

Greenwich St. Equities v Federman
2022 NY Slip Op 31780(U)
May 23, 2022
Supreme Court, Kings County
Docket Number: Index No. 523261/19
Judge: Leon Ruchelsman
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

-----x
GREENWICH STREET EQUITIES and ALEC
SHTROMANDEL,

Plaintiffs, Decision and order

- against -

Index No. 523261/19

MICHAEL FEDERMAN ESQ., PETER MANNARINO,
FEDERMAN STEIFMAN, LLP, SETH STEIFMAN, ESQ.,
GIY OWNER LLC, RAHUL BIJLANI and
BENJAMIN GERUT,

Defendants, May 23, 2022

-----x
PRESENT: HON. LEON RUCHELSMAN

The plaintiffs have moved pursuant to CPLR §2221 seeking to reargue or renew a decision and order dated August 13, 2020 which granted the defendants motion seeking summary judgement dismissing the lawsuit. Alternatively, the plaintiffs move seeking to amend the complaint. The defendants have opposed the motion and papers were submitted by the parties. After reviewing all the arguments this court now makes the following determination.

As recorded in the prior order, this lawsuit concerns allegations the defendants invested in a real estate venture with the plaintiffs and that such venture was a violation of Rule 1.8 of the Professional Code of Responsibilities because the defendants were also the counsel of the plaintiffs. In the prior decision the court dismissed the action holding that a release had been entered into between the parties barring the action contemplated here. The plaintiffs have now moved seeking

reargument or renewal or to file an amended complaint. The reargument and renewal motion is based upon the court's failure to consider allegations the agreement that was signed which included the release was done so only upon duress. Thus, there are questions of fact whether the release is enforceable. Alternatively, the plaintiffs seek to amend the complaint to assert claims of duress.

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 prior motion barely mentioned any basis to void the agreement due to duress. Mr. Shtromandel did assert in his affirmation that, concerning the agreement and the release, he was "coerced to sign in connection with a different transaction in April 2017" (see, Affidavit of Alec Shtromandel, ¶2). Further, he asserted that "Mr. Federman had me over a barrel. I had literally no choice but to accept whatever terms he offered. So when he provided me with an Agreement for the assignment of Membership Agreement in Lieu of Repayment of Debt...I signed it" (id at ¶38). However, in the prior motion no arguments of duress

were ever presented at all. The prior opposition was solely based on alleged violations of Rule 1.8 of the Professional Code of Responsibilities and did not mention any allegations of duress. Thus, the motion cannot be characterized as a motion to reargue but rather as a motion to renew.

A motion to renew must contain evidence that existed at the time the original motion was filed but was unknown to the moving party (Brooklyn Welding Corp., v. Chin, 236 AD2d 392, 653 NYS2d 631 [2d Dept., 1997]). However, that rule has been defined as 'flexible' and a party may file a motion to renew even if the evidence was known at the time of the original motion provided the party offers a reasonable explanation why the additional facts were not included within the original motion (Progressive Northeastern Insurance Company v. Frenkel, 8 AD3d 390, 777 NYS2d 652 [2d Dept., 2004]). The plaintiffs assert that the "original complaint and opposition to the defendants' summary judgment motion did -- though somewhat inartfully and not in great detail -- argue that the February 2019 Release was not enforceable because it was signed under duress" (see, Memorandum of Law, page 2). However, as noted, the original arguments opposing the motion for summary judgment did not assert any duress at all. In any event, the court will examine the allegations to determine whether they adequately raise any questions of fact or whether the complaint should be amended to assert it anew.

Thus, to void a contract on the grounds of coercion or duress, or to raise questions of fact, the complaining party must demonstrate there was an unlawful threat made which required the involuntary acceptance of contract terms where the circumstances allowed for no other alternative (Stewart M. Muller Construction Company Inc., v. New York Telephone Company, 40 NY2d 955, 390 NYS2d 817 [1976]). The requirement of an unlawful or wrongful threat is vital. Thus, "economic duress exists where a party is compelled to agree to terms set by another party because of a wrongful threat by the other party that prevents it from exercising its free will" (see, Beltway 7 & Properties, Ltd., v. Blackrock Realty Advisors Inc., 167 AD3d 100, 90 NYS3d 3 [1st Dept., 2018]). Therefore, to establish economic duress the court must engage in two inquiries. First, whether the defendants engaged in any wrongful threats. Second, did the defendants place the plaintiff Shtromandel in a position where he had no choice but to agree. Stated another way "to find that a payment was made under duress, the payment, or any provision of any agreement, "must have been motivated by 'some actual or threatened exercise of power possessed' by the defendants such that the plaintiff is forced to choose 'the lesser of two evils'" (Shelton v. CIOX Health LLC, 2018 WL 4211447 [E.D.N.Y. 2018] citing other cases).

The plaintiffs cannot satisfy the allegation they were the

victims of any duress. Indeed, the proposed amended complaint does not allege any specific conduct engaged in by the defendants that can constitute duress. According to the proposed amended complaint "the Defendants also knew full well of Mr. Shtromandel's diminished economic capacity. The Attorney Defendants, Mr. Federman particularly, were responsible for creating that economic pressure on Mr. Shtromandel. Mr. Federman repeatedly advantaged himself and his law partners in all of the parties transactions, and his favored client -- Mr. Gerut in the GIY project. Then left between a rock and a hard place, the Attorney Defendants used to that economic pressure to coerce Mr. Shtromandel to sign the Release" (see, Proposed Amended Complaint, ¶55). However, even if all that is true, there is no allegation the defendants acted in any threatening or unlawful manner. Thus, while the plaintiff may have felt pressured or 'forced' to sign the agreement, that is not economic duress sufficient to raise questions of fact voiding the agreement. Indeed, financial pressure or unequal bargaining power, standing alone, does not constitute economic duress (Hart v. Tri-State Consumer Inc., 2021 WL 5180923 [S.D.N.Y. 2021], Cash and Carry Filing Service LLC v. Perveez, 149 AD3d 578, 50 NYS3d 277 [1st Dept., 2017]).

Moreover, to allege a claim of physical duress the plaintiff must demonstrate a threat, which was unlawfully made, which


caused involuntary acceptance of contract terms and the circumstances permitted no alternative (see, Oquendo v. CCC Terek, 111 F.Supp3d 389 [S.D.N.Y. 2015]). The proposed amended complaint merely alleges that "the Defendants all knew Mr. Shtromandel's capacity was diminished when he signed the Release, that he had been suffering from severely troubling emotional and psychological issues, for which he had been previously hospitalized" (see, Proposed Amended Complaint, ¶54). That allegation does not allege any physical duress at all.

Therefore, based on the foregoing, the plaintiffs cannot succeed upon asserting any duress, either physical or economic. Consequently, the motion seeking renewal or reargument or to amend the complaint is denied.

So ordered.

ENTER:

DATED: May 23, 2022
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC