

**11-45 Ryerson Holdings, LLC v SDF47 Ryerson St.,
LLC**

2017 NY Slip Op 32918(U)

September 20, 2017

Supreme Court, Kings County

Docket Number: 513545/2017

Judge: Sylvia G. Ash

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Comm-11 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 20th day of September 2017.

PRESENT:
HON. SYLVIA G. ASH,

Justice.

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11-45 RYERSON HOLDINGS, LLC, 11-45 RYERSON MB, LLC, MB RYE PARTICIPANT, LLC,

Plaintiff(s),

DECISION AND ORDER
Mot. Seq. #2,3,4,5
Index # 513545/2017

- against -

SDF47 RYERSON STREET, LLC, SDF47 RYERSON 1, LLC, SDF47 RYERSON 2, LLC, SDF RYERSON 3, LLC SULLIVAN DEBT FUND HOLDINGS, LLC, MADISON REALTY CAPITAL, L.P.,

Defendant(s).

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The following papers numbered 1 to 3 read herein:

Papers Numbered

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed _____	_____ 1 _____
Opposing Affidavits (Affirmations) _____	_____ 2 _____
Reply Affidavits (Affirmations) _____	_____ 3 _____

After oral argument and upon the foregoing papers, Defendants' motion for to dismiss is hereby GRANTED.

Statement of Facts

This is an action whereby Defendants move by order to show cause (Mot. Seq. #3) seeking an order: (i) pursuant to CPLR 3211(a)(1), dismissing the action on the grounds that a complete defense is founded upon documentary evidence; (ii) pursuant to CPLR 3211(a)(7), dismissing the action on the grounds that the complaint fails to state a cause of action; (iii) pursuant to CPLR

3211(a)(8), dismissing this action due to Plaintiffs' failure to serve the summons and complaint; (iv) pursuant to CPLR §6514(a), directing the Kings County Clerk to cancel the notice of pendency filed in this action for failure to complete service of the summons and complaint within thirty (30) days after filing; and (v) pursuant to CPLR §306-b, dismissing this action for failure to complete service of the summons and complaint within one hundred twenty (120) days after commencement. By decision dated April 25, 2018, this court denied Defendants' motion as it related to service of the summons and complaint, however, reserved decision for the remainder of the motion.

Defendants' Motion to Dismiss

Defendants contend that this action must be dismissed due to undisputed documentary evidence that confirms that the Deed was never intended as security in the nature of a mortgage. Specifically, Defendants claim that Plaintiffs deeded the property to them as an absolute conveyance of a fee simple interest, and Plaintiffs' indebtedness and equity of redemption was extinguished at closing. Defendants further contend that they provided consideration for the title transfer by: (1) releasing Plaintiffs' payment obligations under the loans; (2) obtaining the cancellation of the lis pendens and discontinuance of the investor lawsuits; (3) obtaining the release of the memorandum of contract; (4) remitting a \$4.7 Million cash payment at Plaintiffs' discretion; and (5) paying transfer taxes on the consideration sum.

In opposition, Plaintiffs deny Defendants' allegation that any consideration was paid for the property. Plaintiffs contend that Defendants gave 3 mortgages loans to Plaintiffs totaling \$31 Million, however, Defendants later pressured and persuaded Plaintiffs to execute a deed in lieu of foreclosure to Defendants as security for the 3 mortgages previously obtained. Plaintiffs allege that

the intention of the conveyance was for Defendants to take possession and control of the property, only to return it once Plaintiffs' mortgage obligations were satisfied. Plaintiffs, however, claim that Defendants frustrated their ability to exercise their repurchase option by demanding a payoff amount of \$96,206,974.64. Plaintiffs further contend that Defendants' right to foreclose, reflected in section 2(d) of the sale agreement, is evidence in and of itself that the deed was intended as a mortgage and not an absolute conveyance.

Discussion

On a motion to dismiss a plaintiff's claim pursuant to CPLR §3211(a)(7) for failure to state a cause of action, the court is not called upon to determine the truth of the allegations (*see Campaign for Fiscal Equity v State*, 86 NY2d 307, 317 [1995]). Rather, the court is required to afford the pleadings a liberal construction, take the allegations of the complaint as true and provide plaintiff the benefit of every possible inference (*Kamchi v Weissman*, 125 AD3d 142, 150 [2d Dept 2014]). The court's role is limited to determining whether the pleading states a cause of action, not whether there is evidentiary support to establish a meritorious cause of action (*see Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]). "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 John Doe 1*, 73 AD3d 78, 83-84 [2d Dept 2010])[quoting *Fortis Fin. Servs. v Fimat Futures USA*, 290 AD2d 383, 383 [1st Dept 2002]].

It is a well established principle that "written agreements are construed in accordance with the parties' intent and '[t]he best evidence of what parties to a written agreement intend is what they say in their writing'" (*Schron v Troutman Sanders LLP*, 20 NY3d 430, 436 [2013]). "As such,

'a written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms'" (*Id.*).

Under the traditional principles of contract law, the parties to a contract are free to make their bargain, even if the consideration exchanged is grossly unequal or of dubious value. *Hollander v Lipman*, 65 AD3d 1086, 1087 (2009). Consideration to support an agreement exists where there is either a benefit to the promisor or a detriment to the promise. *Id.* It is enough that something is promised, done, forborne or suffered by the party to whom the promise is made as consideration for the promise made to him. *Id.*

With the foregoing principles in mind, the court finds that Defendants are entitled to dismissal of Plaintiffs' action. The documentary evidence provided specifically states that "*the deed was not and is not intended as a mortgage*" and that Plaintiffs intended to make an absolute and unconditional conveyance with full release of Plaintiffs' right, title, and interest of every character in and to the property so conveyed.

Plaintiffs contend that there was zero cash-consideration, however, the court finds that the consideration given was sufficient to support an agreement. While Plaintiffs dispute the \$4.7 Million cash payment that Defendants claim they paid, it is undisputed that Defendants paid \$1,950,000 for the release of 2 lis pendens against the property, \$1,320,252.50 for New York State and New York City real property transfer taxes and forgave Plaintiffs' debt of \$31,994,666.74. Although the undisputed funds were not cash exchanges from Defendants to Plaintiffs, the court finds that the forgiveness and undertaking of Plaintiffs' debt was at a benefit to Plaintiffs and a detriment to Defendants. Therefore, the court holds these transactions to be sufficient consideration to support an agreement.

Plaintiffs also contend that Defendant's right to foreclose creates an appearance that the deed was intended as a security, however, the court disagrees. The court analyzed section 2(d) of the sale agreement in its entirety to find that the foreclosure clause was a preservation of rights to "continue foreclosure proceedings if such proceedings should become legally necessary in order to eliminate and to cure defect in title to the property conveyed to buyer by the deed". Furthermore, the preceding sentence states "*it is the intention of Borrower, as grantor of the Deed, to make an absolute conveyance and unconditional sale described in the Deed, with full extinguishment of the Borrower's equity of redemption upon delivery thereof, and with full release of all of Borrower's right, title, and interest of every character in and to the property so conveyed.*" This preservation of rights coupled with the parties' clear and unequivocal intent in the preceding sentence is clear proof that the conveyance was an absolute conveyance from Plaintiffs to Defendants. Moreover, section 2(c) of the sale agreement states in pertinent part that "*the deed was not and is not, intended as a mortgage, trust, conveyance, or security of any kind... Upon delivery of the deed, Borrower shall have no right, title or interest to the Property.*"

Based on the allegations contained in Plaintiffs' complaint and giving Plaintiffs the benefit of every favorable inference, this court finds that the written agreement between the parties was an absolute conveyance of a fee simple interest with fair consideration. Accordingly, this court holds that Plaintiffs have failed to state a viable cause of action. Therefore, Defendants' motion to dismiss is hereby GRANTED and all other pending motions are hereby DENIED as moot.

This constitutes the decision and order of the court

E N T E R,



SYLVIA G. ASH, J.S.C.