Chan v Chan
2022 NY Slip Op 30123(U)
January 18, 2022
Supreme Court, New York County
Docket Number: Index No. 159042/2020
Judge: David Benjamin Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAVID B. COHEN **PART** 58

Justice

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GARY CHAN and YIM CHAN-KAO,

Plaintiff,

- v -

ERIKA CHAN AKA ERIKA QIU,

Defendant.

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INDEX NO. 159042/2020

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76

were read on this motion to/for AMEND CAPTION/PLEADINGS.

In this action seeking, inter alia, to quiet title, plaintiffs Gary Chan ("Gary") and Yim Chan-Kao (a/k/a "June") (collectively "plaintiffs") move, pursuant to CPLR 3025(b), to amend the complaint to add a cause of action for promissory estoppel. Defendant Erika Chan a/k/a Erika Qiu ("Erika") opposes the motion. After consideration of the parties' contentions, as well as a review of the relevant statutes and case law, the motion is decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND:

Plaintiffs, siblings and co-owners of real property located at 319 East 119th Street in Manhattan ("the building" or "the premises") commenced this action against their sister, Erika, alleging that, in 2003, Erika became eligible, through a housing lottery, to purchase a townhouse located at 319 East 119th Street in Manhattan ("the building" or "the premises"). Doc. 2. The building had individual units on the first floor ("apartment 1") and fourth floor ("apartment 3"), as well as a duplex located on the second and third floors ("apartment 2"). Doc. 2. Since Erika did not have sufficient funds to pay the contract deposit or the entire down payment, she asked her

mother, Suet Y. Chan ("Mrs. Chan") for a loan. Doc. 2. In order to loan the money to Erika, Mrs. Chan and her husband, Pun Y. Chan ("Mr. Chan"), needed to sell their home. Doc. 2. Mr. and Mrs. Chan offered to loan Erika a portion of the down payment, and also agreed to loan Gary and June a portion as well, with the understanding that plaintiffs and Erika would co-own the building. Doc. 2. Erika agreed and the parties, along with Mr. and Mrs. Chan, decided that Gary would live in apartment 1 and own 25% of the building; June would live in apartment 3 and own 25% of the building; and Erika would live in apartment 2 and own 50% of the building. Doc. 2. The parties verbally agreed that they would be responsible for the mortgage payments, as well as common expenses, according to their percentage of ownership. Doc. 2.

Erika entered into a contract of sale in June 2003, at which time she made a deposit of 10% of the purchase price. Doc. 2. Gary and June each paid $15,000 (approximately 26%) towards the deposit and Erika paid $27,600 (approximately 48%). The closing took place in June 2004, at which time Erika alone was named on the deed given the parties' belief, and agreement, that only the name of the lottery winner could appear on it. Doc. 2. Erika then took out a mortgage on the premises in her name only, although the terms were agreed to by all of the parties with the understanding that each of them was responsible for making mortgage payments in proportion to their respective ownership shares. Doc. 2. Erika was able to obtain a favorable mortgage because Mrs. Chan agreed to pay the remainder of the down payment, loaning 50% of the outstanding balance to Erika and 25% each to Gary and June. Doc. 2. The breakdown of the payments by the parties was reflected in an Excel spreadsheet Erika mailed to plaintiffs. The spreadsheet also included their agreed upon shares of the closing costs.

In 2010, the parties agreed to refinance the mortgage. Doc. 2. Again, the mortgage was taken out only in Erika's name since her name was on the deed. Doc. 2. However, the refinancing expenses were allocated equally between Gary, June, and Erika (33% each). Doc. 2.

Plaintiffs claim that, as early as 2004 or 2008, Erika overcharged Gary and June for their respective shares of the mortgage payments. Doc. 2. They further alleged that, although they each owned only 25% of the premises, Erika, "at her whim and without any consistency", would charge them more than 25% each for certain expenses. Doc. 2 at par. 67. Additionally, they claimed that Erika refused to create a written document "memorializing their ownership arrangement." Doc. 2 at par. 75. After Gary sent Erika an email asking for a meeting to discuss the parties' respective shares of responsibility for property tax, Erika served him with a 90-day notice of termination identifying herself as "landlord" and Gary as "tenant". Doc. 2 at par. 78.

In October 2020, plaintiffs commenced the captioned action against Erika seeking: 1) to quiet title to the premises; 2) a judgment declaring that they each hold an equitable share of no less than 25% in the premises; 3) a judgment estopping Erika from asserting that they did not each own a 25% share in the premises; 4) damages for unjust enrichment based on their overpayment of mortgage and building expenses; 5) a constructive trust; and 6) an accounting. Doc. 2.

Erika joined issue on or about November 23, 2020, denying all substantive allegations of wrongdoing, asserting various affirmative defenses, including the statute of frauds, and counterclaiming for sanctions based on plaintiffs' "frivolous" claims. Doc. 11.

Plaintiffs now move, pursuant to CPLR 3025(b), to amend the complaint to assert a claim for promissory estoppel. Docs. 19-33. In support of the motion, they argue that they have adequately pleaded a claim for promissory estoppel, that the proposed amendment has merit, and that Erika will not be prejudiced by the amendment. Doc. 20. In support of the motion, plaintiffs

submit a proposed supplemental summons and amended complaint setting forth their claim for promissory estoppel. Doc. 25 at pars. 130-134.

In opposition, Erika argues that the motion must be denied as "insufficient" since neither plaintiff submits an affidavit or merit or any evidentiary proof in support of the application. Docs. 35-36. She also maintains that the proposed amended complaint fails to state a claim for promissory estoppel under New York law since plaintiffs do not allege that she breached any oral promise she made to them regarding ownership of the building at or about the time the premises were purchased. Docs. 35-36. In an affidavit in opposition to the motion, Erika principally asserts that she is the sole owner of the premises. Doc. 37.

LEGAL CONCLUSIONS:

Under New York law, "[t]he elements of a promissory estoppel claim are: (i) a sufficiently clear and unambiguous promise; (ii) reasonable reliance on the promise; and (iii) injury caused by the reliance" (*Castellotti v Free*, 138 AD3d 198 (1st Dept 2016). Here, plaintiffs alleged that: Erika "clearly and unambiguously promised [them] that they would be co-owners of the building"; the promise was made verbally, they relied on the promise, as evidenced by their actions over a period of 18 years; and they sustained damages insofar as "they have paid ownership-related costs, fees, and expenses since 2003." Doc. 25 at pars. 130-134.[1] Thus, plaintiffs have adequately pleaded a claim for promissory estoppel (*See Forman v Guardian Life Ins. Co. of Am.*, 76 AD3d 886, 888-889 [1st Dept 2010] [reading complaint in light most favorable to plaintiffs, the complaint alleged a clear and unambiguous promise, reliance on the promise, and damages]). Further, and contrary to Erika's contention, plaintiffs do not "need to establish the merit of [their] proposed new allegations, but [need only] show that the proffered amendment is not 'palpably insufficient

[1] Although the statute of limitations is raised as an affirmative defense (Doc. 11 at par. 13), the motion papers submitted by all of the parties are silent regarding the timeliness of the claim.

or clearly devoid of merit,' which [they have] done here" (*Sorge v Gona Realty, LLC*, 188 AD3d 474, 475 [1st Dept 2020] [*citation omitted*]).

Notably, although Erika asserts the statute of frauds[2] as an affirmative defense in her answer (Doc. 11), she does not argue that, since the alleged oral agreement was barred by this doctrine, promissory estoppel cannot be alleged herein unless the nonenforcement of the alleged oral agreement would be so egregious as to render the application of the statute of frauds unconscionable (*See Matter of Hennel*, 29 NY3d 487, 494 [2017]). Even if she had made this argument, however, triable issues of fact would exist regarding whether the circumstances herein give rise to unconscionable injury since, at a minimum, the complaint reflects that Erika promised Gary and June that they would each own a 25% share of the building and that plaintiffs then detrimentally relied on that promise by paying, among other expenses, a share of the deposit, mortgage, refinancing expenses, and property taxes, and a determination of whether the circumstances herein rise to the level of unconscionable injury should not be determined on the pleadings alone (*Castellotti*, 138 AD3d at 205 [*citation omitted*]).

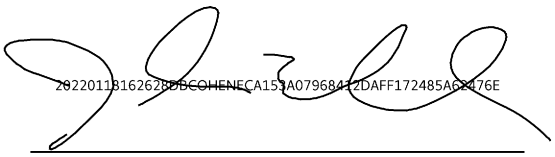
Accordingly, it is hereby:

ORDERED that plaintiff's motion for leave to amend the complaint is granted; and it is further

ORDERED that the amended complaint, in the form annexed to the motion papers as NYSCEF Doc. No. 25, shall be deemed served upon service of a copy of this order with notice of entry upon defendant; and it is further

[2] General Obligations Law § 5-703 (1) requires, inter alia, that contracts creating, granting, or assigning an interest in real property must be in writing.

ORDERED that the parties shall appear for a previously scheduled compliance via Microsoft Teams on February 22, 2022 at 10 a.m.



1/18/2022
DATE

DAVID B. COHEN, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
	X	GRANTED	DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE