Gallery Apts. Co., LP v Board of Mgrs. of the Petit Verdot Condominium
2019 NY Slip Op 30006(U)
January 2, 2019
Supreme Court, New York County
Docket Number: 154981/2018
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT:	**HON. ARLENE P. BLUTH** *Justice*	**PART**	**IAS MOTION 32**
		INDEX NO.	154981/2018
GALLERY APARTMENTS CO., LP		**MOTION DATE**	12/11/2018
	Plaintiff,	**MOTION SEQ. NO.**	001
	- v -		
THE BOARD OF MANAGERS OF THE PETIT VERDOT CONDOMINIUM,			
	Defendant.		**DECISION & ORDER**

---X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 33, 34, 35, 36, 37, 38, 40, 42

were read on this motion to/for SUMMARY JUDGMENT.

The motion for summary judgment in lieu of complaint is granted.

Background

This action arises out of a note defendant executed in favor of plaintiff. Defendant purchased from the sponsor (plaintiff's predecessor-in-interest (732-734 WEA, LLC)) the superintendent's apartment and executed a note for $862,282 plus seven percent interest per annum. The payments were divided into monthly installments of $5,736.78 starting on June 1, 2014. The note was assigned to plaintiff on May 1, 2017.

Plaintiff claims that defendant made timely monthly payments until July 31, 2017 but has since failed to make any payments through May 2018 (when this action when commenced). Plaintiff contends that $58,228.31 is due through May 2018—this amount includes $57,367.51 for the monthly payments and interest as well as $860.51 in late fees.

In opposition, defendant points out that the note was executed for sale of the super's unit in the apartment building operated by defendant located at 732-734 West End Avenue in

Manhattan. Defendant claims that plaintiff's predecessor-in-interest (732-734 WEA, LLC) was the sponsor of the building and converted the premises to condominium ownership. Defendant argues that as part of the sponsor's offering plan, the condo agreed to buy the super's apartment for $822,500 and then, at the closing, the condo gave the sponsor a note with a 10-year term for $862,282 secured by a mortgage. Defendant stresses that at the time this transaction was executed, the sponsor still controlled the condo's board of managers.

Defendant claims that the motion should be denied because plaintiff lacks standing as plaintiff cannot show it held the note at the time this action started. Defendant also raises questions about the fact that Mr. Hefelfinger (who submitted an affidavit in support of plaintiff's motion) represented both the sponsor and the condo at the time of the closing for the super's apartment. Defendant further contends that the value of the unit is about half of the purchase price and, therefore, the transaction lacked consideration. Finally, defendant blames a management company for financial mismanagement..

Discussion

CPRL 3213 provides that "When an action is based upon an instrument for the payment of money only or upon any judgment, the plaintiff may serve with the summons a notice of motion for summary judgment and the supporting papers in lieu of a complaint."

"CPLR 3213 is intended to provide a speedy and effective means of securing a judgment on claims presumptively meritorious" (*Interman Indus. Products, Ltd. v R.S.M. Electron Power, Inc.*, 37 NY2d 151, 154, 371 NYS2d 675 [1975]). "[I]f a prima facie case would be made out by the instrument and a failure to make the payments called for by its terms, the moving party would be entitled to summary judgment unless the other party came forward with evidentiary proof sufficient to raise an issue as to the defenses to the instrument" (*id.* at 155).

Here, plaintiff has met its prima facie case—it attaches the note for the payment of money only (NYSCEF Doc. No. 6), the assignment of the note from the sponsor to plaintiff (NYSCEF Doc. No. 7) and plaintiff claims that defendant failed to make payments (*see Seaman-Andwall Corp. v Wright Mach. Corp.*, 31 AD2d 136, 295 NYS2d 752 [1st Dept 1968] [finding that CPLR 3213 was applicable where plaintiff could meet its prima facie burden by proof of a note and defendant's failure to make payments]). Plaintiff has established that it has standing to bring this case and that CPLR 3213 is applicable.

Defendant failed to raise an issue as to the defenses to the note. The fact that the price for the apartment may have been higher than the market price is not sufficient to defeat the instant motion. Simply because defendant thinks it could have negotiated a better price for the unit once it gained control over the board of managers is not a basis to throw out the agreement. Of course, there are many instances where a sponsor arranges a sweetheart deal between it and a condo's board while the sponsor still controls the board. There may be a limit to this type of deal where a condo would be able to claim lack of consideration. But this is not such a case. Everyone who purchased knew of this arrangement as it was fully disclosed in the offering plan and chose to purchase their unit even if they thought the condo may have overpaid for the super's unit.

The fact that the sponsor, the condo's board and the management company may have been run by the same people does not matter for purposes of this motion. If defendant believes that the building's former management company is to blame for financial mismanagement, then defendant is entitled to pursue its legal options against that entity. But that is not a basis for denying this CPLR 3213 motion based upon a note.

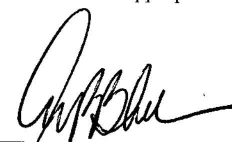
Summary

Although defendant attempts to raise questions about the execution of the note, an instrument for the payment of money only, defendant does not deny that it paid for years then stopped making payments. And defendant did not raise issues of fact about the agreement; it got the apartment and now doesn't want to make the payments that it agreed to make. Instead, defendant claims to dislike the terms of the agreement and blames the management company that used to oversee the building. That is not a valid defense to a motion for summary judgment in lieu of complaint.

Accordingly, it is hereby

ORDERED that the plaintiff's motion for summary judgment in lieu of complaint is granted, and the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendant in the sum of $58,228.31, with interest at the rate of 7% per annum from May 1, 2018 until the date of this decision, and thereafter at the statutory rate, as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs and other proper papers therefor.

1/2/19
DATE



ARLENE P. BLUTH, J.S.C.
HON. ARLENE P. BLUTH

CHECK ONE:	[X] CASE DISPOSED		[ ] NON-FINAL DISPOSITION	
APPLICATION:	[X] GRANTED	[ ] DENIED	[ ] GRANTED IN PART	[ ] OTHER
	[ ] SETTLE ORDER		[ ] SUBMIT ORDER	
CHECK IF APPROPRIATE:	[ ] INCLUDES TRANSFER/REASSIGN		[ ] FIDUCIARY APPOINTMENT	[ ] REFERENCE