

Saric v GFI Breslin, LLC
2022 NY Slip Op 31952(U)
June 17, 2022
Supreme Court, New York County
Docket Number: Index No. 651683/2017
Judge: Kathy J. King
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. KATHY KING **PART 06**

Justice

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JOHN SARIC INDIVIDUALLY AND DERIVATIVELY IN THE
RIGHT OF AND ON BEHALF OF GFI BRESLIN, LLC,

Plaintiff,

- v -

GFI BRESLIN, LLC, GFI BRESLIN MANAGER, LLC, ALLEN
GROSS

Defendant.

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INDEX NO. 651683/2017

MOTION DATE 09/17/2021

MOTION SEQ. NO. 003

DECISION/ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 003) 81, 82, 83, 84, 85, 86, 87, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103

were read on this motion to/for DISMISS.

Upon the foregoing papers, Plaintiff, John Saric, moves to dismiss the counterclaims of Defendants GFI Breslin, LLC (“GFI Breslin”), GFI Breslin Manager, LLC (“GFI Manager”) and Allen Gross (“collectively Defendants”), based on CPLR 3211(a)(7), CPLR 3211(a)(5), and CPLR 3211(a)(1). Defendants oppose the motion.

The instant action arises from a business agreement between plaintiff and defendants. Plaintiff and defendant GFI Manager are parties to the Limited Liability Company Agreement (“the Agreement”) of GFI Breslin in connection with the development of Ace Hotel located at 1186 Broadway, New York. Defendants provided equity in GFI Breslin to plaintiff in exchange for plaintiff overseeing the design, renovation and development of the Hotel, pursuant to the terms and conditions in the Agreement. Based on the agreement, plaintiff is the 5% owner and defendant Allen Gross is the 95% owner of the Ace Hotel.

On or about March 2017, Plaintiff commenced the instant action based on allegations that defendants engaged in a scheme to strip the equity out of GSI Breslin for the benefit of the 95%

owner, Allen Gross (“Gross”), causing plaintiff to suffer monetary damages due to the actions of Gross and the related corporate defendants. Plaintiff asserts causes of action sounding in breach of agreement by GFI Breslin and GFI Manager and breach of fiduciary duty by GFI Manager and Gross. Thereafter, defendants filed an answer together with counterclaims.

On or about February 2020, plaintiff filed a second amended complaint, wherein defendants filed an answer together with amended counterclaims, sounding in: 1) breach of contract arising from plaintiff’s breach of the Agreement’s confidentiality provision (“First Counterclaim”); 2) breach of contract arising from plaintiff’s failure and/or refusal to perform his responsibilities pursuant to the Agreement (“the Second Counterclaim”); and 3) fraudulent inducement in connection with plaintiff’s representation that he was an expert in hotel design, renovation and development (“Third Counterclaim”).

Plaintiff now moves to dismiss defendant’s First Amended Counterclaim under CPLR 3211 (a)(7) and CPLR 3211 (a)(1). Plaintiff also seeks dismissal of defendants’ Second and Third Amended Counterclaims under CPLR 3211 (a)(7). Further, plaintiff asserts that even if the Second and Third Amended Counterclaims are properly pled, they are barred by the statute of limitations, and warrant dismissal under CPLR 3211 (a)(5).

DISCUSSION

In deciding a motion to dismiss pursuant to CPLR 3211(a)(7), the court must afford the pleadings a liberal construction, accept the allegations of the complaint as true and give the plaintiff [counterclaimant] the benefit of every favorable inference (*EBCI, Inc. v. Goldman Sachs & Co.*, 5 N.Y.3d 11, 19 [2005]).

Defendants’ First Amended Counterclaim includes an allegation that plaintiff “publicly disclosed key provisions of the ground lease for the Hotel,” in violation of the confidentiality

clause of their 2007 LLC agreement. A review of the moving papers in support of the requested relief establishes that plaintiff and defendants stipulated as to what material could be publicly disclosed regarding the Hotel, and with court intervention, exchanged the First and Second Amended complaints. Significantly, prior to the filing of the Second Amended Complaint, plaintiff's counsel provided defendants with a courtesy copy thereof and defendants made no objections as to confidentiality of the details of the lease, which are now the subject of defendants' counterclaims. It is well settled that, "allegations consisting of bare legal conclusions as well as factual claims either inherently or flatly contradicted by the documentary evidence are not entitled to such consideration" (*Stuart Lipsky, P.C. v. Price*, 215 A.D.2d 102, 103 [1st Dept. 1995])

Accordingly, the Court finds that defendants' First Amended Counterclaim is insufficient to establish a cause of action based on breach of the Agreement's confidentiality provision pursuant to CPLR 3211(a)(1).

Defendants' Second Amended Counterclaim alleges that pursuant to the agreement between the parties, plaintiff agreed to perform certain responsibilities associated with the development of the property that is subject to the agreement; that plaintiff breached the agreement by failing and/or refusing to perform such responsibilities, and that defendants have suffered damage arising therefrom.

It is well settled that "[t]o 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, 57 [1st Dept 2013]). In the case at bar, plaintiff contends that defendants' Second Amended Counterclaim for breach of contract must be dismissed due to lack of specificity under CPLR § 3013, however, a party bringing an action for breach of

contract need only provide notice of the transactions or occurrences underlying the claim. Particularity in a contract action is not required (see *Shilkoff, Inc. v. 885 Third Ave. Corp.*, 299 A.D.2d 253 [1st Dept. 2002]; *MBIA Ins. Corp. v Credit Suisse Sec. (USA) LLC*, 32 Misc 3d 758, 778 [Sup Ct 2011], *on reconsideration*, 33 Misc 3d 1208(A) [Sup Ct 2011], *revd.*, 102 AD3d 488 [1st Dept 2013]).

The Court finds that the requisite elements for a breach of contract action were pled in defendants' Second Amended Counterclaim. While itemization of damages will be required to establish proof of said counterclaim at trial, the pleadings indicating that defendants seek damages arising from a breach of agreement provide sufficient notice of the claim. Accordingly, plaintiff's motion to dismiss the Second Amended Counterclaim pursuant to CPLR 3211(a)(7) is denied.

Plaintiff also claims that defendants have failed to provide any particularity as to alleged fraud set forth in their Third Amended Counterclaim.

"To state a claim for fraudulent inducement, there must be a knowing misrepresentation of material present fact, which is intended to deceive another party and induce that party to act on it, resulting in injury" (*Schumaker v. Mather*, 133 N.Y. 590, 595, [1892]; *MBIA Ins. Corp. v Credit Suisse Sec.(USA) LLC*, 32 Misc 3d 758, 773 [Sup Ct 2011], *on reconsideration*, 33 Misc 3d 1208(A) [Sup Ct 2011], *revd.*, 102 AD3d 488 [1st Dept 2013]). While plaintiff argues that defendants counterclaim lacks the specificity of detail required by CPLR 3016, a review of the counterclaims state that prior to entering into The Agreement on or about January 16, 2007, plaintiff represented and held himself out to be an expert in hotel design, renovation and development. Defendants stated that such representations were untrue and that in entering the Agreement, defendants relied therein and suffered damages when plaintiff was unable to perform said duties and/or responsibilities.

The Court finds that the allegations set forth in the defendants' Third Amended Counterclaim was sufficiently particularized to support a claim for fraudulent inducement, since the basis of the counterclaim arose from The Agreement which was entered into on a date certain (see e.g., *China Development Indus. Bank v. Morgan Stanley & Co. Inc.*, 86 AD3d 435, 436-37 [1st Dep't 2011]) Thus, plaintiff's motion to dismiss the defendants' Third Amended Counterclaim is denied.


Finally, the Court notes that dismissal of the defendants' Second and Third Counterclaims is not warranted under CPLR 3211(a) (5). Pursuant to the relation back doctrine, as codified in CPLR § 203(f), "a claim asserted in an amended pleading is deemed to have been interposed at the time the claims in the original pleadings were interposed, unless the original pleadings does not give notice of the transactions or occurrences, or series of transactions or occurrences, to be proved pursuant to the amended pleading. The amended pleading will therefore relate back to the original pleading, and will be deemed interposed at the time, if the original pleadings gives the adversary notice."

Here, the alleged breach of contract occurred on or after March 31, 2011, six years prior to plaintiff's filing of the complaint, and defendants' claim for fraudulent inducement was pled in its original complaint, two years from the date of discovery of plaintiff's alleged fraudulent statement (*Rite Aid Corp. v. Grass*, 48 A.D.3d 363, 364 [1st Dep't 2008]). Thus, pursuant to the relation back doctrine, the claims set forth in defendants' Second and Third Amended Counterclaims are timely and not barred by the statute of limitations, and plaintiff's requested relief as set forth in CPLR 3211 (a) (5) is denied.

Based on the foregoing, it is hereby,

ORDERED that plaintiff's motion is granted to the extent of dismissing defendants' First Amended Counterclaim, and in all other respects, plaintiff's motion is denied; it is further,

ORDERED that the parties shall appear for a virtual status conference on July 28, 2022 at 12:30pm via Microsoft teams.

<u>6/17/2022</u>			
DATE			KATHY KING, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	HON KATHY J. KING JSC
APPLICATION:	<input type="checkbox"/> GRANTED	<input checked="" 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