

Baharestani v Baharestani

2022 NY Slip Op 31418(U)

April 29, 2022

Supreme Court, New York County

Docket Number: Index No. 652743/2020

Judge: Kathy J. King

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. KATHY J. KING PART 6

Justice

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STEVEN BAHARESTANI,

Plaintiff,

- v -

GEORGE BAHARESTANI, FOREST HILLS FLATS

Defendant(s).

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INDEX NO. 652743/2020

MOTION DATE 09/04/2020

MOTION SEQ. NO. 002

DECISION & ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 002) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, defendants George Baharestani (“George”) and Forest Hills Flats, LLC (“Forest Hills Flats”) move pursuant to CPLR 3211(a)(1) and (7), to dismiss plaintiff Steven Baharestani’s (“Steven”) amended complaint. Defendants also move for an award of reasonable attorney’s fees and costs pursuant to 22 NYCRR 130-1.1. Plaintiff opposes the motion.

Plaintiff commenced the within action for breach of contract and unjust enrichment. In May 2016, Steven, George, and Martin Baharestani on behalf of Dutch Kills LLC entered into an operating agreement (“2016 Agreement”) for Dutch Kills to acquire property located at 39-35 27th Street, Long Island City, New York (“the subject property”) for the purpose of constructing a nine (9) story hotel. Under the 2016 Agreement, Steven was responsible for obtaining a two-year extension of zoning approval and George had 24 months from the receipt of the extension to obtain a temporary certificate of occupancy (“TCO”) for the property.

Subsequently, in January 2018, Steven and George entered into an agreement (“2018 Agreement”) in which George agreed to pay \$6,500,000 if he failed to meet his obligations under the 2016 Agreement regarding the TCO. As part of the 2018 Agreement, George also agreed to

put his ownership interest in Forest Hills Flats in escrow. In May 2019, Steven, George and Martin, as members of Dutch Kills Partners LLC, signed a corporate resolution (“2019 Corporate Resolution”) to sell the subject property.

Thereafter, Plaintiff filed a lawsuit against defendants alleging breach of contract and unjust enrichment since George did not obtain a TCO, and as a result, he is obligated to pay Steven \$6,500,000 pursuant to the terms of the 2019 Corporate Resolution. Plaintiff further contends that defendant Forest Hills Flats is a proper defendant, as plaintiff claims entitlement to ownership of Forest Hills Flats pursuant to the breach of the 2018 Agreement.

Defendants now move to dismiss plaintiff’s amended complaint under CPLR 3211 (a)(1) based on documentary evidence and CPLR 3211 (a)(7) for failure to state a cause of action, together with an award of attorney’s fees and costs associated with filing the motion. Defendants further contend that Forest Hills Flats is not a proper defendant, given there is no privity of contract between Forest Hills Flats and plaintiff.

Under CPLR 3211 (a)(1), a claim will be dismissed where “documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law” (*Spoleta Constr., LLC v Aspen Ins. UK Ltd.*, 27 NY3d 933, 936 [2016] quoting *Beal Sav. Bank v Sommer*, 8 NY3d 318, 324 [2007]). As to dismissal of plaintiff’s cause of action for breach of contract, the court finds sufficient “documentary evidence... establish[ing] a defense to the asserted claims as a matter of law” (*Spoleta*, 27 NY3d at 936), since the 2019 Corporate Resolution provides for the conditions of sale of the subject property including George’s failure to obtain the TCO within 24 months of the 2016 Agreement.

Additionally, plaintiff has failed to state a cause of action for breach of contract under CPLR 3211(a)(7). “To state a claim for breach of contract, plaintiff must allege: (1) the parties

entered into a valid agreement; (2) plaintiff performed pursuant to the agreement; (3) defendant failed to perform pursuant to the agreement; and (4) damages” (*VisionChina Media Inc. v Shareholder Representative Servs.*, 109 AD3d 49, 58 [1st Dept 2013]). A review of the 2016 Operating Agreement establishes that George signed said agreement in his capacity as member of Dutch Kills LLC, and that his obligation to obtain a TCO was not a personal obligation to Steven, rather it was for property owned by Dutch Kills LLC. Accordingly, plaintiff has not established the elements of a breach of contract cause of action.

As to plaintiff’s unjust enrichment cause of action, the court finds that dismissal is warranted under CPLR 3211 (a)(1) and 3211(a)(7). “To state a cause of action for unjust enrichment, a plaintiff must allege that (1) the other party was enriched, (2) at that party’s expense, and (3) it is against equity and good conscience to permit the other party to retain what is sought to be recovered” (*Farina v Bastianich*, 116 AD3d 546 [1st Dept 2014]). Here, Steven asserts that George has failed to pay Steven money that is due and owing under the 2018 Agreement, the same agreement that plaintiff relied on for its breach of contract claim which the Court found to be without merit. The court notes that the record is devoid of any benefit that plaintiff has conferred on defendant.

Finally, a review of the 2016 and 2018 Agreement establishes that Forest Park Flats is not a party or signatory to either agreement, thus, defendants’ motion also is granted as to Forest Park Flats.

Based on the foregoing, it is hereby,
 ORDERED that defendants' motion is granted to the extent of dismissing plaintiff's amended complaint pursuant to CPLR 3211(a)(1) and CPLR 3211(a)(7) against George Baharestani and Forest Hills Flats LLC, and in all other respects it is denied.

<u>4/29/2022</u> DATE	/s/ <u>Kathy J King</u>	
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE