

Hillabrant v Falanga
2019 NY Slip Op 31173(U)
March 14, 2019
Supreme Court, Richmond County
Docket Number: 152595/2018
Judge: Wayne M. Ozzi
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND: DCM PART 23

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BENJAMIN HILLABRANT,

Plaintiff,

Index No. 15295/2018
Decision & Order

-against-

MARIE R. FALANGA,

Defendant.
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Ozzi, J.

By motion dated October 29, 2018, defendant moves this Court for an Order dismissing the above-entitled action in which Plaintiff seeks, inter alia, specific performance of an alleged contract between the parties. The plaintiff opposes the instant motion. For the reasons set forth below, the defendant's motion is granted.

Procedural History

On October 14, 2010, Plaintiff and Defendant entered into a contract regarding their residence, located at 66 Erika Loop, Staten Island, New York (the "Premises"). Pursuant to the terms of the contract, both parties were to retain a fifty percent (50%) interest in the property. Defendant was entitled to move out of the premises without relinquishing nay of her ownership rights and Plaintiff would assume "full responsibility for all payments relating to the property, including... mortgage payments, utility, taxes...[and maintenance]." Contract Article I Paragraph 2. The contract further provided that Plaintiff, by April 1, 2011, was to secure funds to "buy out" the Defendant's 50% interest in the premises for a sum of One Hundred Twenty Thousand Dollars (\$120,000.00). Plaintiff was to immediately apply for the funding necessary to accomplish the buy out and, upon transfer of the premises into Plaintiff's name, Defendant would

no longer be listed on the mortgage or note. Contract Article II Paragraphs 2 and 3. Pursuant to the Contract, if Plaintiff did not refinance and purchase Defendant's interest in the premises by April 1, 2011, the parties were required to place the property on the market for sale. Defendant was to receive all rental income from the rental unit in the property from April 1, 2011 until the date of sale. The net proceeds from the sale were to be divided equally between the parties. Contract Article II Paragraphs 4-5.

Defendant claims that after failing to secure funding to purchase Defendant's interest in the premises by April 1, 2011, Plaintiff refused to list the property for sale, refused to sign a listing agreement and denied brokers access to the property to perform an assessment. Additionally, Defendant claims that she never received any rental income that was due to her pursuant to the terms of the Contract.

As a result of the foregoing, Defendant instituted an action against Plaintiff. Falanga v. Hillabrant, Index No. 102387/2011 (the "2011 action"). Default judgment was entered against Hillabrant in the 2011 action by Hon. Judith McMahon, J.S.C. on January 10, 2012. After Hillabrant failed to appear for a scheduled conference on April 17, 2012, the matter was assigned to Edward V. Corrigan, Special Referee, to hear and determine the matter. A hearing was held on August 23, 2012. Despite being provided with notice of the hearing, Hillabrant failed to appear. See Referee Report p. 2. Based upon the referee's report, Justice McMahon issued an Order On Decision dated August 27, 2013 ordering Hillabrant to execute all documents and take the necessary steps to place the Premises on the market for sale. Hillabrant was also ordered to engage in good faith negotiations with potential purchasers and not unreasonably withhold consent to any potential sale; to execute all documents necessary to enter into a contract of sale and satisfactorily complete the closing; and to pay Falanga the costs associated with obtaining an

appraisal conducted by Zaloom Associates in the amount of \$500.00. Finally, Hillabrant was ordered to account to Falanga any and all rental income received from the premises. Decision on Order Dated August 27, 2013.

After Hillabrant failed to obey the Order, by refusing to sign a listing agreement, refusing to allow real estate brokers and appraisers onto the property, and failing to reimburse Falanga for the cost of the appraisal or give her an accounting of rental income received as of April 1, 2011, Falanga moved by Order to Show Cause to have Hillabrant held in contempt. Justice McMahon issued another Order, dated February 24, 2015 appointing Thomas Sipp, Esq. as referee. To date, this matter remains pending.

Plaintiff instituted the instant action on October 1, 2018. In his complaint he alleges the following causes of action: (1) specific performance, (2) unjust enrichment, and (3) detrimental reliance.

Conclusions of Law

In his opposition to Defendant's motion to dismiss, Plaintiff claims that a subsequent agreement was entered into between the parties. Specifically, Plaintiff claims that on or about April 27, 2016, the parties entered into anew agreement containing the terms of the conveyance from Defendant to Plaintiff which was memorialized in a letter by Defendant to her former counsel Ralph J. Porzio, Esq. advising him of the parties' new agreement. Plaintiff's counsel contends that this constitutes a new contract between the parties and, consequently, the statute of limitations on Plaintiff's claims has not expired. Plaintiff's position is wholly without merit.

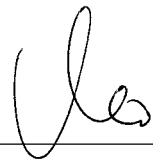
As Defendant correctly points out, none of the elements of a contract are present in Defendant's letter to her former attorney. To establish the existence of an enforceable agreement, a Plaintiff must establish an offer, acceptance of the offer, consideration, mutual

assent and an intent to be bound. 22 N.Y. Jur. 2d, Contracts Section 9. That meeting of the minds must include an agreement on all essential terms. See e.g., Kolchins v. Evolution Markets, Inc., 128 A.D.3d 47 (1st Dep't 2015). All of the above elements are sorely lacking in what is essentially correspondence from a client to her attorney. The statute of limitations for breach of contract is six years. Scheinberg v. Samuels, 171 A.D.2d 857 (2nd Dep't 1991). The contract was entered into over nine years ago and Plaintiff was found to be in default in the first action seven years ago. Consequently, the statute of limitations has long since expired and the current action must be dismissed.

Similarly, as noted above, there is currently an action still pending in this court involving the same parties and the same parcel of land. CPLR 3211(a)(4) grants the court broad discretion when considering whether to dismiss an action on the ground that another action is pending between the same parties on the same cause of action. Whitney v. Whitney, 57 N.Y.2d 732 (1982). A motion to dismiss based on the existence of another suit between parties should be granted where an identify of parties and causes of action in two simultaneously pending actions raises the danger of conflicting rulings relating to the same matter. Diaz v. Philip Morris Companies, Inc., 28 A.D.3d 703 (2nd Dep't 2006). Based on the procedural history as set forth in detail above, dismissal of the instant matter is also warranted on these grounds.

Therefore, the reasons set forth above, Defendant's motion is granted, and this action is hereby DISMISSED. The foregoing constitutes the decision and Order of the Court.

ENTER:



Dated: March 14, 2019

HON. WAYNE M. OZZI, J.S.C.