Young v 101 Old Mamaroneck Rd. Owners Corp.
2020 NY Slip Op 35350(U)
January 2, 2020
Supreme Court, Westchester County
Docket Number: Index No. 57263/2019
Judge: Charles D. Wood
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To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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JOAN A. MOO YOUNG,

Plaintiff,

-against-

DECISION & ORDER
Index No. 57263/2019
Seq Nos. 1&2

101 OLD MAMARONECK ROAD OWNERS CORP., 101 OD MAMARONECK ROAD OWNERS CORPS BOARD OF DIRECTORS, OFFICERS & AGENTS (UNNAMED DEFENDANTS), BLEAKLEY PLATT & SCHMIDT, LLP, JAMES W. GLATTHAAR, ESQ., & DOES 1-10,

Defendants.

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WOOD, J.[1]

New York State Courts Electronic Filing ("NYSCEF") Documents Numbers 27-54, were read in connection with the motions to dismiss by defendants: (Seq 1)- Bleakley Platt & Schmidt, LLP's ("the law firm") and James W. Glatthaar, Esq (collectively, "BPS Defendants"); and (Seq 2)- 101 Old Mamaroneck Road Owners Corp s/h/a "101 Old Mamaroneck Road Owners Corp., 101 Old Mamaroneck Road Owners Corps; Board of Directors Officers & Agents (Unnamed Defendants) (collectively, "Owners Corp.").

In this action, plaintiff seeks a declaratory judgment that Owners Corp shall recognize a stock certificate issued in 2004, as controlling over plaintiff's original certificate issued in 1993. Plaintiff also asserts claims against Owners Corp. for conversion, breach of fiduciary duty of loyalty and good faith, negligence, and tortious interference. As against the law firm, plaintiff

asserts a cause of action for negligence, and as against Glatthaar, fiduciary causes of action.

NOW, based upon the foregoing the motion is decided as follows:

It is well settled that pursuant to CPLR 3211(a)(7) "upon a motion to dismiss [for failure to state a cause of action], the sole criterion is whether the subject pleading states a cause of action, and if, from the four corners of the complaint, factual allegations are discerned which, taken together, manifest any cause of action cognizable at law, then the motion will fail. The court must afford the pleading a liberal construction, accept the facts alleged in the pleading as true, accord the plaintiff the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (Esposito v Noto, 90 AD3d 825 [2d Dept 2011]; (Sokol v Leader, 74 A.D.3d 1180 [2d Dept 2010]); (Bua v Purcell & Ingrao P.C., 99 AD3d 843, 845 [2d Dept 2012] lv to appeal denied, 20 NY3d 857 [2013]). This does not apply to legal conclusions or factual claims which were either inherently incredible or flatly contradicted by documentary evidence (West Branch Conservation Assn. v County of Rockland, 227 AD2d 547 [2d Dept 1996]). If the court considers evidence submitted by a defendant in support of a motion to dismiss under CPLR 3211 (a)(7), a court may consider affidavits submitted by the plaintiff to remedy any defects in the complaint," and if the court does so, "the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one" (Leon v Martinez, 84 NY2d 83, 88 [1994]; Uzzle v Nunzie Ct. Homeowners Ass'n, Inc., 70 AD3d 928, 930 [2d Dept 2010]); Greene v Doral Conference Ctr. Assoc., 18 AD3d 429, 430 [2d Dept 2005]). Affidavits and other evidentiary material may also be considered to "establish conclusively that plaintiff has no cause of action" (Simmons v Edelstein, 32 AD3d 464, 465 [2d Dept 2006]), or where a meritorious claim lies within inartful pleadings (Lucia v Goldman, 68

AD3d 1064, 1065 [2d Dept 2009]). More succinctly, under CPLR 3211(a)(7), the standard is whether the pleading states a cause of action, but if the court considers evidentiary material, the criterion then becomes "whether the proponent of the pleading has a cause of action" (Sokol v Leader, 74 AD3d 1180, 1181-82 [2010]; Marist College v Chazen Envtl. Serv. 84 AD3d 11181 [2d Dept 2011]). Whether a plaintiff can ultimately establish [his or her] allegations is not part of the calculus (Dee v Rakower, 112 AD3d 204 [2d Dept 2013]).

According to the complaint, on or about January 11, 1993, plaintiff and her father closed on the purchase of a cooperative apartment at 3A5 at 2 Overlook Road in White Plains. Plaintiff, an attorney, represented purchasers at the closing. Glatthaar of the law firm was the attorney for the Coop, and during the closing asked plaintiff to how title was being taken, to which plaintiff allegedly responded that they were taking the property in the form of a joint tenancy with the right of survivorship. At the closing, plaintiff and her father received Coop certificate #368, demonstrating a transfer of the shares in the Coop to plaintiff and her father. Absent from said certificate was the notation that the property would be held by plaintiff and her father as joint tenants with rights of survivorship. It is not in dispute that plaintiff, her father or anyone endeavored to correct said certificate.

Over a decade after the closing, in or around early 2004, Plaintiff's father died. In or around late summer of 2004, plaintiff contacted Glatthaar and requested that the Coop reissue the stock certificate to plaintiff as surviving joint tenant; and that the Coop consent to use the reissued shares to secure a second loan on the apartment. In mid-September 2004, plaintiff did receive Coop stock certificate #590 in her name only, as a replacement of #368 and consent to use as security for the second loan.

Approximately thirteen years later, plaintiff entered into a contract of sale to sell the closing. However, prior to the closing on or about May 3, 2017, plaintiff received notice that the Coop's Board of Directors, would not consent to the sale of the apartment; considered stock certificate #590 to be invalid; would not accept plaintiff' tenancy in severalty; considered the prior stock certificate #368 to be the operative certificate, interpreted it to convey a tenancy in common (not a joint tenancy with rights of survivorship); and would not consent to the sale of apartment until a court appointed a representative over the estate of plaintiff's father authorized the transfer of the shares from the estate.

On or about June 6, 2017, plaintiff filed an administrative proceeding in Westchester County Surrogates court to have a fiduciary appointed to transfer her fathers estate's interest in the payment to her, on the belief that her father divorced her step-mother. Plaintiff was unable to locate a divorce decree. She later learned that probating the tenancy in common interest would subject one half of the value of the apartment to a Medicaid Lien against plaintiff's father's (ex?) spouse's estate.

From these facts, plaintiff now brings this action pursuant to CPLR 3001, seeking a declaratory judgment that stock certificate #590, which defendants issued to plaintiff in 2004, acknowledging plaintiff as the sole owner of the apartment is valid and in full force and effect.

In support of its motion to dismiss, BPS Defendants argue that the claim against it is solely contained in the fourth cause of action and asserts a claim of negligence. They argue that the claim should be dismissed because it is time-barred under CPLR 3211(a)(5). The three year Statute of Limitations applicable to a negligence action commences generally, the elements of a cause of action sounding in negligence are: (1) the existence of a duty on the defendant's part as

to the plaintiff; (2) a breach of this duty; and (3) an injury to the plaintiff as a result thereof (Stukas v. Streiter, 83 AD3d 18, 23 [2d Dept 2011]).

Plaintiff claims that the claim against the law firm is for negligence based on the work Glatthaar performed for the firm handling plaintiff's stock certificates and the claim against Glatthaar is for breach of fiduciary duties during his various capacities as an officer of defendant Board handling stock certificates. Plaintiff's claims against the BPS Defendants for negligence is that the law firm as transfer agent of Owners Corp, owed a duty to Owners Corp to manage and handle the transfers of shares passing from current owners to new owners as well as reissuance of shares, and that duty of care ran to shareholders to whom such shares were issued and transferred. At the closing in 1993, BPS Defendants breached the duty of care owed to Owners Corp in failing to draft and issue plaintiff's original certificate #368 in a form that preserved the tenancy plaintiff acquired at the closing. Specifically, plaintiff contends that BPS Defendants failed to indicate on the face of the certificate the tenancy plaintiff acquired, and knew or should have known that a denotation of tenancy was necessary to preserve plaintiff's joint tenancy with right of survivorship. And again in September 2004, when BPS Defendants reissued and transferred the shares in certificate #368 to plaintiff under certificate #590, it did so in such a manner that it caused Owners Corp in 2017 to decide that they needed to dishonor the certificate.

Based on the record, BPS Defendants demonstrated that they did not owe plaintiff a duty in connection with the stock certificate. Plaintiff was representing herself and her father at the closing of the purchase of the apartment. It was Plaintiff who had the duty to ensure that the stock certificate was transferred in a manner that reflected her desired ownership. BPS Defendanst argue that there is no allegation in the complaint that Glatthaar or the law firm had

any involvement in these decisions. In a letter to current counsel for the Coop, plaintiff conceded that the mistake in the stock certificate was only partially her own fault for not recognizing the error, as she was self-represented at the closing.

The court cannot fathom how the coop's counsel (BPS Defendants) had a duty to plaintiff, to indicate on the stock certificate the form of ownership, when there is no evidence that plaintiff even requested such designation, and when as plaintiff as purchaser represented herself. Defendants point out that there is no evidence in the record that plaintiff was aware whether she was asked for or expressed a preference about the form of title. Absent privity, or an attorney-client relationship, or causation, as it was plaintiff's duty, as representing herself to ensure the transfer of the stock certificates properly transpired, plaintiff cannot assert a negligence claim against the BPS Defendants. This holds true for the other causes of action against Glatthaar.

For all these reasons, since plaintiff failed to state a cause of action as against the BPS Defendants, the court grants the BPS Defendants' motion to dismiss the complaint.

Turning to the Owners Corp motion to dismiss, from their point of view, plaintiff is really seeking to sue this court to force the Board of Directors to acknowledge the 2004 certificate (#590) as valid, despite the fact that plaintiff's father predeceased his spouse, and his estate was never probated, and that all of these actions are discretionary board decisions.

"In reviewing the actions of a homeowners' association, a court should apply the business judgment rule and should limit its inquiry to whether the action was authorized and whether it was taken in good faith and in furtherance of the legitimate interests of the association"(Curlin v. Clove Lane Homeowners Ass'n, Inc., 153 AD3d 922, 924–25 [2d Dept 2017]). The Court of Appeals found that:

"obligations of a cooperative board, other than to note that the board owes its duty of loyalty to the cooperative—that is, it must act for the benefit of the residents collectively. So long as the board acts for the purposes of the cooperative, within the scope of its authority and in good faith, courts will not substitute their judgment for the board's. Stated somewhat differently, unless a resident challenging the board's action is able to demonstrate a breach of this duty, judicial review is not available" (Levandusky v One Fifth Ave. Apartment Corp., 75 NY2d 530, 537–38 [1990]).

To trigger further judicial scrutiny, plaintiff must make a showing that the board acted (1) outside the scope of its authority, (2) in a way that did not legitimately further the corporate purpose, or (3) in bad faith (40 W. 67th St. v Pullman, 100 NY2d 147 [2003]).

Here, plaintiff maintains that she and her father's intention was to hold title in the form of Joint Tenancy with Right of Survivorship as indicated on the Uniform Residential Loan Application. However, none of the coop papers in 1992, requested in writing how title was to be taken. As a result, no record outside the stock certificate exists that could rebut the legal presumption of tenancy in common. She freely admits that the mistake was partially her own in not recognizing the error (NYSCEF Doc No. 30). Plaintiff argues that the board's decision to reject certificate #590 cannot be allowed to unilaterally void the certificate without any process.

However, Owners Corp. contends that interpreting a stock certificate that does not contain any "joint tenants with right of survivorship" langauage as one not taken as joint tenants is a logical act of a cooperative. In plaintiff's March 15, 2007 letter, she even asked for the Board's discretion in ignoring the plain language (or lack thereof) on her original stock certificate.

As for Plaintiff's other causes of action sounding in tortious conversion, breach of fiduciary duty, negligence, and tortious interference, to state a cause of action to recover damages

for breach of fiduciary duty, a plaintiff must allege: "(1) the existence of a fiduciary relationship, (2) misconduct by the defendant, and (3) damages directly caused by the defendant's misconduct. A breach of fiduciary duty cause of action must be pleaded with the requisite particularity under CPLR 3016(b)" (Parekh v Cain, 96 A.D.3d 812, 816, [2d Dept 2012]). To establish a cause of action in conversion "the plaintiff must show legal ownership or an immediate superior right of possession to a specific identifiable thing and must show that the defendant exercised an unauthorized dominion over the thing in question ... to the exclusion of the plaintiff's rights" (Castaldi v 39 Winfield Assocs., 30 AD3d 458 [2d Dept 2006]).

As the court found that the Board's actions were protected under the Business Judgment Rule, and plaintiff has failed to present evidence supporting breach of fiduciary duty or conversion claims, that there has been no showing of misconduct, fraud, self-dealing, or bad faith on the part of Owners Corp, these causes of action fails to state a claim. This is true for plaintiff's other causes of action involving Owners Corp. Thus, the Court is satisfied that the material allegations of the complaint, insofar as they allege breaches of the fiduciary duty, the conversion, tortious causes of action, and the other causes of action on the part of Owners Corp. are insufficient to overcome the presumptive applicability of the business judgment rule.

Taking into consideration, the parties' submissions, Owners Corp met their burden on their motion by submitting evidence that the cooperative acted within the scope of its authority under the bylaws and in good faith to further the interests of the cooperative. In opposition, the plaintiffs failed to raise a triable issue of fact. There were no assertions of discrimination or other accusations that which would be considered inherently "incompatible with good faith and the exercise of honest judgment" (Maun v Edgemont at Tarrytown Condo., 156 AD3d 873, 874 [2d

Dept 2017]). Thus, no further judicial scrutiny is necessary.

Even as the court accepts the facts as alleged in the complaint as true, as the court must, and accords plaintiff the benefit of every possible favorable inference, the court finds that plaintiff has not sufficiently pleaded these causes of action.

In light of the foregoing, punitive damages and attorneys fees are not warranted, and shall not be imposed.

Accordingly, based upon the stated reasons, it is hereby

ORDERED, that defendants Bleakley Platt & Schmidt, LLP, and James W. Glatthaar, Esq. Motion to dismiss the complaint (Seq 1) is Granted, with no costs to either party; and it is further

ORDERED, that declaratory judgment sought by plaintiff that stock certificate #590, which defendants issued to plaintiff in 2004, acknowledging plaintiff as the sole owner of the apartment, is valid and in full force and effect is denied.

The Clerk shall mark his records accordingly.

All other matters not specifically addressed herein decided are denied. This constitutes the Decision and Order of the Court.

Date: January 2, 20 20
White Plains, New York

HON. CHARLES D. WOOD
Justice of the Supreme Court

TO: All Parties by NYSCEF