

Ringel v Ringel

2022 NY Slip Op 32256(U)

July 7, 2022

Supreme Court, New York County

Docket Number: Index No. 653518/2021

Judge: Melissa Crane

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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
NEW YORK COUNTY

PRESENT: HON. MELISSA CRANE PART 60M

Justice

CHANA RINGEL,

Plaintiff,

- v -

BENJAMIN RINGEL, BR LAKEWOOD, LLC, RINGEL CHILDRENS TRUST, Yael RINGEL, BARUCH SCHREIBER, JOHN AND JANE DOES, ABC CORPS. 1-10

Defendant.

INDEX NO. 653518/2021
MOTION DATE 04/08/2022
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34

were read on this motion to/for DISMISS

Benjamin Ringel ("B. Ringel"), BR Lakewood, LLC ("BR Lakewood"), Ringel Children's Trust ("Children's Trust"), and Yael Ringel as co-trustee of the Trust ("Y. Ringel") (collectively, "Defendants") move to dismiss this dispute between siblings that involves three claims for fraudulent transfer of property. For the foregoing reasons, the motion is granted in part.

BACKGROUND

Plaintiff Chana Ringel's ("Plaintiff" or "C. Ringel") claims concern three alleged transfers: B. Ringel's 2012 transfer of a 40% interest in BR Lakewood ("2012 transfer"); B. Ringel's 2015 transfer of an additional 40% interest in BR Lakewood ("2015 transfer"); and B. Ringel's 2016 transfer of the 15 Washington, Lawrence, NY real property ("15 Washington Property") ("2016 transfer"). Plaintiff asserts three causes of action relating to those transfers: (1) fraudulent transfers pursuant to N.Y. Debt. & Cred. Law ("DCL") § 273-a; (2) fraudulent transfers by an insolvent pursuant to DCL § 273; and (3) fraudulent transfers made with intent to defraud pursuant to DCL § 276.

Plaintiff alleges that she and Defendant B. Ringel are siblings and joint owners of various real estate holdings. They became embroiled in litigation in New Jersey Superior Court starting in 2015. The New Jersey actions are *Chana Ringel v BR Lakewood, LLC, et al.*, Docket No. OCN-C-127-15 (“BCR Lakewood Action”) and *Chana Ringel, et al. v Benjamin Ringel, et al.*, Docket No. OCN-C-152-16 (“Oakridge Action”) (together, “the New Jersey Actions”) (NYSCEF Doc. No. 9, ¶ 11). In the BCR Lakewood Action, Plaintiff alleges that B. Ringel is the sole member of BR Lakewood,¹ that C. Ringel is the sole member of CR Lakewood, LLC (“CR Lakewood”) and that, together, BR Lakewood and CR Lakewood are 50% owners of BCR Lakewood Holdings, LLC (“BCR Lakewood”) (NYSCEF Doc. No. 26, ¶¶ 3-5). BCR Lakewood, in turn, is a holding company which is the sole member of a group of entities that own real property in Lakewood, New Jersey (NYSCEF Doc. No. 26, ¶ 6).

The New Jersey Actions generally allege breach of contract and breach of fiduciary duty against B. Ringel relating to the real estate holdings (NYSCEF Doc. No. 9, ¶ 12). In particular, in the BCR Lakewood Action, Plaintiff C. Ringel and CR Lakewood, individually and derivatively on behalf of BCR Lakewood, filed a complaint against BR Lakewood and B. Ringel, alleging breach of the operating agreement, breach of fiduciary duty, breach of the implied covenant of good faith and fair dealing, oppressive conduct, tortious interference with prospective economic advantage, unjust enrichment, dissolution, and dissociation (NYSCEF Doc. No. 26). In the Oakridge Action, Plaintiff C. Ringel, individually and derivatively on behalf of BCR Oakridge LLC, filed a complaint against B. Ringel, Sunset Hill Oakridge Plaza, LLC, John Does 1-10, and ABC Corporations 1-10, alleging the same causes of action (NYSCEF Doc. No. 29).

¹ In the Affidavit of Benjamin Ringel, B. Ringel disputes that he was the “sole owner” of BR Lakewood but acknowledges having an ownership interest in BR Lakewood (NYSCEF Doc. No. 17, ¶ 8).

After years of litigation, the parties entered into a settlement agreement that resolved some of the New Jersey claims and agreed to submit the remaining New Jersey claims to arbitration (“Settlement Agreement”) (NYSCEF Doc. No. 9, ¶ 13).

Paragraph 5 of the Settlement Agreement states:

Arbitration of Remaining Claims in the Actions. The Parties shall submit all remaining claims in the Actions (the "Remaining Claims") including the parties' respective claims for monetary damages in the BCR Lakewood action, and the parties' respective claims in the Oakridge action including Chana's claims for equitable relief with respect to the Oakridge property owned by Sunset to binding arbitration (“Arbitration”), which shall occur at a mutually acceptable location in New Jersey. Within fourteen (14) days from the date of the full execution of the Settlement Agreement, the Parties shall select a mutually acceptable arbitrator ("Arbitrator").

(NYSCEF Doc. No. 20, ¶ 5).

Paragraph 7 of the Settlement Agreement further states: “Jurisdiction of the Court. The Court shall maintain jurisdiction over the Parties to enforce the terms of the Settlement Agreement” (NYSCEF Doc. No. 20, ¶ 7). The arbitration is still ongoing before the Honorable Robert Contillo, retired judge of the Chancery Division of New Jersey Superior Court (NYSCEF Doc. No. 9, ¶ 13).

Plaintiff and Defendants agree that, despite the Settlement Agreement, there has been no final judgment in the New Jersey Actions (NYSCEF Doc. No. 21, p. 4; Doc. No. 23, p. 6).

MOTION TO DISMISS

Defendants argue that Plaintiff’s DCL § 273-a claim is premature because the New Jersey Court has not issued a final judgment in the New Jersey Actions (NYSCEF Doc. No. 21, pp. 7-8). Defendants also argue that the court should dismiss the DCL § 273 cause of action because Plaintiff does not plead that Defendants were insolvent at the time of the transfer or C. Ringel was a creditor, among other things (NYSCEF Doc. No. 21, pp. 9-11). As to the third cause of action under DCL

§ 276, Defendants argue that Plaintiff failed to plead intent to defraud with specificity under CPLR 3016(b) (NYSCEF Doc. No. 21, pp. 12-13).

Defendants further seek dismissal of Plaintiff's claims under CPLR 3211(a)(1) and (a)(2) for lack of subject-matter jurisdiction based on the arbitration and forum selection clauses within the Settlement Agreement (NYSCEF Doc. No. 21, pp. 13-14). Defendants argue that the claims here are "directly related" to the claims in the New Jersey Actions and the "entire purpose" of this action is to recover assets "in the event of an award issued in the pending arbitration," thus, Plaintiff must assert these claims in the arbitration or before the New Jersey court (NYSCEF Doc. No. 21, p. 14). Finally, Defendants argue that the statute of limitations bars the claims seeking to set aside the 2012 transfer (NYSCEF Doc. No. 21, pp. 14-15).

Plaintiff responds that the claims in the Complaint are not subject to the currently pending arbitration because the arbitration clause in the Settlement Agreement applies to the remaining claims in the BCR Lakewood Action and Oakridge Action, only (NYSCEF Doc. No. 24, p. 5). Plaintiff also responds that she adequately alleged her second and third causes of action under DCL §§ 273 and 276 (NYSCEF Doc. No. 24, pp. 7, 10).

DISCUSSION

On a motion to dismiss pursuant to CPLR 3211(a)(7), the court must "accept the facts as alleged in the complaint as true, accord [plaintiff] the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]; see also *Chapman, Spira & Carlson, LLC v Helix BioPharma Corp.*, 115 AD3d 526, 527 [1st Dept 2014]). On a motion to dismiss under CPLR 3211(a)(1), "dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law" (*Leon v Martinez*, 84 NY2d 83, 88

[1994]). Dismissal based on the expiration of a statute of limitations under CPLR 3211(a)(5) requires the movant to meet the initial burden of “establishing, prima facie, that the time in which to sue has expired” (*New York City School Const. Authority v Ennead Architects, LLP*, 148 AD3d 618, 618 [1st Dept 2017]).

I. Plaintiff's Conceded Claims

As an initial matter, Plaintiff concedes that her first cause of action under DCL § 273-a is premature (NYSCEF Doc. No. 24, p. 6). Additionally, Plaintiff concedes that her second claim, under DCL § 273, is untimely with respect to the 2012 transfer. Accordingly, the court dismisses the first cause of action in its entirety and the second cause of action to the extent it relates to the 2012 transfer.

II. Plaintiff's Remaining Claims Relating to the 2012 and 2015 Transfers

A court may dismiss a complaint where “there is another action pending between the same parties for the same cause of action in a court of any state or the United States” (CPLR 3211[a][4]). Dismissal is appropriate where the other action “arises out of the same facts as the other claims and asserts a closely related theory,” even if “different legal theories or claims were set forth in the two actions” (*Stewart Title Ins. Co. v Wingate, Kearney & Cullen*, 145 AD3d 462, 462-63 [1st Dept 2016]). A court has “broad discretion” to dismiss or stay an action where a different action is “pending between the same parties arising out of the same subject matter or series of alleged wrongs” (*see Shah v RBC Capital Markets LLC*, 115 AD3d 444, 444-445 [1st Dept 2014]). Additionally, pursuant to the doctrine against claim splitting, a party is precluded from litigating a claim where it is “based upon the same liability in [a] prior action, and [] the claim was ascertainable when the prior action was commenced” (*Melcher v Greenberg Traurig LLP*, 135 AD3d 547, 552 [1st Dept 2016]). In choosing which action should be dismissed or stayed, a court

will generally dismiss or stay a less comprehensive action in favor of a “more complete” and comprehensive action elsewhere (*AIG Financial Products Corp. v Penncara Energy, LLC*, 83 AD3d 495, 497 [1st Dept 2011]; *see also Dietz v Linde Gas North America, LLC*, 178 AD3d 469, 470 [1st Dept 2019]).

Here, Plaintiff should have raised the second and third causes of action, as they relate to the 2012 and 2015 transfers, in the New Jersey Actions. The New Jersey Actions and this action involve overlapping subject matter and parties. BR Lakewood, B. Ringel, and C. Ringel are all parties to one or both of the New Jersey Actions and this action. (*see* NYSCEF Doc. Nos. 9, 26, and 29). While Plaintiff did not raise causes of action based on a theory of fraudulent conveyance in New Jersey, the allegations concerning the 2012 and 2015 transfers rely on the same subject matter as the New Jersey Actions. That is, B. Ringel’s allegedly improper distributions of company funds, either from BR Lakewood or from the holding company, BCR Lakewood. Plaintiff alleged in the New Jersey Actions that B. Ringel withdrew excessive distributions from BCR Lakewood, the entity BR Lakewood and CR Lakewood jointly own (NYSCEF Doc. No. 26, ¶¶ 32-37).

In this case, Plaintiff alleges that B. Ringel then improperly transferred his interest in BR Lakewood without consideration [the 2012 and 2015 transfers] (NYSCEF Doc. No. 9, ¶¶ 27-29). Therefore, the Complaint in this case merely alleges a continuation of B. Ringel’s alleged breaches of fiduciary duty from the New Jersey Actions, among other things. This is particularly clear because the Complaint was filed by C. Ringel—who is a plaintiff in the New Jersey Actions—against B. Ringel and BR Lakewood—who are defendants in the New Jersey Actions. Through filing this Complaint in New York, Plaintiff has split her claims between New York and New Jersey, seeking liability in this case for the same underlying damages as the New Jersey Actions

based on allegedly fraudulent transfers that Plaintiff may have been able to ascertain when she filed the BCR Lakewood Action on June 16, 2015.

Additionally, dismissal of the causes of action relating to the 2012 and 2015 transfers is appropriate because the New Jersey Actions are broader than this action. Plaintiff alleges scores of claims in the New Jersey Actions, including breach of the operating agreement, breach of fiduciary duty, breach of the implied covenant of good faith and fair dealing, oppressive conduct, tortious interference with prospective economic advantage, unjust enrichment, dissolution, and dissociation (NYSCEF Doc. Nos. 26 and 29). To obtain “comprehensive relief,” Plaintiff should have raised these claims in New Jersey (*see* *AIG Financial Products Corp. v Penncara Energy, LLC*, 83 AD3d 495, 497 [1st Dept 2011] [affirming decision granting motion to stay New York action under CPLR 3211[a][4] pending the resolution of an action in Pennsylvania due to “substantial identity of the parties and claims” and because the Pennsylvania action was “more comprehensive . . . and ‘offer[ed] more’ than [the New York] action”]; *see also* *Dietz v Linde Gas North America, LLC*, 178 AD3d 469, 470 [1st Dept 2019] [affirming decision granting motion to stay New York action pending outcome in a New Jersey action “given the substantial identity of parties and claims in the two actions and the fact that the New Jersey action involves more comprehensive claims . . . which encompass the issues in [the New York action]”).

Alternatively, even if Plaintiff is not “claim splitting” or running afoul of CPLR 3211[a][4], the causes of action relating to the 2012 and 2015 transfers are subject to the forum selection clause in the parties’ Settlement Agreement. Paragraph 7 of the Settlement Agreement states that “[t]he [New Jersey] Court shall maintain jurisdiction over the Parties to enforce the terms of the Settlement Agreement” (NYSCEF Doc. No. 20, ¶ 7). Defendants correctly note that Plaintiff here “merely seeks a remedy for the satisfaction of a potential monetary award issued in her favor in

the New Jersey Action” (NYSCEF Doc. No. 34, p. 6). Plaintiff aims here, at least concerning the 2012 and 2015 transfers, to aid her enforcement of claims resolved, or resolving, in the New Jersey Actions and arbitration (*see e.g.* NYSCEF Doc. No. 9, ¶¶ 2, 41, 47 [alleging, in the Complaint, that Defendants’ transfers were “designed to defeat any judgment of C. Ringel” in the New Jersey Actions]).

Accordingly, the court dismisses the second and third causes of action to the extent that they relate to the 2012 and 2015 transfers.

III. Plaintiff’s Remaining Claims Relating to the 2016 Transfer

Plaintiff’s DCL § 273 and DCL § 276 causes of action relating to the 2016 transfer of the 15 Washington Property do not concern the same subject matter as the New Jersey Actions. Plaintiff, individually and derivatively on behalf of BCR Lakewood, sued Defendants B. Ringel and BR Lakewood in the BCR Lakewood Action based on allegations of breach of contract and breach of fiduciary duty relating to BCR Lakewood (*see* NYSCEF Doc. No. 26; *see also* NYSCEF Doc. No. 9, ¶ 12). Unlike the 2012 and 2015 transfers, Plaintiff’s DCL claims concerning the 2016 transfer of the 15 Washington Property (real property located in New York State) are unrelated to BR Lakewood and BCR Lakewood. B. Ringel owned the 15 Washington Property, not BR Lakewood or BCR Lakewood. B. Ringel gifted this property to his wife directly (*see* NYSCEF Doc. No. 9, ¶¶ 31-32 [alleging that B. Ringel individually purchased the property and later transferred it to his wife for no consideration]). Accordingly, Plaintiff’s second and third claims relating to the 2016 transfer are not dismissible pursuant to CPLR 3211 (a)(2) or (a)(4). Finally, jurisdiction over the real property is particularly appropriate because, unlike the properties owned by BCR Lakewood, the 15 Washington Property is in New York (*see, e.g. Greate Bay Hotel & Casino v Chan*, 239 AD2d 295, 295-296 [1st Dept 1997] [finding that New York court had

jurisdiction over bank accounts and safe deposit boxes but lacked jurisdiction over real property because it was located in New Jersey]).

The court rejects Defendants' contention that Plaintiff has inadequately pleaded her second and third causes of action as they relate to the 2016 transfer. Under DCL § 273, "[e]very conveyance made and every obligation incurred by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without regard to his actual intent if the conveyance is made or the obligation is incurred without a fair consideration" (*see Joslin v Lopez*, 309 AD2d 837, 837-838 [2d Dept 2003]).² A plaintiff establishes a rebuttable presumption of insolvency by asserting a lack of adequate consideration for a transaction (*Matter of Wimbledon Fin. Master Fund, Ltd. v Bergstein*, 166 AD3d 496 [1st Dept 2018]) and, ultimately, insolvency is a question of fact (*see Sullivan v Kodsi*, 373 F Supp 2d 302, 308 [SDNY 2005]).

Here, Plaintiff sufficiently alleges a lack of adequate consideration for the 2016 transfer. Specifically, she alleges: "[o]n or about February 24, 2016, B. Ringel transferred the 15 Washington Property to his wife Yael Ringel, for minimal or no consideration" (NYSCEF Doc. No. 9, ¶ 32). Plaintiff has created a rebuttable presumption of B. Ringel's insolvency for the purposes of DCL § 273.

Defendants do not rebut this presumption and, at most, create issues of fact. Defendants assert that B. Ringel was solvent because, as Plaintiff alleges in the Complaint, B. Ringel's "interest in various properties and/or LLCs [was] worth 'in excess of \$25 million'" in 2019. Additionally, Defendants assert that B. Ringel continued to retain a 20% interest in BR Lakewood and received hundreds of thousands of dollars in distributions after the 2012 and 2015 transfers

² Plaintiff correctly notes that the Debtor Creditor Law was amended in 2019 but with an effective date of April 4, 2020 (NYSCEF Doc. No. 24, p. 5) (citing L.2019, c. 580, § 2). As such, the version of the Debtor Creditor Law in effect at the time of the allegedly fraudulent transfers applies.

(NYSCEF Doc. No. 21, p. 10). However, Defendants provide no documentary evidence demonstrating solvency, and the Plaintiff did not verify the Complaint. Thus, the court denies defendants' motion to dismiss the DCL § 273 claim relating to the 2016 transfer.

Under DCL § 276, “[e]very conveyance made and every obligation incurred with actual intent, distinguished from intent presumed in law, to hinder, delay, or defraud either present or future creditors, is fraudulent as to both present and future creditors” (*see Wall St. Assoc. v Brodsky*, 257 AD2d 526, 528-529 [1st Dept 1999]). “Due to the difficulty of proving actual intent to hinder, delay, or defraud creditors, the pleader is allowed to rely on ‘badges of fraud’ to support his case, i.e., circumstances so commonly associated with fraudulent transfers ‘that their presence gives rise to an inference of intent’” (*id.* at 529 [citations omitted]). These “badges of fraud” include “a close relationship between the parties to the alleged fraudulent transaction; a questionable transfer not in the usual course of business; inadequacy of the consideration; the transferor's knowledge of the creditor's claim and the inability to pay it; and retention of control of the property by the transferor after the conveyance” (*id.*).

Plaintiff adequately alleges her DCL § 276 claim for the 2016 transfer. Specifically, Plaintiff alleges that: B. Ringel gifted the 15 Washington Property to his wife directly; the 2016 transfer was not in B. Ringel's usual course of business; B. Ringel knew that C. Ringel was a potential creditor; the 2016 transfer was made after the commencement of the New Jersey Actions; the transfer lacked adequate consideration; and B. Ringel “retained control and/or possession of the asset[] that [was] transferred” (NYSCEF Doc. No. 9, ¶ 47).

Thus, Defendants' motion is denied as to Plaintiff's claims under DCL § 276 relating to the 2016 transfer.

The Court has considered the parties' remaining contentions and finds them unavailing.

Accordingly, it is

ORDERED that Defendants' motion to dismiss the Complaint (Motion Seq. No. 1) is granted in part and denied in part; and it is further

ORDERED that the first cause of action is dismissed in its entirety without prejudice; and it is further

ORDERED that the second cause of action under DCL § 273 is dismissed with respect to the 2012 and 2015 transfers, but not with respect to the 2016 transfer; and it is further

ORDERED the third cause of action under DCL § 276 is dismissed with respect to the 2012 and 2015 transfers, but not with respect to the 2016 transfer; and it is further

ORDERED that Defendants shall file an answer within 20 days of the court's e-filing date of this decision and order; and it is further

ORDERED that the parties shall appear for a compliance conference on July 21, 2022 at 11:30 a.m. by Microsoft Teams.

7/7/22
DATE

Mel
MELISSA CRANE, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: