

Greenwich St. Equities v Federman
2020 NY Slip Op 32650(U)
August 13, 2020
Supreme Court, Kings County
Docket Number: 523261/19
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

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GREENWICH STREET EQUITIES ET. AL.,
Plaintiff, Decision and order

- against - Index No. 523261/19

MICHAEL FEDERMAN ESQ., ET. AL.,
Defendant, August 13, 2020

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PRESENT: HON. LEON RUCHELSMAN

The defendants have moved pursuant to CPLR §3212 seeking summary judgement dismissing the complaint. The plaintiffs oppose the motion and have cross-moved seeking discovery. Papers were submitted by the parties and arguments held and after reviewing all the arguments this court now makes the following determination.

The plaintiffs were clients of the defendants and defendants law firm dating back to 2008. In addition, the defendants were also business partners with the plaintiffs and invested in real estate deals together. The Verified Complaint alleges the defendants invested in a real estate venture together with the plaintiff Alec Shtromandel while at the same time acting as the plaintiff's counsel in violation of Rule 1.8 of the Professional Code of Responsibilities which bars attorneys representing clients to engage in activities which are the subject of the representation. Specifically, the Verified Complaint alleges the plaintiff Shtromandel was a member of 645-651 Union Investor LLC which was the owner of a hotel located at 645-651 Union Street in Kings County. The plaintiff Greenwich Street Equities operated

the hotel on behalf of the LLC. The defendants represented Shtromandel and Greenwich Street Equities and 645-651 Union Investor LLC. Shtromandel sought to own a larger share of the LLC and upon the representation of the defendants as counsel sought to purchase the interests of Benjamin Gerut and an entity he controlled called Kuzari 645-651 Union Investor LLC who together owned seventy five percent of the LLC. The Verified Complaint alleges the defendants offered to provide financing to Shtromandel and would thus become equity partners in the project. Indeed, Gerut and Kuzari sold their interests to an entity called GIY Owner LLC which was partially owned by entities owned by the defendants. On April 20, 2017 the plaintiff Shtromandel executed a document that noted that the defendants "own membership interests in 645-651 Union Investor LLC" and that Shtromandel waived any conflicts of interest that could arise in representing plaintiff in the "transaction" which is defined as "the potential sale of a tenancy-in-common or otherwise acceptable legal entity structure of the property located at 645-651 Union Street, Brooklyn, NY" (see, Email dated April 20, 2017). Indeed, Shtromandel hired additional counsel to advise him concerning this transaction. Disputes soon arose concerning the property and the parties negotiated a global settlement. On February 1, 2019 the parties executed a 'Settlement, Release and Indemnity Agreement' which released all claims against all parties.

The defendants now move seeking summary judgement arguing the release forecloses the relief sought in this lawsuit. The motion is opposed on the grounds there are questions whether the release is enforceable.

Conclusions of Law

Where the material facts at issue in a case are in dispute summary judgment cannot be granted (Zuckerman v. City of New York, 49 NYS2d 557, 427 NYS2d 595 [1980]). Generally, it is for the jury, the trier of fact to determine the legal cause of any injury (Aronson v. Horace Mann-Barnard School, 224 AD2d 249, 637 NYS2d 410 [1st Dept., 1996]). However, where only one conclusion may be drawn from the facts then the question of legal cause may be decided by the trial court as a matter of law (Derdarian v. Felix Contracting Inc., 51 NY2d 308, 434 NYS2d 166 [1980]).

Thus, to succeed on a motion for summary judgement it is necessary for the movant to make a prima facie showing of an entitlement as a matter of law by offering evidence demonstrating the absence of any material issue of fact (Winegrad v. New York University Medical Center, 64 NY2d 851, 487 NYS2d 316 [1985]). Moreover, a movant cannot succeed upon a motion for summary judgement by pointing to gaps in the opponents case because the moving party must affirmatively present evidence demonstrating the lack of any questions of fact (Velasquez v. Gomez, 44 AD3d

649, 843 NYS2d 368 [2d Dept., 2007]).

A general release by its very nature settles not only specific differences between the parties but all claims of every character, even those unknown, as long as they arose prior to the date of the release (Cahill v. Regan, 5 NY2d 292, 184 NYS2d 348 [1959]). In this case the Agreement released and discharged the defendants "from all claims" (see, Settlement, Release and Indemnity Agreement). The Agreement, which refers to the plaintiff as AS, further provided that the parties "may hereafter discover Claims presently unknown or unsuspected, or facts in addition to or different from those which it now knows or believe to be true, with respect to the matters released herein. Nevertheless, it is the express and knowing intention of the AS Parties hereto to fully, finally and forever to settle and release all such matters, and all Claims relating thereto, which exist, hereafter may be discovered to have existed, or might have existed (whether or not previously or currently asserted) against the GIY Parties. AS Parties shall indemnify, defend and hold harmless the GIY Parties, each of who shall be third party beneficiaries of this Agreement, from and against any Claims, damages, actions, suits, proceedings, hearings, investigations, charges, complaints, demands, obligations, injunctions, judgments, orders, decrees, rulings, dues, penalties, fines, assessments, adjustments, amounts paid in settlement, liens,


losses, liabilities, costs and expenses (including court costs, reasonable expenses of investigation and reasonable attorneys' fees) incurred or suffered by the Red Pine Parties caused by, resulting from or arising out of any breach or nonfulfillment of any agreements, obligations or covenants of or made by the AS Parties" (id). This comprehensive release surely serves to bar the lawsuit contemplated here. The opposition to the motion for summary judgement argues that the defendants have breached Rule 1.8(a) of the New York Rules of Professional Responsibility by entering into business transactions with a client where the interests differed. Even if true, the plaintiffs have failed to present any question of fact why the release does not extinguish those claims. The Agreement was negotiated with separate counsel representing the plaintiffs who painstakingly sought to reach an agreement satisfactory to all sides. The plaintiffs argue that there are "innumerable questions of fact concerning the nature and extent of the Attorney Defendants professional relations with the Plaintiffs" (see, Memorandum of Law in Opposition to Motion for Summary Judgement, page 11). However, those questions, if they indeed exist, do not raise any questions denying the motion for summary judgement since they do not address the comprehensive release signed which essentially released the defendants from any liability. Therefore, the plaintiffs have failed to present any evidence why a violation of the Rules of Professional

Responsibility survive a fully consensual and executed agreement. Thus, there are no questions toe agreement was proper and enforceable. Consequently, the cross-motion seeking summary judgement is granted. The motion seeking discovery is now denied as moot and all motions seeking sanctions are denied.

So ordered.

ENTER:

DATED: August 13, 2020
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC