WESTREICH, M.D.

Defendants.

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ROBERT R. REED, J.

In this action, plaintiff seeks to recover from defendants for monies she expended in successfully defending herself in a personal injury/premises liability lawsuit. The complaint alleges breach of contract and unjust enrichment causes of action against one defendant and an unjust enrichment cause of action against the other defendant. Each defendant moves separately, pursuant to CPLR 3211, to dismiss the complaint [mot. seq. nos. 001 and 002].

On a motion to dismiss, the court must accept as true the facts alleged in the complaint as well as all reasonable inferences that may be gleaned from those facts (*Amaro v Gani Realty Corp.*, 60 AD3d 491; *Skillgames, LLC v Brody*, 1 AD3d 247, 250, citing *McGill v Parker*, 179 AD2d 98, 105; *see also Cron v Harago Fabrics*, 91 NY2d 362, 366). The court is not permitted to assess the merits of the complaint or any of its factual allegations, but may only determine if, assuming the truth of the facts alleged, the complaint states the elements of a legally cognizable cause of action (*Skillgames, id.*, citing *Guggenheimer v Ginzburg*, 43 NY2d 268, 275). Deficiencies in the complaint may be remedied by affidavits submitted by the plaintiff (*Amaro*,

60 NY3d at 491). "However, factual allegations that do not state a viable cause of action, that consist of bare legal conclusions, or that are inherently incredible or clearly contradicted by documentary evidence are not entitled to such consideration" (*Skillgames*, 1 AD3d at 250, citing *Caniglia v Chicago Tribune-New York News Syndicate*, 204 AD2d 233). Further, where the defendant seeks to dismiss the complaint based upon documentary evidence, the motion will succeed if "the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law" (*Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 (citation omitted); *Leon v Martinez*, 84 NY2d 83, 88).

Plaintiff leased an office suite from the building owner, and, later, plaintiff sublet two offices in her suite to non-party Laurence M. Westreich, M.D. ("Dr. Westreich") for a term of years. Thereafter, Dr. Westreich's company, defendant Laurence M. Westreich, M.D., L.L.C. ("Westreich LLC"), entered into a further sublease, in which defendant Scott Bienenfeld became a subtenant of defendant Westreich LLC in Dr. Westreich's space in the office suite. According to the complaint in the current action, the terms of the sublease required defendant Bienenfeld, *upon defendant Westreich LLC's request*, to provide liability insurance, naming both plaintiff and defendant Westreich LLC as additional insureds. Of note, the complaint does not allege that Westreich LLC ever made such a request. Also of note, nowhere does the complaint allege that the sublease between plaintiff and Dr. Westreich contained any language obliging Dr. Westreich to provide liability insurance for plaintiff or otherwise to indemnify her against legal claims.

The complaint alleges that one of Bienenfeld's patients filed a lawsuit against the building owner and management company alleging negligence and seeking recovery for personal injuries allegedly sustained when entering the office suite to visit Bienenfeld. The building

owner and management company filed a third-party complaint against plaintiff, seeking indemnification. Plaintiff, the complaint alleges, requested that Dr. Westreich/Westreich LLC and Bienenfeld contribute to her defense and that she be provided liability insurance coverage. Her requests for contribution, the complaint alleges, were ignored, and, ultimately, she alone incurred the full cost of successfully defending the third-party lawsuit. The essence of plaintiff's case is that it is unfair that she was placed in the position of having to defend herself in a lawsuit based upon a personal injury/premises liability claim filed by a patient of Bienenfeld's. Plaintiff's claims, however, under the circumstances set forth, are not legally sustainable.

"The theory of unjust enrichment lies as a quasi-contract claim'" and contemplates "an obligation imposed by equity to prevent injustice, in the absence of an actual agreement between the parties" (*IDT Corp. v Morgan Stanley Dean Witter & Co.*, 12 NY3d 132, 142, quoting *Goldman v Metropolitan Life Ins. Co.*, 5 NY3d 561, 572). An unjust enrichment claim is rooted in "the equitable principle that a person shall not be allowed to enrich himself unjustly at the expense of another" (*Miller v Schloss,* 218 NY 400, 407). Thus, in order to adequately plead such a claim, the plaintiff must allege "that (1) the other party was enriched, (2) at that party's expense, and (3) that it is against equity and good conscience to permit the other party to retain what is sought to be recovered" (*Mandarin Trading Ltd. v Wildenstein,* 16 NY3d 173, 182 [brackets and internal quotation marks omitted]). Here, there is a contract; indeed, there are two: first, the sublease between plaintiff and Dr. Weistreich; second, the further sublease between Westreich LLC and Bienenfeld. These subleases, for better or for worse, express the bargained-for rights and responsibilities of the various parties to the within action with respect to the

subleasehold of the subject office suite. Frankly, these subleases, as drafted, left plaintiff exposed to certain risks (*i.e.*, the risks realized in the aforementioned third-party personal injury/premises liability lawsuit). The court, however, may not re-write these contracts post-facto to address the gaps in their drafting (*see EBC I Inc. v. Goldman, Sachs & Co.*, 5 NY3d 11, 33-34). In addition, and more importantly, plaintiff fails to allege a legally cognizable benefit conferred by her to defendants. Defendants were never named as parties of any sort in the personal injury/premises liability matter – not even by plaintiff. That is, defendants never had any exposure to liability in the personal injury/premises liability lawsuit. Plaintiff's expenditure of legal expenses, under such circumstances, cannot be said to have benefited defendants in any non-speculative way.

The complaint's breach of contract claim also fails. There is some question as to whether the sublease between Westreich LLC and Bienenfeld was valid, inasmuch as it was Dr. Westreich individually who subleased the space in the office suite from plaintiff. In any event, assuming the validity of the Westreich LLC/Bienenfeld sublease, and, as a consequence, acknowledging the obligations thereunder, any requirement of Bienenfeld to obtain liability insurance naming plaintiff as an additional insured, by the plain language of that sublease, was made expressly contingent upon a future request for such coverage by Westreich LLC. As stated above, the complaint does not allege – even upon information and belief – that such a request was ever made.

Therefore, it is

ORDERED that the respective motions of defendants [mot. seq. nos. 001 and 002] to dismiss the complaint are GRANTED, pursuant to CPLR 3211(a)(1) and CPLR 3211(a)(7), and

the Clerk, accordingly, is hereby directed to enter judgement dismissing the complaint herein with prejudice.

Dated: October 25, 2016

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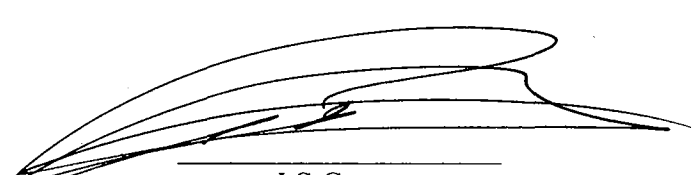

J.S.C.