

ACP Hous. Assoc., L.P. v ABJ Milano, LLC
2020 NY Slip Op 31344(U)
May 12, 2020
Supreme Court, New York County
Docket Number: 156320/2019
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 3EFM

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ACP HOUSING ASSOCIATES, L.P.

INDEX NO. 156320/2019

Plaintiff,

MOTION DATE 10/11/2019

- v -

ABJ MILANO, LLC,

MOTION SEQ. NO. 001

Defendant.

**DECISION + ORDER ON
MOTION**

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41 were read on this motion to/for DISMISS.

This case concerns the related concepts of mutual mistake and reformation due to “scrivener’s error” in the context of allegedly inaccurate property descriptions in a deed.

The deed in question (the “Deed”) is part of a multi-parcel sales transaction involving a portfolio of Harlem apartment buildings at 165 West 122nd Street (the “165 Property”), which Plaintiff ACP Housing Associates, L.P. (“ACP”) sold to Defendant ABJ Milano, LLC (“ABJ”). ACP claims that the Deed, in its legal description of the 165 Property, mistakenly includes the adjacent vacant land at 163 West 122nd Street (the “Vacant Lot”). ACP brings this action to reform the Deed and remove the Vacant Lot from the sales transaction. ACP also asserts an unjust enrichment claim, arguing that the parties did not intend for the Vacant Lot to be a part of the sales transaction.

In response, ABJ now files a motion to dismiss ACP’s complaint, and requests that the prior Notice of Pendency, previously filed against the Vacant Lot, be cancelled.

For the following reasons, ABJ’s motion to dismiss is denied.

LEGAL ANALYSIS

In assessing a motion to dismiss under CPLR § 3211(a)(7), the Court must give the complaint a liberal construction, accept its factual allegations as true, and provide ACP with the benefit of every favorable inference. (*See Nomura Home Equity Loan, Inc. v. Nomura Credit & Capital, Inc.*, 30 NY3d 572, 582 [2017]). However, “factual allegations ... that consist of bare legal conclusions, or that are inherently incredible ..., are not entitled to such consideration.” (*Mamoon v. Dot Net Inc.*, 135 AD3d 656, 658 [1st Dept 2016]).

Under CPLR § 3211(a)(1), a “dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law.” (*Leon v. Martinez*, 84 NY2d 83, 88 [1994]). A motion to dismiss may be granted only where the documentary evidence “utterly refutes plaintiff’s factual allegations, conclusively establishing a defense as a matter of law.” (*Goshen v. Mut. Life Ins. Co. of New York*, 93 NY2d 314, 326 [2002]; *see also Robinson v. Robinson*, 303 AD2d 234, 235 [1st Dept 2003]).

A claim for reformation of a written agreement “must be grounded upon either mutual mistake or fraudulently induced unilateral mistake,” and to succeed, the party seeking relief “must establish by clear, positive and convincing evidence that the agreement does not accurately express the parties’ intentions.” (*Warberg Opportunistic Trading Fund L.P. v GeoResources, Inc.*, 151 AD3d 465, 470-71 [1st Dept 2017] [citing *313-315 W. 125th St. L.L.C. v. Arch Specialty Ins. Co.*, 138 AD3d 601, 602 [1st Dept 2016] [internal citations omitted]]).

“Reformation based upon a scrivener’s error requires proof of a prior agreement between [the] parties, which when subsequently reduced to writing fails to accurately reflect the prior agreement.” (*Id.* [citing *U.S. Bank N.A. v. Lieberman*, 98 AD3d 422, 424 [1st Dept 2012]]).

ACP’s Reformation Claim

Here, ACP sets forth all the necessary elements to assert reformation under alternative theories of mutual mistake and/or scrivener's error. ACP alleges that the Deed mistakenly included the Vacant Lot in the legal description of the 165 Property, contrary to both parties' intentions. ACP alleges numerous contradictory instances within the Deed where the property being sold is referred to as including and not including the Vacant Lot. In addition, the Term Sheet ordered by ABJ did not include the Vacant Lot as one of the properties for sale. (*See* NYSCEF Entry No. 5, Term Sheet). Based on the submitted documentary evidence and asserted facts, ACP sufficiently alleges a claim for reformation.

This Court is not convinced by ABJ's argument that ACP's claims are flatly belied by the submitted documentary evidence. In support of its motion, ABJ submitted several closing papers allegedly executed by ACP that identify the Vacant Lot as belonging to the property being sold. Throughout the closing documents, the parties refer to the property being sold as 163-165 West 122nd Street. Although the closing documents refer to a combined address of 163-165 West 122nd Street, ACP alleges that these references were incorrect. It points out that throughout the closing documents, there are also references to a *single* address for the 165 Property. Assuming the truth of ACP's factual allegations, the different versions of the street address in different places within the closing documents, creates an ambiguity and suggests there might have been a mistake as to how the property being sold was defined. The documents submitted by ABJ do not conclusively refute ACP's claim. Questions of fact remain as to whether the parties intended to include the Vacant Lot as a property being sold along with the 165 Property.

The Court also denies ABJ's motion to dismiss ACP's claim for unjust enrichment. Although a valid and enforceable written contract may ordinarily preclude recovery for unjust enrichment concerning events arising out of the same subject matter, "where there is a bona fide

dispute as to the existence of a contract or the application of a contract in dispute in issue, a plaintiff may proceed upon a theory of quasi contract...” (*Sabre Intl. Sec., Ltd. v Vulcan Capital Mgt., Inc.*, 95 AD3d 434, 438-49 [1st Dept 2012] [internal citations omitted]). Here, ACP is challenging the enforceability of the parties’ contract. Therefore, ACP can bring an unjust enrichment claim as an alternative ground for relief.

Finally, ABJ’s request to cancel the Notice of Pendency against the Vacant Lot is denied. CPLR § 6514(b) provides that “[t]he court, upon motion of any person aggrieved and upon such notice as it may require, may direct any county clerk to cancel a notice of pendency, if the plaintiff has not commenced or prosecuted the action in good faith.” Based on the current record, there is no basis to believe that ACP brought this action in bad faith.

CONCLUSION

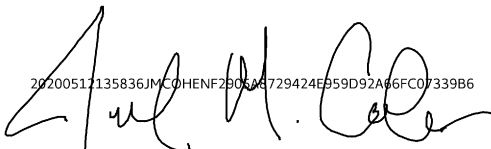
In accordance with the foregoing, it is

ORDERED that Defendant ABJ’s motion to dismiss is **denied**.

This constitutes the Decision and Order of the Court.

5/12/2020

DATE


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JOEL M. COHEN, 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