

Eikenberry v Lamson
2021 NY Slip Op 32215(U)
October 25, 2021
Supreme Court, Kings County
Docket Number: Index No. 516653/20
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8
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KRISTEN L. EIKENBERRY,
Plaintiffs Decision and order

- against - Index No. 516653/20

RICHARD JOSEPH LAMSON,
Defendants, October 25, 2021

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PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved seeking to reargue portions of a decision and order of the court dated July 22, 2021. Specifically, the plaintiff argues the court erred when it dismissed the fifth, sixth, and twenty sixth causes of action. The defendant has opposed the motion. Papers were submitted by the parties and after reviewing all the arguments this court now makes the following determination.

The facts have been recited in prior orders and need not be reiterated again. As recorded in the prior order the court sustained almost all of the causes of action contained in an amended motion to dismiss. The court dismissed causes of action for constructive trust, fraudulent conveyance and a cause of action for breach of fiduciary duty concerning KE Pacific on the grounds the plaintiff had no interest in that company. As noted, the plaintiff asserts the court erred in dismissing these causes of action.

Conclusions of Law

A motion to reargue must be based upon the fact the court overlooked or misapprehended fact or law or for some other reason mistakenly arrived at in its earlier decision (Deutsche Bank National Trust Co., v. Russo, 170 AD3d 952, 96 NYS2d 617 [2d Dept., 2019]).

The court held the plaintiff could not satisfy the elements of a constructive trust because the plaintiff never transferred any asset to the defendant. The plaintiff seeks to reargue that conclusion and stresses that in fact she did contribute her time services and energy. However, there are no cases presented which permit the imposition of a constructive trust without a tangible asset, measured in terms of actual worth, by the party seeking the trust. Thus, the mere contribution of energy and talent is insufficient to impose a constructive trust. Further, the plaintiff has all but conceded she did not contribute any asset or money by attempting to argue that she reinvested partnership profits in other ventures satisfying this requirement. However, even if true, that does not establish a constructive trust because there is no evidence of any promise in that regard. Those facts merely reinforce the plaintiff's arguments that a partnership existed, but does not give rise to any constructive trust. Therefore, the motion seeking to reargue the dismissal of that cause of action is denied.

Next, the plaintiff seeks to reargue the dismissal of a claim pursuant to Debtor Creditor Law §273 on the grounds the court erred by concluding the allegations concerned a constructive fraudulent conveyance when in actuality the claim involved an actual fraudulent conveyance.

However, to successfully plead an actual fraudulent conveyance, the complaint must allege specific facts demonstrating intent with particularity. While that standard is relaxed, nevertheless, facts supporting the allegations must be alleged (see, Cargo Partner AG v. Albatrans Inc., 207 F.Supp2d 86 [S.D.N.Y. 2002]). The Amended Complaint in this case does not allege any facts at all. The Amended Complaint states, in conclusory fashion, that "on information and belief, Lamson has intentionally and fraudulently conveyed and transferred funds out of the EL Partnership, including, but not limited to, Lamson's draining out of the Fairmont Industries Account in the amount of \$1.275 million without Ms. Eikenberry's knowledge or consent" (see, Amended Complaint, §181). The Amended Complaint continues to recite that "upon further information and belief, Lamson has engaged in other fraudulent conveyances including cashing of checks and diverting of partnership proceeds into accounts and or entities owned solely by him including the West Branch Account, and transferring or diverting the proceeds from the sale of the Pacific Street townhouses out of the EL Partnership. Upon

information and belief, Lamson has intentionally made these transfers for the purpose of hindering, defrauding, and delaying Ms. Eikenberry from receiving the benefit of the EL Partnership assets. Lamson has also made these transfers for the purpose of draining EL Partnership of its assets for his own benefit and self-dealing, and to render the EL Partnership insolvent and/or unable to pay what is owed to Ms. Eikenberry" (see, Amended Complaint, §§182-184). These allegations are wholly conclusory and do not contain any specific facts demonstrating intent at all. Thus, the Amended Complaint fails to adequately allege any fraudulent conveyance. Therefore, the motion seeking to reargue the dismissal of the sixth cause of action is denied.

Third, the plaintiff moves seeking to reargue the dismissal of any claims concerning KE Pacific. The plaintiff does not present any argument the court overlooked the plain language of the assignment wherein the plaintiff transferred KE Pacific's asset to another entity. Thus, even if plaintiff remained the owner of KE Pacific, an empty shell without any assets, she cannot maintain any allegations about conduct regarding an asset to which she maintains no ownership. The plaintiff asserts that "the Assignment's plain and unambiguous terms show that Eikenberry did not transfer any interest in KE Pacific; rather KE Pacific, by Eikenberry, transferred only its interest in A&P Pacific Holding, LLC" (see, Memorandum of Law, page 11). Even if


true, clearly, the plaintiff maintains no ownership over A&P Pacific Holding LLC and cannot maintain any action in this regard.

Therefore, based on the foregoing the motion seeking to reargue and to reinstate any of the dismissed causes of action is denied.

So ordered.

ENTER:

DATED: October 25, 2021
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC