

Castro v Belmonte

2021 NY Slip Op 30187(U)

January 15, 2021

Supreme Court, Queens County

Docket Number: 702953/20

Judge: Richard G. Latin

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Short Form Order

**1/19/2021
11:59 AM**

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable **RICHARD G. LATIN**
Justice

IA PART 40

**COUNTY CLERK
QUEENS COUNTY**

-----X
MAGDALENA CASTRO,

Index No.: 702953/20
Motion Date: 10/08/20
Motion Seq. No.: 1

Plaintiff,

-against-

CLAUDINE BELMONTE AND DENNIS BELMONTE
INDIVIDUALLY AND AS TRUSTEES OF THE
BELMONTE TRUST,

Defendants.

-----X
The following papers read on this motion by plaintiff to dismiss defendants' counterclaim for breach of constructive trust, pursuant to CPLR 3211[a][7]; and cross motion by defendants to dismiss the first, second and third causes of action on the ground that they are time-barred under the Statute of Limitations.

PAPERS

NUMBERED

Notice of Motion-Affidavits-Exhibits.....	1 - 4
Notice of Cross Motion-Affidavits-Exhibits.....	5 - 8

Upon the foregoing papers it is ordered that the motion and cross motion are determined herein as follows:

This is an action to, *inter alia*, partition property which was purchased with funds allegedly belonging entirely to plaintiff but which, inexplicably was placed in the names of both plaintiff and defendants as co-owners. The complaint alleges the following: that all of the parties were born in the Philippines and immigrated to the United States. On February 18, 2009, plaintiff was struck by a bus and severely injured her leg. Due to the severity of her injuries Plaintiff required help regarding mobility and tending to her injury. Defendants volunteered to aid Plaintiff in her recovery from her injuries and Plaintiff moved into Defendants' residence. Defendants managed Plaintiff's finances and aspects of Plaintiff's daily life while Plaintiff recovered from her injuries. On or about November 15, 2012 Plaintiff received \$1,564,358.66 personal injury settlement resulting from the Bus Accident (the "Personal Injury Settlement"). After the bus accident, Plaintiff relied on Defendants to manage major aspects of her daily life including but not limited to financial matters and maintaining Plaintiff's physical health. In November 2012, after Plaintiff received the Personal Injury Settlement, Defendants explained to Plaintiff that due to her status as a non-citizen, Plaintiff could not and should not own assets solely in Plaintiff's name. Defendants told Plaintiff that they would hold assets in Defendants name to protect them from seizure by the authorities. Defendants told Plaintiff that any assets transferred from Plaintiff to Defendants would be returned to Plaintiff

when her immigration status “permitted” her to retain assets or when Plaintiff requested a return of the assets. The complaint further alleges that Defendants told Plaintiff that they would no longer help her with her daily activities if Plaintiff did not transfer assets to Defendants. At the time Defendants made the aforementioned statements, Plaintiff was in a weakened state and isolated from friends and other family members due her physical condition. Plaintiff submits that she would not have transferred assets to Defendants but for Defendants threats of asset seizure and abandonment. Plaintiff reasonably relied on Defendants’ statement causing her to put the following assets in joint name with Defendant(s) or solely in Defendants’ name:

- (I) On or about November 26, 2012 Plaintiff deposited \$300,000.00 from the Personal Injury Settlement in a Bank of America Certificate of Deposit in Defendants’ name;
- ii) On or about November 2012 Plaintiff deposited funds from the Personal Injury Settlement into a Bank of America Checking Account;
- iii) On or about November 2012 Plaintiff deposited funds from the Personal Injury Settlement into a Bank of America Savings Account (collectively the “Bank of America Accounts”);
- iv) On or about December 31, 2012 Plaintiff purchased real property known as 86-51 Midland Parkway, Jamaica Estates, New York 11432 (the “Real Property”).

The complaint also alleges that, upon information and belief, Defendants acted with intent to defraud Plaintiff of her interest in the Bank of America Accounts and the Real Property, in that Defendants periodically withdrew funds from the Bank of America Accounts until April 2016 when the accounts were completely depleted or closed. By deed dated October 16, 2019 Defendant, Claudine Belmonte transferred her interest in the Real Property to the Belmonte Trust dated October 16, 2019. Defendants are trustees of the BELMONTE TRUST dated October 16, 2019. Defendants have attempted to exclude Plaintiff from the Real Property.

In 2016 and 2017, the parties to this action were involved in a dispute as to occupancy of the premises at issue, 86-51 Midland Parkway. A Landlord/Tenant action was filed between the natural person defendants herein, and Dexter Belmonte, the plaintiff’s brother in law. That action was commenced in Queens County Civil Court, Landlord/Tenant Part, under Index No.: LT-66972-16. In that action, there was a dispute between the natural person parties to this action which ultimately resulted in an on the record and so-ordered stipulation wherein the parties agreed to the 50-50 split of the premises at issue. Defendants submitted a transcription of the March 21, 2017 appearance, wherein Magdalena Castro appeared, assisted by an interpreter, and stipulated on the record that Claudine Belmonte was a co-owner of the premises at issue in this action.

Plaintiff commenced the instant action on February 20, 2020, alleging fraud in the inducement, undue influence, constructive trust and for a partition of the property along with an accounting for expenditures and profits from the Real Property located 86-51 Midland Parkway, Jamaica New York. Defendants counterclaimed, inter alia, for breach of a constructive trust. By the

instant motion, plaintiff moves to dismiss that counterclaim. Defendants oppose the motion and cross move to dismiss the first three causes of action as time-barred, and on the ground that plaintiff asserted on the record that defendants were co-owners of the property.

The motion by plaintiff to dismiss the counterclaim which alleges breach of constructive trust, is granted. When assessing a motion to dismiss a complaint or counterclaim pursuant to CPLR 3211(a)(7) for failure to state a cause of action, the court must afford the pleading a liberal construction, accept as true all facts as alleged in the pleading, accord the pleader the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*see Rabos v R & R Bagels & Bakery, Inc.*, 100 AD3d 849, 851 [2d Dept 2012]; *Mazzei v Kyriacou*, 98 AD3d 1088, 1089 [2d Dept 2012]; *Yellow Book Sales & Distrib. Co., Inc. v Hillside Van Lines, Inc.*, 98 AD3d 663, 664 [2d Dept 2012]). The allegations of the pleading cannot be vague and conclusory (*see V. Groppa Pools, Inc. v Massello*, 106 AD3d 722, 722-23 [2d Dept 2013]; *Phillips v Trommel Constr.*, 101 AD3d 1097 [2d Dept 2012]), but must contain sufficiently particularized allegations from which a cognizable cause of action reasonably could be found (*see Mazzei v Kyriacou*, 98 AD3d at 1090). The test of the sufficiency of a pleading is “ ‘whether it gives sufficient notice of the transaction, occurrences, or series of transactions or occurrences intended to be proved and whether the requisite elements of any cause of action known to our law can be discerned from its averments’ ” (*Moore v Johnson*, 147 AD2d 621, 621 [2d Dept 1989], quoting *Pace v Perk*, 81 AD2d 444, 449 [2d Dept 1981]). Therefore, the counterclaim must be declared legally sufficient if the court determines that defendant may be entitled to relief on any reasonable view of the facts stated (*Campaign for Fiscal Equity, Inc.*, 86 NY2d 307,318 [1995]).

In general, it may be appropriate to impose a constructive trust in situations “ ‘[w]hen property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest’ ” (*Sharp v Kosmalski*, 40 NY2d 119, 121 [1976]). A constructive trust is an equitable remedy (*see Simonds v Simonds*, 45 NY2d 233, 241 [1978]), and its purpose is to prevent unjust enrichment (*see Sharp v Kosmalski*, 40 NY2d at 123). In general, to impose a constructive trust, four factors must be established: (1) a confidential or fiduciary relationship, (2) a promise, (3) a transfer in reliance thereon, and (4) unjust enrichment (*id.* at 121). However, as these elements serve only as a guideline, a constructive trust may still be imposed even if all of the elements are not established (*see Simonds v Simonds*, 45 NY2d at 241; *see also Latham v Father Divine*, 299 NY 22, 27 [1949]).

Defendants failed to satisfy the second element by demonstrating that plaintiff promised to pay defendants for the said expenditures, and failed to satisfy the third element which requires a showing that they acted in reliance on the unsaid promise. Furthermore, defendants’ payment of expenditures to improve and maintain the subject premises may be satisfactorily explained by their desire to improve the surroundings in which the family lived (*see Matter of Matter of Lefton*, 160 AD2d 702, 704 [2d Dept 1990]). Likewise, the fact that they made mortgage, tax and other payments on the property during the time they resided there could be considered payment for the use of the property (*see Marini v Lombardo*, 79 AD3d 932, 934 [2d Dept 2010]; *Matter of Matter of Lefton*, 160 AD2d 702, 704 [2d Dept 1990]; *Onorato v Lupoli*, 135 AD2d 693 [2d Dept 1987]). The complaint also contains the undisputed allegation that the parties purchased the home using proceeds plaintiff’s obtained through a personal lawsuit, and it is not alleged that any assets

of defendants were used in the purchase of the property (*see Gargano v V.C. & J. Constr. Corp.*, 148 AD2d 417, 418–419 [2d Dept 1989]). Thus, affording the defendants a liberal reading of their papers and drawing all favorable inferences therefrom (*Onorato v Lupoli, supra*), the court finds that defendants have failed to establish all the necessary elements for a constructive trust and breach thereof.

Defendants move to dismiss plaintiff's first three causes of action on the ground that they are time-barred. The statute of limitations for plaintiff's first cause of action, fraud in the inducement is governed by CPLR §213(8), and is governed by either a six year statute of limitations, with an exception that within two years of either discovery of the alleged fraud or from which time the alleged fraud could have been discovered by reasonable diligence. In short, the time within which an action based upon fraud "must be commenced shall be the greater of six years from the date the cause of action accrued or two years from the time the plaintiff ... discovered the fraud, or could with reasonable diligence have discovered it" (CPLR 213[8]; *see Piedra v Vanover*, 174 AD2d 191 [2d Dept 1992]).

The statute of limitations for plaintiff's second cause of action, undue influence, is similarly governed by CPLR §213(8). The statute of limitations for plaintiff's third cause of action, breach of constructive trust, is governed by CPLR §213(1), which sets forth a six year statute of limitations. This time period is measured from the occurrence of the wrongful act giving rise to a duty of restitution, and is not subject to the two year extension provisions of CPLR §213(8) (*see Barone v Barone*, 130 AD3d 765 [2d Dept 2015]; *Sitkowski v Petzing*, 175 AD2d 801 [2d Dept 1991]). Here, in support of their motion to dismiss the complaint, the defendants established, prima facie, that the causes of action alleging fraud in the inducement, undue influence and breach of constructive trust are time-barred. The Complaint alleges that the wrongful acts occurred in November and December of 2012. The instant action was not commenced until February 20, 2020, well over six years after the alleged unlawful occurrence. Moreover, the plaintiff failed to commence this action within two years after the fraud could have been discovered with reasonable diligence (*see* CPLR 203 [g]; *Freda v McNamara*, 254 AD2d 251 [2d Dept 1998]).

In opposition, the plaintiff failed to "aver evidentiary facts establishing that the case falls within an exception to the Statute of Limitations" (*Coombs v Jervier*, 74 AD3d 724, 725 [2d Dept 2010], quoting *Savarese v Shatz*, 273 AD2d 219, 220 [2d Dept 2000]; *Green v Albert*, 199 AD2d 465, 465 [2d Dept 1993]). Accordingly, the plaintiff's first three causes of action are dismissed as outside the applicable statute of limitations (*see* CPLR 213[1], [8]).

The motion to dismiss the counterclaim is granted.

The cross motion to dismiss the first three causes of action, to wit, fraud in the inducement, undue influence and constructive trust, is granted.

Defendants shall serve a copy of this order, together with notice of entry, on the plaintiff within 30 days of the date of entry of this order.

This constitutes the decision and order of the Court.

Dated: January 15, 2021



RICHARD G. LATIN, J.S.C.
Index No.: 702953/20- Decision-Order

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