Vebeliunas v Overstrom
2019 NY Slip Op 32991(U)
October 9, 2019
Supreme Court, New York County
Docket Number: 160255/2016
Judge: Anthony Cannataro

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANTHONY CANNATARO **PART** IAS MOTION 41EFM

Justice

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VANDA VEBELIUNAS, INDIVIDUALLY AND AS THE TRUSTEE OF THE VART TRUST,

Plaintiff,

- v -

GUNNAR OVERSTROM, CLAUDIA OVERSTROM

Defendant.

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INDEX NO. 160255/2016

MOTION DATE 05/15/2019

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54

were read on this motion to/for JUDGMENT - SUMMARY.

Plaintiffs, the former owners of the real property known as 304 Bayville Road, Lattingtown, New York, commenced this breach of contract action against defendants, the current owners of the Bayville property, to recover monies plaintiffs allege is owed to them by defendants pursuant to a closing agreement executed by the parties as part of the sale of the Bayville property. Defendants now move, pursuant to CPLR 3212, to dismiss plaintiffs' sole remaining cause of action for breach of contract. Plaintiffs cross-move, pursuant to CPLR 3212, for summary judgment, a money judgment, and for such further relief as is just and proper.

On a motion for summary judgment, the movant carries the initial burden of tendering admissible evidence sufficient to demonstrate the absence of a material issue of fact as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Once the movant meets its initial burden, the burden shifts to the opposing party to "show facts sufficient to require a trial of any issue of fact" (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Summary judgment may be granted upon a *prima facie* showing of entitlement to judgment as a matter of law, through admissible evidence sufficient to

eliminate material issues of fact (CPLR 3212 [b]; *Alvarez*, 68 NY2d at 324; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). When there are no triable material issues of fact, it is incumbent upon a court, in the interests of judicial economy, to grant summary judgment (*Andre v Pomeroy*, 35 NY2d 557 [1980]).

The dispute between the parties revolves around an earlier agreement that was entered into before the sale of the Bayville property and which ran with the land. Specifically, on March 4, 1989, plaintiffs, who at that time still owned the Bayville property, entered into an agreement with the Hechts, then owners of the real property known as 5 Taylor Court, Lattingtown, New York, which provided plaintiffs with a one-hundred-year lease to one acre of the Taylor Court property at a rental rate of $10 per year, and an option to purchase that acre for $10 after twenty years' time. The agreement also provided the owners of the Taylor Court property with an easement allowing them to access and use the lake on the Bayville property.

In 2004, the Lipmans, who had purchased the Taylor property from the Hechts, commenced an action seeking to rescind the 1989 agreement. While that litigation was ongoing, plaintiffs conveyed title of the Bayville property to defendants, Gunnar and Claudia Overstrom by deed dated January 26, 2006. As part of that sale, plaintiffs and defendants entered into a closing agreement which was modified to its final version on October 17, 2008. The closing agreement provided that plaintiffs would continue to defend the Lipman Action, and that if they were successful in the litigation, plaintiffs would be entitled to an additional $75,000 from defendants. Specifically, Article 5 of the closing agreement states that "if the Lipman Action is settled or resolved by court order or judgment beyond appeal, resulting in complete ratification and/or enforcement of the lease and easement in favor of the Purchaser (hereinafter referred to as a "Successful Outcome"), $75,000 shall be returned to Seller."

Shortly after executing the closing agreement, on October 22, 2008 plaintiffs executed a "Confirmation of Express Ratification of Mutual Lease and Easement Agreement". In December 2012, Supreme Court, Nassau County (Winslow, J.), held that plaintiffs had in fact ratified the 1989 agreement. The Appellate Division, Second Department in *O'Neill v Vebeliunas* (136 AD3d 876 [2016]), affirmed that holding in a decision dated February 17, 2016, but modified the trial court's decision by deleting the provision which directed that the easement provided for in the agreement be deemed extinguished.

The parties now dispute whether these courts' rulings, specifically, the decision by the Appellate Division, entitles plaintiffs to the $75,000 fee provided for by the closing agreement. Defendants maintain that in order for plaintiffs to be entitled to the additional $75,000, the easement on the Bayville property would have had to have been extinguished. Plaintiffs by contrast argue that the 1989 agreement only needed to be restored to its original intent which afforded a lease and option to the owner of the Bayville property and an easement to the owner of the Taylor Court property.

The construction of a definite contract is a question of law for the court to decide (*Maysek & Moran. Inc. v S.G. Warbure & Co., Inc.*, 284 AD2d 203 [2001]). When parties have set down their agreement in a clear, complete document, their writing should be enforced according to its terms (*South Road Associates, LLC v. Intern. Business Machines Corp.*, 4 NY3d 272, 277 [2005]; *Goldstein v. AccuScan, Inc.*, 2 NY3d 811 [2004]). A written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms (*Kolmar Americas, Inc. v Bioversal Inc.*, 89 AD3d 493 [2011]).

The Appellate Division found that the 1989 agreement at issue in this case was clear in its intention to provide the owner of the Taylor Court property with a "perpetual" easement to the Bayville property (*O'Neill v Vebeliunas*, 136 AD3d at 878).

Reading the 1989 agreement in the light of the Appellate Division's learned decision, the consideration for the low-priced lease and purchase option was a perpetual easement on the Bayville property. Taking this reading of the 1989 agreement together with the closing agreement, it follows that the $75,000 contingent fee at issue in the closing agreement was meant to reflect the value of the lease and the option which the owner of the Bayville property stood to gain, or lose, depending on the outcome of the Lipman action.

Defendants interpretation of the closing agreement, to the effect that the collection of the $75,000 fee was dependent upon both securing the lease and option, and the nullification of the easement, is patently unreasonable. That interpretation would require reading the payment of the additional $75,000 as dependent upon the courts upholding only one party's rights flowing from the 1989 agreement, while simultaneously rescinding the rights of the other party and nullifying the consideration which made the agreement a valid contract in the first place. In addition to running contrary to general principles of contract, this interpretation does not fit the language of the closing agreement which only requires "ratification and/or enforcement of the lease and easement" to be considered a "successful outcome" and which says nothing of a condition that the easement portion of the 1989 agreement be rescinded.

As the Lipman action ultimately resolved with the 1989 agreement being ratified in its entirety, per the terms of the closing agreement, plaintiffs are entitled to the additional $75,000 provided for therein.

Accordingly, it is

ORDERED that defendants' motion seeking summary judgment is denied; and it is further

ORDERED that plaintiffs' motion seeking summary judgment on its cause of action for breach of contract is granted, and the Clerk is directed to enter judgment in

favor of plaintiffs and against defendant in the amount of $75,000, together with interest at the rate of 9% per annum from the date of February 17, 2016 until the date of the decision on this motion, and thereafter at the statutory rate, as calculated by the Clerk, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.

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10/9/19
DATE

ANTHONY CANNATARO, J.S.C.

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