Harris v Reagan
2017 NY Slip Op 33160(U)
April 7, 2017
Supreme Court, Cortland County
Docket Number: 16-680
Judge: Judith F. O'Shea

[* 1]

Duplicate Original (4/28/17) - JFO'Shea

At a Motion Term of The Supreme Court of the State of New York held in and for the Sixth Judicial District, at the Tompkins County Courthouse, in Ithaca, New York, heard on the 22nd day of March 2017.

PRESENT: HON. JUDITH F. O'SHEA
SUPREME COURT JUSTICE

STATE OF NEW YORK
SUPREME COURT: COUNTY OF CORTLAND

Calvin L. Harris,

Plaintiff,

DECISION & ORDER

vs.

INDEX #16-680
RJI # 2016-0506-M

Joseph C. Reagan,

Defendant.

JUDITH F. O'SHEA. JSC

This action was commenced by the filing of a summons and complaint on October 24, 2016. Plaintiff alleges multiple causes of action predicated on a "Shareholders' Agreement" and a "Side Agreement" (collectively as the "Agreements") executed by the Plaintiff and Defendant on September 5, 2006. Plaintiff asserts various causes of action in his compliant, including breach of contract, breach of good faith and fair dealing, unjust enrichment, and breach of fiduciary duty. Defendant now moves for dismissal of all causes of action in the complaint for failure to state a cause of action upon which relief can be granted.

Plaintiff and his family purchased two automobile dealerships in Cortland, New York and incorporated such as Royal Chevrolet/Cortland, Inc. and Royal Nissan of Cortland, Inc. (collectively, the "Dealerships"). At approximately the same time as the purchase, Defendant was given a managerial position and a ten percent (10%) ownership interest in the Dealerships. Plaintiff and his brother maintained the remaining ninety percent (90%) of the Dealership stock.

Plaintiff's wife disappeared in September of 2001. In September of 2005, Plaintiff was indicted for the murder of his wife, Michelle Harris. Plaintiff believed that the Dealerships' franchise agreement would be terminated by the automobile manufacturers if Plaintiff was convicted of murdering his wife. This concern caused Plaintiff to meet with his corporate attorney, Stanton M. Drazen, Esq., to amend the ownership interests in the dealerships. This meeting resulted in the Agreements that are the subject of the instant matter.

The Agreements were executed on or about September 5, 2006 by Plaintiff and Defendant. The Agreements provided, *inter alia*, that Plaintiff would own forty-five percent (45%) of the stock and Defendant would own fifty-five percent (55%) of the stock in the Dealerships. (Plaintiff's brother's ownership interests were simultaneously bought out in a "Global Resolution Agreement and a Definitive Agreement" between Plaintiff, Defendant and Plaintiff's brother). The Agreements required Plaintiff to transfer his shares of stock to Defendant in the event of his conviction and upon the expiration of all statutory appeals. Plaintiff would be paid approximately $3,600,000 including interest of 6.58% over a period of twenty (20) years, payable at $15,000 per month. Stock certificates were executed by the parties sometime in April 2007 reflecting Plaintiff's 45% ownership of the dealerships and defendant's 55% ownership.

On or about July 9, 2007, following Plaintiff's first conviction for the murder of his wife, Plaintiff, while incarcerated, met with his corporate counsel, Attorney Drazen. At that meeting, Plaintiff executed blank stock certificates that would ultimately transfer Plaintiff's remaining forty-five percent (45%) of corporate shares to Defendant. On July 18, 2007, Attorney Drazen gave to Defendant the fully executed stock certificates, along with completed warranty deeds signed by Plaintiff (and notarized), which transferred Plaintiff's forty-five percent (45%) ownership interest in the Dealerships' real property. Thereafter, Defendant gave the executed stock certificates and warranty deeds to his attorney, James Baranello, Esq., who duly recorded the warranty deeds in the Cortland County Clerk's Office. At that point, Defendant became the sole shareholder in the Dealership, and sole owner of the Dealership real property.

Defendant immediately began making the $15,000 monthly payments per the Agreements, and has continued to do so, which plaintiff has accepted and never rejected. Plaintiff has not contributed to the dealerships' expenses/debts since July 2007, which indicates that Plaintiff did not dispute the sale and transfer of the Dealership corporate shares or real estate. Defendant continues to make the required $15,000 monthly payments to Plaintiff. The approximate amount of payments made to date totals approximately $1.6 million. Plaintiff has accepted every payment.

Plaintiff previously filed a complaint in this Court alleging that the Defendant had fraudulently obtained the Dealership stock shares. In the 2014 complaint, as in the case at bar, Plaintiff, sought to reacquire the 45% of shares that he had transferred to Defendant in 2007. In the prior matter, this Court by Order and Decision dated December 2, 2015 dismissed Plaintiff's complaint in its entirety. Plaintiff failed to perfect an appeal of that decision.

Plaintiff's theory in the current action differs from the action brought in 2014. In the instant case, Plaintiff does not allege fraud, but seeks to rely on a footnote found on page 6 of the Shareholder's Agreement. The footnote states:

> Payments shall commence under this Note (30) days after [Plaintiff] is incarcerated notwithstanding pending appeals. In the event an appellate review results in a change in the verdict to not 'guilty,' payments made to Calvin shall be deemed as "salary," the Note will be marked 'paid in full' and the shares will be re-transferred to [Plaintiff] subject to manufacturer approval.

Plaintiff argues that this footnote is controlling, and that because Plaintiff ultimately received a 'not guilty' verdict for the murder of his wife, the shares transferred in 2007 must be returned to him. He further contends that the $1.6 million dollars that he has received as payment for the shares should be treated as 'salary.' Plaintiff does not attempt to set forth exactly what

services he has performed to justify such a large salary. In fact, the record is void of any substantial employment that Plaintiff provided to the Dealership over the approximate ten (10) year period for which he has received the monthly payments from Defendant. Additionally, it is also worth noting that Defendant claims that his own personal funds, and not Dealership funds, were used to make the payments to Plaintiff for the purchase of the shares.

Paragraph twelve (12) of the Shareholders' Agreement provided for conditions under which the agreement would terminate.

> This Agreement shall terminate upon the occurrence of any of the following:
>
> (a) As to each Shareholder only, the transfer of all of the shares of the stock held by such Shareholder pursuant to the provisions of this Agreement;
> (b) The written agreement of all the Shareholders of the Corporation and of the Corporation;
> (c) The bankruptcy, receivership, or dissolution of the Corporation; or
> (d) At such time as there is only one remaining Shareholder of the Corporations.

Defendant argues, among other things, that the Shareholder Agreement terminated in 2007 under its own terms pursuant to Paragraph 12(d), when the remaining 45% of stock was transferred from Plaintiff to Defendant. With the transfer of that stock, Defendant become the sole remaining shareholder of the corporation, thus triggering the termination clause contained in Paragraph 12(d) of the Shareholder Agreement. As such, Defendant argues that the footnote relied upon by Plaintiff also necessarily terminated with the Shareholder Agreement. Defendant now moves for an order dismissing the compliant in its entirety for failing to state a cause of action upon which relief can be granted.

CONCLUSIONS OF LAW

In determining a motion to dismiss for failure to state a cause of action pursuant to CPLR § 3211 (a)(7), the Court "must afford the pleadings a liberal construction, take the allegations of the complaint as true and provide [the] plaintiff the benefit of every possible inference." Schmidt & Schmidt, Inc. v. Town of Charlton, 890 N.Y.S.2d 693 (3rd Dept. 2009), quoting EBC I, Inc. v. Goldman, Sachs & Co., 5 N.Y.3d 11, 19 (2005); citing Alaimo v. Town of Fort Ann, 63 A.D.3d 1481, 1482 (3rd Dept. 2009). Additionally, the Court "may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint since the ultimate criterion is whether the proponent of the pleading has a cause of action, not whether he [or she] has stated one." Leon v. Martinez, 84 N.Y.2d 83, 88 (1994), quoting Guggenheimer v. Ginzburg, 43 N.Y.2d 268, 275 (1977); citing IMS Engrs.-Architects, P.C. v. State of New York, 51 A.D.3d 1355, 1356 (3rd Dept. 2008).

Plaintiff's argument for the return of the shares is based predominantly on the language found in the footnote on page six (6) of the Shareholders' Agreement. For Plaintiff's complaint to survive, the Shareholders' Agreement, and the footnote contained therein, must survive the 2007 transfer of all of Plaintiff's shares to Defendant.

The submitted evidence suggests that the Agreements were executed at the same time, and when read together, the Agreements indicate that the parties intended that each party would retain their respective percentage of the shares and real estate until the criminal cases against Plaintiff were resolved with finality. The provision in Paragraph 12(d), however, allowed the contract to terminate should either party dispose of their respective shares prior to the criminal matter being completely resolved.

The submitted evidence and documentation indicates that in July of 2007, following Plaintiff's first conviction, the Plaintiff decided to proceed with the sale of his remaining shares and interest in the Dealership real estate prior to the exhaustion of all available appeals in the criminal case. Plaintiff executed the stock certificates transferring the stock, as well as executing before a notary warranty deeds transferring the real estate to Defendant. Shortly thereafter, it is undisputed that Plaintiff began accepting the agreed upon monthly payments and has continued to accept such payments.

The Court finds that Defendant has been the sole remaining shareholder since the transfer of the stock from Plaintiff in July of 2007. The language of Paragraph 12(d) is clear and unambiguous. Accordingly, pursuant to Paragraph 12(d), the Shareholders' agreement terminated under its own terms in July of 2007 when Defendant became the one remaining shareholder of the corporations. The footnote that Plaintiff relies on in his complaint similarly terminated with the Shareholders' Agreement.

The Shareholders' Agreement having terminated in 2007, Plaintiff's complaint fails to state a cause of action and must be dismissed in its entirety.

It is therefore,

ORDERED, that Defendant's motion to dismiss all causes of action in Plaintiff's complaint **is granted**

This shall constitute the Decision and Order of the Court.

ENTER
Dated:

April 7, 2017

Hon. Judith F. O'Shea
Supreme Court Justice

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The parties listed below have been mailed a copy of this Order on 4/7/17 by A Amms.

Original: ~~Samantha A. Pike, Chief Clerk~~ 80's. Karen R. Jordan 80's.
Supreme & County Courts - Rockland

Copy: Carol A. Crossett, Esq.
Attorney for Plaintiff

Dale A. Worrall, Esq.
Attorney for Defendant