

Martin v Sahgal

2019 NY Slip Op 31305(U)

April 15, 2019

Supreme Court, New York County

Docket Number: 657323/2017

Judge: Kathryn E. Freed

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2EFM

Justice

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DENNY MARTIN and ALLISON MARTIN,
Plaintiffs,

INDEX NO. 657323/2017
MOTION SEQ. NO. 001

- V -

SUMIR SAHGAL and ESSEN MEDICAL ASSOCIATES, PC,
Defendants.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 were read on this motion for DISMISSAL.

Upon the foregoing documents, it is ordered that the motion is **granted**.

In this breach of contract action, defendants Sumir Sahgal (“Sahgal”) and Essen Medical Associates, PC (“Essen Medical”) move, pursuant to CPLR 3211(a)(1), to dismiss the first, third, sixth, and seventh causes of action from the complaint of plaintiffs Denny Martin (“Denny”) and Allison Martin (“Allison”) (collectively “plaintiffs”). Plaintiffs oppose the motion. After oral argument, and after a review of the parties’ papers and the relevant statutes and caselaw, it is ordered that the motion is **granted**.

FACTUAL AND PROCEDURAL BACKGROUND:

Plaintiffs commenced this action on January 22, 2018 by filing a summons and complaint. (Doc. 17.) In the complaint, they asserted eight causes of action against defendants (*id.*), four of which are pertinent to the instant motion: (1) the first cause of action, seeking damages, on behalf of both plaintiffs, of at least \$700,000.00 due to a breach of contract (*id.* at 6); (2) the third cause

of action, claiming that defendants committed fraud against plaintiffs by entering into a contract with an intent to deceive them (*id.* at 7); (3) the sixth cause of action, requesting a declaratory judgment that plaintiffs were the sole owners of the disputed property at issue and that defendant Sahgal had no interest therein (*id.* at 9); and (4) the seventh cause of action, seeking a mandatory injunction directing defendant Sahgal to return title of the subject property to plaintiffs (*id.* at 9–10). Defendants have moved, pursuant to CPLR 3211(a)(1), to dismiss the foregoing causes of action. (Doc. 6.) No discovery has been conducted. (*See* Doc. 30 at 2.)

The facts underlying this action are heavily disputed by the parties. Defendants repeatedly argue in their motion papers that the first, third, sixth, and seventh causes of action must be dismissed because plaintiffs filed a fraudulent deed. (*See* Doc. 11.) The complaint alleges that defendant Sahgal met with Denny Martin in August of 2010 to discuss an employment opportunity at Sahgal's company, Essen Medical. (Compl. at 1.) In 2012, Sahgal allegedly loaned \$168,000.00 to Denny. Martin so that plaintiffs could purchase an apartment on Third Avenue. (*Id.* at 2; Doc. 23 at 4.) To secure repayment of the loan, defendants required that Sahgal be listed as a 50% interest owner on the deed with which plaintiffs obtained their home. (Compl. at 2.) Plaintiffs further assert that, once the loan was repaid in full by plaintiffs, Sahgal was to deed his 50% interest back to plaintiffs, thereby leaving them as the sole owners of the property. (*Id.* at 6.)

In September of 2014, Denny and defendants got into a dispute about the compensation that he was receiving for his work. (*Id.* at 5.) Specifically, he claimed that defendants had breached their employment agreement with him and that he was owed over \$1,750,000.00 for his services. (*Id.*) Denny Martin was thereafter terminated from his employment. (*See id.*)

The following facts are not alleged in the complaint¹: In late 2014, based on the fact that the amount defendants owed to Denny under their employment agreement was “much more” than what plaintiffs owed to defendants on their loan, plaintiffs demanded that Sahgal relinquish his interest in the property and deed his 50% ownership back to them. (Doc. 23 at 5.) Sahgal did not do so. (*Id.*) “[U]sing the power of attorney provided by Sahgal to them” (*id.*), plaintiffs subsequently filed a deed attempting to transfer Sahgal’s interest in the property to them (*id.*). Accordingly, on March 15, 2016, Denny signed a deed “using the power of attorney” (*id.* at 5–6) and filed it in April of 2016 (“the 2016 deed”) (*id.*). However, plaintiffs “were advised by their title company that the 2016 Deed was ineffective because the power of attorney did not clearly grant authority to [Denny] to sign on behalf of Sahgal” (*Id.* at 6.)

In support of their motion to dismiss, defendants argue that the 2016 deed was fraudulent. They argue that the first cause of action must be dismissed “because any finding of fact in favor of the Plaintiffs . . . would be contradicted by the Fraudulent Deed.” (Doc. 11 at 10.) They also assert that the third cause of action—for fraud—should be dismissed because plaintiffs have not suffered an injury, since Denny “has (improperly) conveyed the Ownership Interest to himself and his wife” (*Id.* at 9.) For similar reasons, defendants argue that the sixth and seventh causes of action—which, respectively, seek a declaration and a mandatory injunction transferring Sahgal’s interest in the property to plaintiffs—are moot due to “Plaintiffs’ own Fraudulent Transfer.” (*Id.* at 8–9.) In other words, defendants contend that plaintiffs cannot seek the relief of obtaining the full interest in the property because they already own it in full, since they filed the 2016 deed “fraudulently” transferring Sahgal’s interest to themselves.

¹ These facts are alleged in the parties’ motion papers. (*See* Docs. 7, 11, 16, 23, 25, 30, 33–34.) The Court takes notice of these facts because the primary basis for defendants’ motion to dismiss is that plaintiffs are attempting to defraud this Court by having omitted relevant facts from their complaint.

In the alternative, defendants assert that plaintiffs' first, third, sixth, and seventh causes of action are barred by the statute of frauds. The injury underlying these causes of action is that plaintiffs have not received their full interest in the property from Sahgal, even though the parties purportedly had an agreement that Sahgal would transfer his interest to them after the loan was repaid. Defendants argue that, because that agreement was never reduced to writing, it violates the statutes of frauds and therefore those causes of action must be dismissed. (*Id.* at 11–12.)

In opposition, plaintiffs contend that, although the deed was deemed defective by a title company, it was not fraudulent because it was based “on a possible mistaken reading of the power of attorney that Sahgal had given [Denny]” in 2012. (Doc. 16 at 3.) In particular, the power of attorney that Sahgal executed had given Denny Martin the power to conduct “real estate transactions.” (Doc. 9 at 4.) Thus, plaintiffs argue that they had “read the power of attorney to confer authority to file a new deed.” (Doc. 16 at 3.) Moreover, plaintiffs argue that defendants cannot take inconsistent positions by using the 2016 deed as a double-edged sword. Specifically, plaintiffs argue that, on the one hand, defendants are arguing that the causes of action should be dismissed because they are moot, since the Martins have already obtained full title to the property by filing the fraudulent deed. (*Id.* at 4–5.) On the other hand, defendants also assert that the 2016 deed was fraudulent because Denny did not have the authority to execute it on behalf of Sahgal. (*Id.* at 5.) Therefore, according to plaintiffs, “Defendants cannot argue both ways . . . that the deed is and is not effective.” (*Id.*) Finally, with respect to defendants' contention that the causes of action should be dismissed under the statute of frauds, plaintiffs argue that the parties' part performance prevents the application of the statute of frauds and that the agreement that Sahgal would transfer his ownership to plaintiffs upon repayment of the loan was sufficiently in writing. (Doc. 23 at 8–12.)

LEGAL CONCLUSIONS:

On a CPLR 3211 motion to dismiss a complaint, “the pleading is to be afforded a liberal construction.” (*Leon v Martinez*, 84 NY2d 83, 87–88 [1994].) Nonetheless, CPLR 3211 (a)(1) provides for dismissal should the reviewing court find that the documentary evidence conclusively establishes a defense to the asserted claims as a matter of law. (*See 150 Broadway N.Y. Assocs., L.P. v Bodner*, 14 AD3d 1, 5 [1st Dept 2004]; *see also Leon*, 84 NY2d at 88.) Therefore, if the complaint’s “allegations are contradicted by documentary evidence, they are not presumed to be true or granted every favorable inference” (*Sterling Fifth Assocs. v Carpentille Corp., Inc.*, 9 AD3d 261, 261–62 [1st Dept 2004].)

Contrary to defendants’ argument, this Court finds that the 2016 deed does not warrant dismissal of plaintiffs’ first, third, sixth, and seventh causes of action. Those four causes of action allege that plaintiffs have suffered injury due to Sahgal’s refusal to deed his interest to them. (*See* Compl. at 6–7, 9–10.) Those allegations are not contradicted by the 2016 deed because plaintiffs admit that a title company deemed the deed ineffective (Doc. 25 at 3), and therefore Sahgal’s 50% interest in the property was never transferred to plaintiffs.

Nevertheless, this Court grants the motion to dismiss because the first, third, sixth, and seventh causes of action are barred by the statute of frauds. All of those causes of action are premised on the allegation that Sahgal has not honored a purported agreement to transfer his 50% interest in the property to plaintiffs upon full repayment of the loan. For example, in their first cause of action, plaintiffs claim that: “Defendants and the Martins agreed that Defendants would hold the interest in the Property, only as security for repayment of the salary advance made by Defendants to [Denny Martin]” (Doc. 17 at 6.) In their third cause of action, plaintiffs likewise

assert that “Defendants represented to the Martins that Sahgal would hold the interest in the Property, only as security for repayment of the salary advance” (*Id.* at 7.) They claim in their sixth cause of action that: “the deed from the Martins to Sahgal and the Note from [Mr. Martin] to [Essen Medical], were merely security vehicles so as to protect Defendants’ salary advance to [Mr. Martin].” (*Id.* at 9.) Plaintiffs claim in their seventh cause of action that “Sahgal should be directed to return title to the Property to Plaintiffs” pursuant to that agreement. (*Id.*)

These causes of action are subject to New York’s statute of frauds, which is codified in General Obligation Law § 5-703. “Under the statute of frauds, to be enforceable, certain types of agreements cannot be oral; they must be in writing. Simply stated, the purpose of the statute is to prevent perjury and fraud and to preserve the integrity of contracts.” (*Dorfman v Reffkin*, 144 AD3d 10, 15 [1st Dept 2016].) In particular, § 5-703(3) provides: “A contract to devise real property or establish a trust of real property, or any interest therein or right with reference thereto, is void unless the contract or some note or memorandum thereof is in writing and subscribed by the party to be charged therewith, or by his lawfully authorized agent.”

Here, there are no documents submitted evidencing an agreement that Sahgal would transfer his 50% interest in the property to plaintiffs upon repayment of the loan. Thus, this purported agreement is unenforceable, and the first, third, sixth, and seventh causes of action—which, again, rely on that agreement—cannot be sustained. Moreover, because the complaint does not allege that plaintiffs have repaid the loan², they cannot argue that the statute of frauds does not apply due to their part performance of the purported agreement. Part performance must be

² In this regard, the complaint states the following: “Based on all the monies owed by Defendants to [Denny Martin], the advance loan has been repaid and Defendants were required to deed back that interest in the Property to the Martins.” (Doc. 17 at 6.) In other words, the complaint states that the loan should be considered repaid, not because plaintiffs have actually repaid the loan, but because defendants owe more money to plaintiffs than plaintiffs owe to defendants.

unequivocally referable, making plaintiffs' position herein even weaker. (*See Anostario v Vicinanza*, 59 NY2d 662, 664 [1983].)

Therefore, in accordance with the foregoing, it is hereby:

ORDERED that defendants Sumir Sahgal and Essen Medical Associates, PC's motion to dismiss the first, third, sixth, and seventh causes of action from the complaint of plaintiffs Denny Martin and Allison Martin is granted, and those causes of action shall be stricken from the complaint; and it is further

ORDERED that, within 30 days of the uploading of this order to NYSCEF, defendants' counsel is directed to serve a copy of this order with notice of entry on plaintiffs' counsel and on the Clerk of the Court, who is directed to enter judgment accordingly; and it is further

ORDERED that the parties are to appear for a preliminary conference on July 23, 2019, at 80 Centre Street, Room 280, at 2:15 PM; and it is further

ORDERED that this constitutes the decision and order of this Court.

4/15/2019
DATE

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_____~~
KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE