

Garcia v Samarian Twelve, LLC
2019 NY Slip Op 33204(U)
October 25, 2019
Supreme Court, New York County
Docket Number: 652848/2015
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH

PART

IAS MOTION 32

Justice

-----X

INDEX NO. 652848/2015

FRANK GARCIA,

MOTION DATE 08/14/2019

Plaintiff,

MOTION SEQ. NO. 001

- v -

SAMARIAN TWELVE, LLC, SAMARIAN GROUP,
LLC, SAMARIAN PRODUCTIONS, LLC, ALFRED
ZACCAGNINO

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42

were read on this motion to/for

SUMMARY JUDGMENT

The motion by defendants for summary judgment dismissing the complaint is granted.

Background

In March 2010, Plaintiff invested about \$550,000 with defendants. In October 2010, he withdrew about \$113,000 and then, in 2013, plaintiff entered into a termination agreement with defendants in which he cashed out his remaining holdings.

Plaintiff claims that he was duped by defendants, and particularly Zaccagnino, who purportedly knew that plaintiff was relying on the money he invested with defendants for his living expenses. Plaintiff claims that his money was invested in speculative ventures that were ultimately unsuccessful. Plaintiff contends that defendants took thousands of dollars from him and alleges causes of action for fraud, violation of General Business Law § 349, breach of fiduciary duty, unjust enrichment, conversion, breach of contract, negligent misrepresentation, and accounting.

Defendants move for summary judgment on the ground that the termination and release agreement from October 2013 constitutes a complete bar to this action. Defendants insist that plaintiff freely entered into this agreement and thereby waived his right to sue defendants for purported acts related to his investments.

In opposition, plaintiff contends that the release is unenforceable. Plaintiff insists he does not believe he ever received the \$5,000 payment mentioned in the agreement and that the agreement (if enforceable) only bars contractual claims rather than the tort claims plaintiff asserts. Plaintiff also argues that the release is void based on fraud in its execution. Plaintiff argues that defendants stole his money and that defendants cannot show what happened to his money. Plaintiff complains that counsel for defendants told plaintiff it was okay for him to sign the agreement without advising him that he needed to consult his own attorney.

In reply, defendants assert that plaintiff received the full consideration he was due under the terms of the agreement and insist that plaintiff would have complained about not receiving money in subsequent emails between the parties. Defendants also point out that plaintiff's failure to receive the entire consideration is not a basis to invalidate the entire agreement. Defendants' counsel denies representing plaintiff in any capacity and maintains that plaintiff had three days to consider the agreement before signing.

Discussion

To be entitled to the remedy of summary judgment, the moving party "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such a prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers

(*id.*). When deciding a summary judgment motion, the court views the alleged facts in the light most favorable to the non-moving party (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492, 955 NYS2d 589 [1st Dept 2012]).

Once a movant meets its initial burden, the burden shifts to the opponent, who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 560, 427 NYS2d 595 [1980]). The court's task in deciding a summary judgment motion is to determine whether there are bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505, 942 NYS2d 13 [2012]). If the court is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied (*Tronlone v Lac d'Amiante Du Quebec, Ltee*, 297 AD2d 528, 528-29, 747 NYS2d 79 [1st Dept 2002], *affd* 99 NY2d 647, 760 NYS2d 96 [2003]).

"[A] general release is governed by principles of contract law" (*Mangini v McClurg*, 24 NY2d 556, 562, 301 NYS2d 508 [1969]). "[T]he releasor, whether the issue arise in reformation or on construction of the instrument must sustain the burden of persuasion if he is to establish that the general language of the release, valid on its face and properly executed, is to be limited because of a mutual mistake, or otherwise does not represent the intent of the parties. Where, however, the release is challenged on grounds of duress, illegality, or fraud, the burden of persuasion remains with the releasee" (*id.* at 563).

Here, the termination and release agreement states that plaintiff "agrees to waive any claim, and indemnify and hold Samarian 12, Zaccagnino, and all other Samarian related entities harmless therefore, Releasor may have under the Agreements and waives any and all rights,

known or unknown, vested or unvested, liquidated or contingent, to any property invested in, or through Samarian 12 by Garcia” (NYSCEF Doc. No. 25, ¶ 1).

The release agreement defines Agreements as the March 18, 2010 (amended on August 26, 2010) and May 2, 2013 agreements. The 2010 agreement contains language in which plaintiff agreed to indemnify and waive any claims that might arise out of any investment losses (NYSCEF Doc. No. 27, ¶ X).

Simply put, any reasonable interpretation of the release agreement compels the conclusion that the instant action is barred. Plaintiff waived “any and all rights, known or unknown” related to the investments. Clearly, the purpose of the termination agreement was that plaintiff would receive \$15,000 and the parties would walk away from their relationship. The fact that plaintiff is now unhappy with an agreement he signed is not a ground to invalidate it. And whether he received the full amount of consideration (\$15,000) is not a basis to invalidate the release agreement.

Moreover, the undisputed timeline of events shows that plaintiff freely entered into the release agreement. Plaintiff received an email on October 14, 2013 in which counsel for defendants purportedly attached the release agreement and stated, “Let me know if you disagree and we can work on finalizing it for execution” (NYSCEF Doc. No. 41). Counsel for defendants also asked plaintiff to send along his headshot and resume (*id.*). Plaintiff sent along his headshot and resume on October 15, 2013 (NYSCEF Doc. No. 42). Plaintiff subsequently signed the agreement on October 17, 2013.

Plaintiff’s claim that defendants’ counsel acted as if he represented plaintiff is belied by a letter dated September 20, 2013. That letter (from counsel for defendants to plaintiff) begins “As you known from our prior communications, this office represents Samarian Twelve, LLC and

Alfred Zaccagnino" (NYSCEF Doc. No. 40). There is no question that in September 2013 (only a few weeks before the agreement was signed), counsel for defendants clearly stated he was representing defendants.

Summary

The Court declines to read the release agreement to permit plaintiff to pursue tort claims. That is too narrow a reading of this general release clause. This Court must enforce clear and unambiguous provisions of agreements and this three-page agreement with notarized signatures can only be read to bar plaintiff's instant action.

Accordingly, it is hereby

ORDERED that the motion by defendants for summary judgment is granted, the complaint is dismissed, and the Clerk is directed to enter judgment accordingly, with costs, upon presentation of proper papers therefor.

DATE

10/25/19

CHECK ONE:

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CASE DISPOSED

GRANTED

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DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

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NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

☐

OTHER

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REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:

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