

SNL XVII LLC v 160 17th St. LLC

2022 NY Slip Op 31293(U)

April 18, 2022

Supreme Court, Kings County

Docket Number: Index No 520047/2021

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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SNL XVII LLC,

Plaintiff,

Decision and order

Index No. 520047/2021

160 17TH ST. LLC and
LA MIRADA-SCHIPPERS, LLC,

Defendants,

April 18, 2022

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PRESENT: HON. LEON RUCHELSMAN

The defendants have moved seeking to dismiss the complaint. The plaintiff opposes the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

According to the amended complaint, on January 10, 2020 the plaintiff SNL XVII LLC loaned the defendant 160 17TH ST. LLC the sum of \$98,935.50. On June 24, 2020 SNL loaned an additional \$477,310 to the defendant 160 17th St. On March 29, 2021 the parties entered into a forbearance agreement whereby it was agreed the defendant owed the plaintiff \$636,389. Further, the agreement provided that another entity 160 Manager LLC assumed liability to the plaintiff. The amended complaint asserts the defendant has repaid \$180,792. The amended complaint alleges that on July 14, 2020 the defendant 160 17th St. transferred all of it's ownership in property located at 156 17th Street to Miranda-Schippers LLC for no consideration and that such transfer was fraudulent pursuant to Debtor Creditor Law §273, §274 and §276 and that such transfer is voidable pursuant to Debtor

Creditor Law §276-a. Further, the amended complaint alleges the plaintiff transferred one and a half million dollars to Miranda-Schippers LLC on July 10, 2020, further evidencing another fraudulent transfer. The defendants now move seeking to dismiss the complaint on the grounds the plaintiff ratified the transfers thus the plaintiff waived any claims such transfers were fraudulent.

Conclusions of Law

It is well settled that upon a motion to dismiss the court must determine, accepting the allegations of the complaint as true, whether the party can succeed upon any reasonable view of those facts (Strujan v. Kaufman & Kahn, LLP, 168 AD3d 1114, 93 NYS3d 334 [2d Dept., 2019]). Further, all the allegations in the complaint are deemed true and all reasonable inferences may be drawn in favor of the plaintiff (Weiss v. Lowenberg, 95 AD3d 405, 944 NYS2d 27 [1st Dept., 2012]). 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, Moskowitz v. Masliansky, 198 AD3d 637, 155 NYS3d 414 [2021]).

It is further well settled that a creditor may ratify a transfer and then is estopped from moving to void such transfer (In Re Adelpia Recovery Trust, 634 F3d. 678 [2d. Cir. 2011]).

Therefore, ratification requires both the "knowledge of a defect in the act to be confirmed" and "the right to reject or ratify it" (In re Estate of Edgar Wolf Levy, 69 AD3d 630, 893 NYS2d 142 [2d Dept., 2010]). Ratification is an affirmative defense and must be proven by the defendant (DoubleLine Capital LP v. Odebrecht Finance Ltd., 323 F.Supp3d 393 [S.D.N.Y. 2018]).

Thus, generally, ratification is found to exist where the creditor was a material participant in the transfer or accepted benefits from the transaction. The defendants argue that plaintiff's execution of the forbearance agreement constituted a ratification of the transfer since as a result of the forbearance agreement the plaintiff was afforded additional collateral in the form of a confession of judgment from 160 Manager LLC. The defendants argue that "by entering into the March 29, 2021 agreement with 160 17 and 160 Manager LLC Plaintiff expressly and/or implicitly acknowledged the transfer of title to the 160 Property and 160 Manager LLC's interest therein. In furtherance of that acknowledgment, Plaintiff secured confessions of judgment from 160 17 and 160 Manager LLC in the amount of \$636,389.00 each further collateralizing and protecting its debt, which were filed on February 10, 2022 and judgments entered thereon" (see, Memorandum in Support of Motion to Dismiss, page 4). However, there is no such acknowledgment of the transfer of the property to the defendant Miranda-Schippers LLC. Rather, the plaintiff

obtained additional collateral in the form of 160 Management's confession of judgement. That confession of judgement does not mean the plaintiff ratified the transfer or waived any claim such transfer was fraudulent. Nor does it mean the plaintiff benefitted from the transfer. Again, merely receiving additional collateral in the form of a confession of judgement from a third party does not mean there was a ratification of the transfer.

In Reply, defendant argues that "Plaintiff should not be permitted, on the one hand, to enforce the confessions of judgment secured by reason of its ratification, and on the other hand, seek to reverse the transactions upon which the confessions of judgment were secured" (see, Memorandum of Law in Reply, page 2). That argument might be persuasive if the forbearance agreement even mentioned the transfer of July 2020. However, the forbearance agreement does not mention the transfer at all. Therefore, there is no evidence sufficient to demand a dismissal of the action on the grounds the plaintiff not only contemplated a transfer but actually ratified such transfer. Thus, the forbearance agreement is merely an agreement to forbear against the defendant in exchange for all the terms contained in the agreement including the additional collateral from 160 Management LLC. Those provisions do not, as a matter of law, constitute a ratification of a transfer that took place a year and a half earlier. Further, there is no such similar ratification

regarding the allegation a transfer of over one million dollars took place.

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

So ordered.

ENTER:



DATED: April 18, 2022
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC