

Valvi v FTBK Inv. LLC
2022 NY Slip Op 32123(U)
July 5, 2022
Supreme Court, Kings County
Docket Number: Index No. 523619/2021
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS ; CIVIL TERM: COMMERCIAL 8

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MARIA VALVI and PRIME REALTY OF NY1 INC.,
Plaintiffs,

Decision and order

- against -

Index No. 523619/2021

FTBK INVESTOR LLC, NY BROOKLYN INVESTOR
TRUST 5, MADISON REALTY, MADISON REALTY
CAPITAL ADVISORS, LLC, MADISON REALTY
CAPITAL GP, LLC, MADISON REALTY CAPITAL,
L.P., 300-304 10TH STREET FT LLC, 298-304 10TH
STREET OWNER LLC, and SDF5 385 UNION D LLC,
Defendants,

July 5, 2022

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PRESENT: HON. LEON RUCHELSMAN

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

On April 4, 2011 an "Option Agreement for Purchase of Real Property" was entered into between the plaintiff Maria Valvi the president of plaintiff Prime Realty of NY1 Inc., as purchaser and FTBK Investor LLC, as Trustee for NY Brooklyn Investor Trust 5 c/o Madison Realty Capital as the seller. Pursuant to that agreement the seller offered an option to buyer to purchase three properties located at 234 8th Street, 300-304 10th Street and 385 Union Avenue all in Brooklyn, New York in the event the seller purchased them. The complaint alleges that the defendants indeed purchased properties located at 300-304 10th Street and 385 Union and did not inform the plaintiff of those acquisitions and did

not offer the plaintiff to purchase them. The plaintiff instituted this lawsuit and assert a cause of action for specific performance compelling the sale of 300-304 10th Street to them. Further, the complaint asserts two causes of action for breach of contract related to 300-304 10th Street and 385 Union Avenue.

The defendants have now moved seeking to dismiss the complaint arguing that the defendants in fact did not purchase either of those properties. Rather, 300-304 10th Street was purchased by an entity called 300-304 LLC and later transferred to 298-304 LLC and 385 Union Avenue was purchased by an entity called SDF5 LLC. These entities were not part of the option agreement at all and consequently cannot be bound by any of its terms. The plaintiff opposes the motion arguing there are significant questions of fact which foreclose any summary determination at this time.

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]). 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]).

The defendants assert that the entity seller only includes FTBK Investor LLC and that any additional entities listed including Madison Capital as well as the two purchaser entities were not part of FTBK Investor LLC and thus are not bound by the option agreement. First, concerning Madison Capital and by extension any Madison entity, there are surely questions of fact whether any Madison entity is a party to the option agreement. The agreement itself states that the entity FTBK Investor LLC, as Trustee for NY Brooklyn Investor Trust 5 c/o Madison Realty Capital is collectively known as the seller which would include Madison as well. Madison argues that the symbol 'c/o' "meant only that any notices and/or mailings to FTBK, as Trustee, must be sent to the care of Madison" (see, Memorandum of Law in Support of Motion to Dismiss, page 7). While that might be true, there are certainly questions whether a broader intent, including Madison as an actual entity was contemplated. This is true because the address of the seller is provided, rendering superfluous the notion the symbol 'c/o' only meant that correspondences should be sent to Madison. Furthermore, the option agreement is signed by a managing member of the seller and again the seller is listed as FTBK Investor LLC, as Trustee for NY Brooklyn Investor Trust 5 c/o Madison Realty Capital. The

inclusion, yet again, of Madison Realty Capital undermines any argument they were only placed there as a location where mail should be sent. Perhaps most significantly, pursuant to the option agreement, an option price of \$1,000 was required to exercise such option. The plaintiff Maria Valvi exercised that option and issued a check for the required \$1,000 to Madison Realty Capital. The defendants argue that Madison's inclusion within the option agreement "only signified that notices and mailings to FTBK should be sent to the care of Madison. The "c/o" symbol did not impose upon the Madison Defendants any obligation or liability to perform under the alleged Agreement, which the Madison Defendants were never parties to" (see, Memorandum of Law in Support of Motion to Dismiss, page 2). The check written to Madison Realty Capital raises significant questions as to their role in this agreement. Therefore, based on the foregoing, the motion seeking to dismiss any Madison entity is denied.


Turning to the two entities that purchased the properties, Section 9(d) of the Option Agreement states that "the Option Agreement applies to, insures to the benefit of, and is binding upon and enforceable against the parties and their respective heirs, successors, and or assigns, to the extent as if specified at length throughout the agreement" (*id.*). The Complaint alleges that 300-304 LLC, 298-304 LLC and SDF5 LLC are all the successor and assigns of the defendant. In opposition, the defendant

merely denies those allegations are untrue. Of course, at the pleading stage all the allegations are deemed true and all reasonable inferences may be drawn in favor of the plaintiff (Dunleavy v. Hilton Hall Apartments Co., LLC, 14 AD3d 479, 789 NYS2d 164 [2d Dept., 2005]). Therefore, merely questioning the accuracy of any allegations is insufficient to defeat a motion to dismiss. Of course, further discovery will determine whether the allegations have merit, however, at this juncture the motion seeking to dismiss the complaint as to the these three defendants is denied. Likewise, the motion seeking to dismiss the trust defendant is denied at this time.

So ordered.

ENTER:

DATED: July 5, 2022
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC