

52 Herbert Villa LLC v Goldman Sachs Bank USA

2021 NY Slip Op 30646(U)

March 2, 2021

Supreme Court, Kings County

Docket Number: 517126/20

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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52 HERBERT VILLA LLC,

Plaintiff,

Decision and order

- against -

Index No. 517126/20

GOLDMAN SACHS BANK USA, and
GENESIS CAPITAL LLC,

Defendants,

March 2, 2021

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PRESENT: HON. LEON RUCHELSMAN

The defendants have moved pursuant to CPLR §3211 seeking to dismiss the plaintiff's complaint on the grounds it fails to state any cause of action. The plaintiff opposes the motion. Papers were submitted by the parties and after reviewing all the arguments this court now makes the following determination.

According to the complaint on March 3, 2017 the plaintiff borrowed \$320,000 from defendant Genesis Capital which was secured by a mortgage on property located at 52 Herbert Street in Kings County. On the same date the plaintiff borrowed \$1,780,000 from the same defendant and gave a mortgage as well. On January 25, 2018 both loans were assigned to defendant Goldman Sachs. On August 30, 2018 the plaintiff borrowed another \$433,565.80 from Goldman Sachs and gave another mortgage. Thereafter, the loans were consolidated to one amount of \$1,637,597. Further, the defendant Goldman Sachs loaned plaintiff an additional \$1,610,603 and that loan was also secured by a mortgage. The complaint alleges that "there are discrepancies between the draws that were advanced by the Defendants and the draws requested by Plaintiff,

whereby some draws were disbursed for an elevator when the Subject Property has no elevator, and draws were incorrectly disbursed to contractors that were not involved in the project at the Subject Property" (see, Verified Complaint, ¶15). Plaintiff asserts they requested a payoff letter, however, the amount contained in the payoff letter was incorrect and therefore the plaintiff could not refinance as anticipated. Indeed, on June 3, 2020 a payoff letter was forwarded to plaintiff which contained the full payoff amount of \$3,484,743.19. Notably, the payoff letter stated that "PLEASE BE ADVISED THAT THIS DEMAND IS ONLY AN ESTIMATE. Additional interest, late charges, fees, and costs may be incurred by the Borrower between the Statement Date and the Payoff Date. ACCORDINGLY, PLEASE CALL...TO VERIFY THE PAYOFF AMOUNT PRIOR TO ISSUING PAYMENT" (see, Demand Loan Payoff). Two days later the parties executed a pre-negotiation agreement wherein it states "the Loan Documents shall remain in full force and effect and the Obligations thereunder shall remain in full force and effect, unless and until a written document is signed which complies with the provisions of paragraph 3. Borrower and Guarantor each acknowledges and affirms that it has no claims against Lender arising from or relating to the Loan Documents executed by it and no defenses to, or offsets against, any of its Obligations under the Loan Documents" (see, Pre-Negotiation Agreement, ¶4). The plaintiff initiated the instant lawsuit and

seeks a declaratory judgement concluding the payoff amount sent was inaccurate and thus all interest from March 1, 2020 should be waived. The defendants have moved seeking to dismiss the lawsuit on the grounds it fails to state any cause of action.

Conclusions of Law

"[A] motion to dismiss made pursuant to CPLR §3211[a][7] will fail if, taking all facts alleged as true and according them every possible inference favorable to the plaintiff, the complaint states in some recognizable form any cause of action known to our law" (AG Capital Funding Partners, LP v. State St. Bank and Trust Co., 5 NY3d 582, 808 NYS2d 573 [2005]). Whether the complaint will later survive a motion for summary judgment, or whether the plaintiff will ultimately be able to prove its claims, of course, plays no part in the determination of a pre-discovery CPLR 3211 motion to dismiss (see, EBC I, Inc. v. Goldman Sachs & Co., 5 NY3d 11, 799 NYS2d 170 [2005]).

The pre-negotiation agreement executed by the parties specifically states, as noted, that a default exists and that all claims concerning the amount owed are waived. The plaintiff argues that notwithstanding those provisions they may assert these claims where the defendant made erroneous payments foreclosing the plaintiff's ability to refinance. Thus, the mistakes the defendant allegedly made supercede any waiver

arguments.

First, the defendants have introduced conclusive evidence that the only mistake they committed was incorrectly noting the wrong property in the memo line of four checks, however, there were no actual disbursements that were erroneously made. There are no other allegations of fraud or improper conduct that would permit such claims to survive any waiver. Thus, there is no basis upon which to assert any mistake survives the waiver of all claims. Further, while it is certainly true that a release only covers matters that were the subject of the dispute and do not involve future claims (Cahill v. Regan, 5 NY2d 292, 184 NYS2d 348 [1959]) the release in this case does not seek to bar future claims. Rather, the release, executed in June 2018, bars claims that arose prior to that date, namely claims based upon the payoff letter sent to the plaintiff a few days earlier. Thus, surely any claims based upon alleged erroneous amounts contained in the payoff letter were waived.

Second, the payoff letter, which forms the entire basis of the lawsuit, explicitly stated it was not a final payoff amount and invited the plaintiff to reach out and challenge any of the amounts listed. The plaintiff asserts that "if indeed the payoff dated June 3, 2020 was not a final payoff, Plaintiff could not have waive [sic] any cause of action accruing subsequent to the date of the pre-negotiation agreement dated June 5, 2020" (see,


Affirmation in Opposition, ¶22). There is no natural flow between the non-finality of the payoff letter and executing the pre-negotiation agreement. The plaintiff had an obligation to pursue the correct payoff amount if it questioned the amount contained in the letter. More importantly, the plaintiff in fact executed the pre-negotiation agreement thereby undermining the very argument asserted here that the agreement should not be given any weight. Thus, there can be no claims seeking a waiver of interest or any other claims based upon the documents presented in this case.

Therefore, based on the foregoing the motion seeking to dismiss the complaint is granted.

So ordered.

ENTER:

DATED: March 2, 2021
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC