

Quartararo v Quartararo
2021 NY Slip Op 34329(U)
March 23, 2021
Supreme Court, Dutchess County
Docket Number: Index No. 2019-51971
Judge: Hal B. Greenwald
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SUPREME COURT- STATE OF NEW YORK
DUTCHESS COUNTY

Present:

Hon. HAL B. GREENWALD

Justice.

SUPREME COURT: DUTCHESS COUNTY

PAUL M. QUARTARARO,

Plaintiff

-against-

JOHN P. QUARTARARO, individually, LUCINDA
ORR QUARTARARO, individually, JOHN P. QUARTARARO,
As a Member of CHESTNUT RIDGE PARTNERS, LLC,
CHESTNUT RIDGE PARTNERS, LLC, LUCINDA
ORR QUARTARARO, as a Member of CLANFIELD, LLC
and CLANFIELD, LLC.

Defendants.

DECISION AND ORDER
Index No. 2019-51971

The following NYSCEF documents were reviewed and considered by the Court in rendering this Decision and Order: 1, 2, 3, 10, 14, 15, 21, 31-59, 71-77, 87, 88, 91-95.

This matter is a multi-year, multi-party, multi issue lawsuit. It could be viewed as so complicated and convoluted that it would take years and years of Discovery, disputed Discovery, document production and continued in fighting between two brothers. That is if the Court would condone it and allow it to happen. However, the pending motion presents itself as possibly a way to streamline this matter.

To say that this is a dispute between two brothers would be an understatement. The 55-page Complaint by Plaintiff PAUL M. QUARTARARO (PMQ) sets forth 13 alleged Causes of Action in 274 paragraphs. The Cause of Action against Defendants JOHN P QUARTARARO (JPQ) Individually, LUCINDA ORR QUARTARARO (LOQ) individually, JOHN P. QUARTARARO as Member of CHESTNUT RIDGE PARTNERS, LLC (CRP), LUCINDA ORR QUARTARARO (LOQ) as a Member of CANFIELD LLC and CANFIELD LLC, include fraudulent misrepresentation, conspiracy to commit fraud, fraud in the inducement, breach of contract, breach of duty of good faith and fair dealing, negligent misrepresentation, unjust enrichment, conversion, breach of contract - accounting, breach of contract – damages, breach of duty of loyalty and lastly constructive trust.

BRIEF SUMMARY OF THE LAWSUIT

The underlying business activity that forms the basis for the suit was the formation of Chestnut Ridge Partners, LLC (CRP) by the filing of the Articles of Organization with the Department of State on June 4, 2014. In April 2015 JPQ joined Castle Hill Partners as a partner and managing director. At

paragraph 59 of the Complaint it is stated that: "The business plan of the company was that Defendant JPQ's hedge fund clients would trade through Castle Hill and generate commissions for defendant CRP." Also, in April 2015 Plaintiff PMQ invested \$150,000 to become a 15% minority owner of CRP. Three months later, Plaintiff PMQ intended to become a 25% owner of CRP and wired \$50,000 of the \$100,000 it would take to become a full 25% owner. In August 2015, an additional \$15,000 was invested making Plaintiff PMQ's total monetary contribution to CRP of \$215,000 (or a 21.5% interest in CRP, but not a 25% interest as originally intended).

Plaintiff claims he was to receive between \$4,000 to \$8,000 per month from his investment in CRP and to date, has not received any money. Plaintiff claims that Castle Hill has deposited \$541,818.02 into CRP's bank accounts, and another fund Essentia has deposited \$11,082 for a total business income to CRP of \$552,900.02. Therefore, JPQ claims as a 21.5% owner he is entitled to \$118,873.50. Plaintiff JPQ also claims the return of his \$215,000 investment for a total claim of \$333,873.50. Plaintiff also seeks \$1M in punitive or compensatory damages.

DEFENDANT JPQ'S PENDING MOTION

Defendant JPQ has a pending motion that seeks to dismiss the Complaint on several grounds, that Plaintiff PMQ has no standing under CPLR 3211(3); that there is another action pending under CPLR 3211(4); and for failure to state a cause of action under CPLR 3211(7). The standing claim and allegation there is another action pending claim relate to a Surrogate Court action concerning the brothers' deceased mother, Lisbeth P. Quartararo. However, neither defense is valid. There is no reason Plaintiff here would have to make the instant claim as a representative of an estate. The claim by Plaintiff PMQ is a claim that is personal to him, as an individual. Additionally, CPLR 3211 (4) would allow for dismissal of a complaint where there is already an action pending between the same parties for the same cause of action in New York. Again, such is not the case when comparing this matter to the Estate matter.

In support of the motion JPQ provides a 34 page Affidavit that is very similar in tone and content with the complaint that was filled with the history of the family and its issues. The Affidavit includes speculation about the Estate of Lisbeth P. Quartararo, the matriarch of the family, balloon notes, the sale of JPQ's residence, prior business dealings between JPQ and his father Jack, a mink coat, sibling rivalry, and Surrogate Court issues. Next to nothing is written about the financial issues surrounding CRP and what the monetary claim is based upon.

However, there is a 25-page Memorandum of Law that is more tailored towards the various claims made for relief as set forth in the motion. The basis for the "no standing to sue" and the "another action pending" claims is the unrelated estate battle concerning the Estate of Lisbeth P Quartararo, the mother of JPQ and PMQ. Defendant says that if there are any claims that contain allegations concerning the aforesaid mother's Estate, Plaintiff cannot make these claims individually, it must be as a representative of the Estate. For the claim that there is another action pending it would be "...sufficient the same actions and relief sought must be the same...". However, such is not the case herein. As proposed by the 12 causes of action in the Complaint, this is an action for monies due. Plaintiff claims his 21.5% interest in CRP should net him \$118,873.50 and he is owed his investment of \$215,000. That's it!

Further, the Court finds there is no common plan or scheme between Defendants JPQ and LOQ.

There is a claim that the Complaint should be dismissed for failure to state a cause of action. So long as well only deal with the purported monies due, there is a cause of action for monies due. Whether it is valid or can be sustained and collected is another story. But there is a cause of action.

Defendant further seeks to have the Notice of Pendency filed in this case against the real property at 560 Chestnut Ridge canceled and vacated. As set forth in Defendants' Memorandum of Law at page 14:

In the instant matter, the controversy as framed by Plaintiff PMQ is the payment of monies due. There is no mortgage which collateralizes Defendants' real estate. There is no legal or factual basis to support Plaintiff PMQ's claim that Plaintiff will have an ownership interest or any interest in Defendants' real property.

The Court agrees and denies the application to impose a constructive trust and grants the application to vacate the Notice of Pendency.

By reason of all the foregoing it is

ORDERED that the portion of the collective Defendants' Motion Sequence #1 that seeks dismissal of all Causes of Action pursuant to CPLR 3211 (3) – No standing to sue, is **denied**; and it is further

ORDERED that the portion of the collective Defendants' Motion Sequence #1 that seeks dismissal of all Causes of Action pursuant to CPLR 3211 (4) – Another action is pending, is **denied**; and it is further

ORDERED that the portion of the collective Defendants' Motion Sequence #1 that seeks dismissal of all Causes of Action pursuant to CPLR 3211 (7) – Fails to state a Cause of Action, is **denied**; and it is further

ORDERED that the portion of the collective Defendants' Motion Sequence #1 that seeks cancellation of the Notice of Pendency, is **granted**; and it is further

ORDERED that the aforesaid Notice of Pendency as to Lot #4 of subdivision of lands of JOHN P. QUARTARARO consisting of 12.82 acres as subdivision map #11616B filed on October 30, 2014 in the Dutchess County Clerk's office also known as grid number 132600-0962-00-172719-0000 being a portion of the property described in a deed recorded with the Dutchess County Clerk at liber 22013 page 5322 to JOHN P. QUARTARARO also known as Chestnut Ridge Road, Town of Dover, County of Dutchess, State of New York, be marked "cancelled and discharged of record" by said Dutchess County Clerk and said Dutchess County Clerk is directed to do so; and it is further

ORDERED that the portion of the collective Defendants' Motion Sequence #1 that seeks a ruling that there is no common scheme or plan so as to preclude evidence of prior alleged act, is **denied**; and it is further

ORDERED that the portion of the collective Defendants' Motion Sequence #1 that seeks leave to amend Defendants' Answer to add Affirmative Defenses: (a) No standing to sue and (b) Another Action pending pursuant to CPLR 3025(b), is **denied**; and it is further

ORDERED that the portion of the collective Defendants' Motion Sequence #1 that seeks a Protective Order pursuant to CPLR 3103(a) regarding Plaintiff's discovery demands and appointing a Referee to Supervise Discovery pursuant to CPLR 3104 at Plaintiff's sole cost and expense, is **granted only to the extent as follows**: That Plaintiff's discovery demands shall be related to Plaintiff's investment of \$215,000 in CRP and Plaintiff's anticipated income of \$118,873.50 as claimed by Plaintiff.

Any relief not specifically granted herein is denied.

The foregoing constitutes the Decision and Order of this Court.

Dated: Poughkeepsie, NY

March 23, 2021

ENTER



Hon Hal B. Greenwald, J.S.C.

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Pursuant to CPLR Section 5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

When submitting motion papers to Justice Greenwald's Chambers, please do not submit any copies. Submit only the original papers.