

Medaglia v Cassata
2018 NY Slip Op 31895(U)
June 28, 2018
Supreme Court, Suffolk County
Docket Number: 45878/2010
Judge: Jerry Garguilo
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SHORT FORM ORDER

E-FILE

INDEX NO. 45878/2010

**SUPREME COURT - STATE OF NEW YORK
COMMERCIAL DIVISION IAS PART 48 - SUFFOLK COUNTY**

PRESENT:

HON. JERRY GARGUILO
SUPREME COURT JUSTICE

DECISION AFTER TRIAL

ALDO MEDAGLIA,

Plaintiff,

-against-

ROSARIO S. CASSATA, RICHARD SCUDERI,

Defendants,

POLO GROUNDS AT MELVILLE, LLC,

Nominal Defendant.

PLAINTIFF'S ATTORNEY:

RICHMAN & LEVINE, P.C.
666 OLD COUNTRY RD, STE 101
GARDEN CITY, NY 11530

DEFENDANT'S ATTORNEY:

KAGAN LUBIC LEPPER LEWIS GOLD
200 MADISON AVE, 24TH FLOOR
NEW YORK, NY 10016

The matter was tried before the Court without a jury, commencing April 10, 2018, and continuing April 11, 2018, April 12, 2018 and April 13, 2018.

As in any civil matter a party has the burden of proof on a particular issue in that considering all the evidence in the case, the parties claim on that issue must be established by a fair preponderance of the credible evidence. The credible evidence means the testimony or exhibits that the Court finds worthy of belief. A preponderance means the greater part of the evidence. The phrase preponderance of the evidence refers to the quality of the evidence, its weight, and the effect it has on the mind of the finder of fact, the Court. In order for a party to prevail on an issue on which the proponent has the burden of proof, the evidence that supports the claim on that issue must appear as more nearly representing what happened than the evidence opposed to it. If it does not or if it weighs so evenly that the finder of fact is unable to say that there is a preponderance on either side, the finder of fact must decide the question against the party who has the burden of proof and in favor of the opposing party.

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This Court finds that Plaintiff failed to meet his burden of proof and finds in favor of Defendant, Cassata.¹

The Court must find that Plaintiff is not entitled to judgment against Cassata simply because he failed to demonstrate a breach of any contractual obligation concerning the project known as Polo Grounds at Melville, LLC. In fact, the Court finds that the transactions between these parties appears no different than placing a bet on a trifecta wherein one of the pool of bettors claims it is a "sure thing," the bet is unsuccessful and a contributor to the pool seeks enforcement of the "sure thing" comment by demanding a return of his ante.

The trail to this transaction began in 2002 when Defendant Cassata, saw a classified ad in Newsday marketing an option agreement for a 21 acre parcel of land on Old Country Road in Huntington, New York. The option agreement was dated September 27, 2002 and made between a Trust and Melville Partners, LLC. Melville had paid the trust \$50,000.00 for the option and was asking \$1,550,000.00 for it. If the option was exercised, the contract-vendee had the right to purchase the property for \$5,700,000.00 with a credit for the original \$50,000.00 paid to the Trust for the option.

"The elements of a cause of action recover damages for breach of contract are (1) the existence of a contract, (2) the Plaintiff's performance under the contract, (3) the Defendant's breach of the contract, and (4) resulting damages." *Palmetto Partners, L.P. v. AJW Qualified Partners, LLC*, 83 A.D.3d 804, 806, 921 N.Y.S.2d 260, 264 (2nd Dept. 2011).

The plan of the investors, now parties to the litigation, was to construct residential dwellings on the property and sell the homes in order to realize a profit for the venture known as Polo Grounds at Melville, LLC. The agreement was not to purchase and subdivide the property simply for the sake of creating one-acre lots. Rather, the express purpose was to realize a profit in both the subdivision and construction of high-end homes.

The essence of Plaintiff's claim is reimbursement of capital contribution. The case represents good intentions and high hopes met with a dead end. There is no credible evidence that Plaintiff contracted for a money back guarantee.

The trial commenced on April 10, 2018 with a stipulation between counsel. The

1. The Court dismissed claims against Defendant Scuderi during the course of the trial.

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stipulation noted that Plaintiff invested \$514,720 into what we will call the project which was known as the Polo Ground at Mellville LLC. Defendant Scuderi, invested \$503,345. Defendant Cassata, invested \$1,029,410. The LLC was organized in 2003 to do business in New York. Plaintiff Medaglia, was not one of the original investors but he became an investor sometime in 2003. From 2003 through 2009 Plaintiff's interest in the project was 25%. As a result of Cassata's additional investments, Plaintiff's investment was reduced to 22.9%. Scuderi's investment was reduced to 22.4%. The balance of the ownership rights in the entity was with Cassata.

Again, the essence of the project was to buy a large tract of farmland in Melville. Upon obtaining the property it was to be subdivided into 1 acre building plots. The anticipated yield of between 14 and 18 separate building plots never materialized.

The project was conceived when Cassata read an ad in Newsday and thereafter agreed to purchase and/or take an assignment of an option on the property for approximately \$1.5 million. Cassata had a plan to make a very profitable investment. All the parties came together in a piecemeal fashion. Cassata and Scuderi, who knew each other, were the first. Defendant Cassata, convinced and/or suggested that Scuderi buy into the project. Which he did. Plaintiff Medaglia and Defendant Scuderi are related through some family ties. Eventually, Plaintiff Medaglia, invested a little more than a half million dollars into the project.

There is no relevant writing anywhere involving Plaintiff and Defendants which describes the rights, duties and responsibilities of any of the parties, as same relates to the issues presented at trial.

It should be noted that upon Plaintiff resting, the Court dismissed all causes of action except those for breach of contract and attorneys' fees. Plaintiff sought the return of his investment essentially alleging a breach of contract.

The requirements for the formation of a contract are (1) at least two parties with legal capacity to contract, (2) mutual assent to the terms of the contract, and (3) consideration. No single act, phrase or other expression is determinative, except the Court should look to the totality of all of these factors, given the attendant circumstances, the situation of the parties, and the objectives they were striving to attain. A contract may consist of separate writings or documents if the writings make it clear that they ought to be read in conjunction with other writings to determine the intent of the parties.

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Mutual assent is often referred to as a "meeting of the minds" of the parties on all essential terms of the contract. It is abundantly clear that there is absolutely no claim proved against Scuderi. The only meaningful reference to Scuderi in the entire testimony was that he told his relative, Megaglia, that it was "a sure thing." None of the basic elements of a contract were proved with any specificity whatsoever by Plaintiff against Scuderi.

Plaintiff's opening statement suggested that in January 2008 the last payment was made by Medaglia. It was further noted that the agreement was not "lawyerized" and that an operating agreement was never executed. Further, Medaglia, was approached to buy into the proposed project which was to eventually exercise the option. Thereafter, a subdivision was anticipated and upon final approval luxury homes were to be built.

Come November of 2008, a preliminary map was approved. It took five years to get there. However; litigation between the owners of the land and the assignees threatened to shut down the entire project. Much was made of the fact that in November 2008 a preliminary approval of the plan occurred with a deadline of six months to submit a final plan to the Town and County agencies. The essence of Plaintiff's case is that Defendant Medaglia "dropped the ball" and failed to complete the application process within the six month period. The explanation tendered by Defendant and credible in the eyes of the Court was that Supreme Court litigation seeking injunctive relief was pending. To further invest in the project when incurring substantial legal bills was not prudent.

Plaintiff, Aldo Medaglia, is in fact, a businessman. He has spent 45 years in the interior construction business, mostly in the Buroughs. Polo Grounds was his first venture of this kind. His relative, Scuderi, introduced him to the project. It should be noted that Scuderi and Medaglia were partners in the construction business. However, by the time this case reached trial they were not on speaking terms.

It is not in doubt that all of the parties to this litigation invested money. It is further not in doubt that no one saw any return or took distribution from invested dollars. Although much is alleged against Cassata, he took the biggest loss, in excess of \$1 million. Although there was never a binding operating agreement, Cassata acted as the managing partner.

There is nothing in the record that would indicate that this transaction was anything other than a venture attended with risks and potential benefits. None of the benefits were ever realized. Cassata was met with an economic downturn, an administrative process that was vexing, and diverse litigation. The project failed.

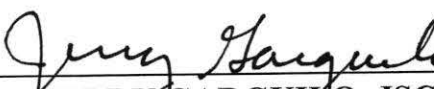
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The failure of the project was not a flip of the coin decision by Cassata. The venture failed upon advice of competent counsel and financial people.

As noted herein, there was no meeting of the minds that anyone who invested in the project were guaranteed a return of their investment upon failure. Seasoned business persons entered into this agreement with their eyes wide open. As noted earlier upon close of Plaintiff's case, the Court dismissed counts 2, 3, 4, 5, 6, 7, 8 and 9. The verdict is in favor of the Defendant, dismissing any remaining claims.

The foregoing constitutes the Decision of this Court. Submit judgment on notice.

Dated: June 28, 2018


HON. JERRY GARGUILO, JSC