

Dellwood Dev., Ltd. v Coffinas Law Firm, PLLC

2022 NY Slip Op 34758(U)

July 5, 2022

Supreme Court, Kings County

Docket Number: Index No. 504415/2019

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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DELLWOOD DEVELOPMENT, LTD. and	:	HON. PETER P. SWEENEY,
DEMETRIOS DELENGOS,	:	J.S.C
	:	
Plaintiffs,	:	
-against-	:	MOTION SEQUENCE 001
	:	
THE COFFINAS LAW FIRM, PLLC, GEORGE	:	Index No.: 504415/2019
COFFINAS, and NEIMARK & NEIMARK,	:	
	:	
Defendants,	:	<u>NOTICE OF ENTRY</u>
-----	X	

PLEASE TAKE NOTICE, that the within is a true copy of the Decision and Order of the Hon. Peter P. Sweeney, J.S.C., dated July 5, 2022, and entered by the Clerk of the within Court on July 11, 2022.

Dated: July 11, 2022
New York, New York

FURMAN KORNFELD & BRENNAN LLP



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TO:

All Parties Via NYSCEF

504415/19

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73

Index No.: 504415/2019
Motion Date: 12-6-21
Mot. Seq. No.: 1

-----X
DELLWOOD DEVELOPMENT, LTD. and
DEMETRIOS DELENGOS,

Plaintiffs,

-against-

DECISION/ORDER

THE COFFINAS LAW FIRM, PLLC, GEORGE
COFFINAS, and NEIMARK & NEIMARK,

Defendants.
-----X

Upon the following e-filed documents, listed by NYSCEF as item numbers 6-31, 33-42, 48-60, the motion is decided as follows:

Defendants, THE COFFINAS LAW FIRM, PLLC, and GEORGE COFFINAS, ESQ. (hereinafter the "Attorney Coffinas") move for an Order pursuant to CPLR §§ 3211(a)(1), (a)(5), and (a)(7) dismissing Plaintiffs', DELLWOOD DEVELOPMENT, LTD ("Dellwood"), and DEMETRIOS DELENGOS ("Delengos"), (collectively "Plaintiffs") Complaint in its entirety, with prejudice, on the grounds that Plaintiffs' causes of action for legal malpractice and breach of fiduciary duty are barred by the doctrine of collateral estoppel, barred by the three-year statute of limitations, and the allegations in the Complaint otherwise fail to state a cognizable causes of action against Attorney Coffinas, together with such other and further relief as this Court may deem just and proper.

Background:

Plaintiffs commenced this action seeking to recover damages they allegedly suffered as a result of the legal malpractice of Attorney Coffinas in connection with his representation of Dellwood and/or Delengos in three separate legal matters: (1) Delengos' acquisition of Dellwood; (2) Attorney Coffinas' representation of Delengos and Dellwood in an action entitled *Porat v. Delengos*, Index No. 17394/2010 (Sup. Ct. Westchester County) ("the Porat action"), and (3) his representation of Delengos and Dellwood in *Lincoln Building Services, Inc. v. Dellwood Development Ltd. and Demetrios Delengos* (Queens County, Index Number 5899/2012 ("Action No. 1"). and *Lincoln Building Services Inc. v. Dellwood Development Ltd.*

001

(Queens County, Index Number 705630/2015 ("Action No. 2") which were tried jointly before Justice Timothy Dufficy.

Delengos' Acquisition of Dellwood.

Defendant Dellwood is a New York limited liability company formed in 2003. From that time to October 31, 2007, Ovad Porat (Porat) was its sole member. Dellwood was engaged in the business of general construction and the bulk of its business was renovating existing apartment buildings for conversion from low-income rental units to condominium units to be purchased by their existing tenants. Dellwood had been contracted to perform such work by two not for profit entities - SHUHAB Housing Development Fund Corporation (SHUHAB) and UHAB Housing Development Fund Corporation (UHAB). Dellwood's contract with these entities required Dellwood to have a certain amount of cash collateral in their business accounts to ensure that it would be able to perform under the contract.

In 2007, in order to secure such cash collateral, Porat, on behalf of Dellwood, borrowed funds from Lincoln Building Service Inc. ("Lincoln") and executed a promissory note agreeing to repay Lincoln upon demand the amount of \$4,454,241, plus 15% interest (the "Note"). After securing these funds from Lincoln, Dellwood defaulted under the contracts as well as on the Note. Thereafter, Porat and Vasilios Tsimitras ("Tsimitras"), the owner of Lincoln, approached Delengos, requesting that he acquire Dellwood and continue the construction projects. Delengos agreed.

On October 31, 2007, Delengos purchased Dellwood from Porat and as part of the Purchase Agreement, Delengos agreed to pay Porat a salary of \$2,500.00 a week for a period. Attorney Coffinas represented Delengos in connection with the Purchase Agreement. One of the claims being asserted in this action is that prior to the closing of the Purchase Agreement, Attorney Coffinas never informed of the existence of the Note or that Dellwood would have to pay the Note after the closing.

Porat v. Delengos.

In or around or around 2009, Dellwood stopped making the required salary payments to Porat pursuant to the Purchase Agreement. On July 16, 2010, approximately two years and eight

months after the closing of the Purchase Agreement, Porat commenced an action in Westchester Action (*Porat v. Delengos*, Index No. 17394/2010 (Sup. Ct. Westchester County)), naming Delengos and Dellwood as defendants seeking, among other things, damages in the amount of \$589,000.00. Porat maintained, among other things, that Delengos and Dellwood breached the Purchase Agreement by not paying Porat the salary called for in the Purchase Agreement. Attorney Coffinas initially appeared for Delengos and Dellwood in the action and alleged counterclaims alleging fraud in the inducement and restitution in the amount of \$76,000.

During the pendency of the Porat action, both Porat and Delengos moved for summary judgment. Porat also moved to disqualify Attorney Coffinas from representing Delengos and Dellwood in the action alleging that Attorney Coffinas would be called as a material witness. On November 14, 2012, the Hon. Bruce E. Tolbert denied both motions for summary judgment but granted Porat's motion to disqualify Attorney Coffinas. On August 12, 2013, the action was settled. Pursuant to the settlement agreement, Dellwood agreed to pay Porat the sum of \$150,000 and certain other damages.

The Joint Trial Actions:

In an action commenced in 2012, entitled *Lincoln Building Services, Inc. v. Dellwood Development Ltd. and Demetrios Delengos* (Queens County, Index Number 5899/2012), Lincoln sued Dellwood and Delengos, for among other things, the non-payment of the Note. Lincoln asserted a breach of contract claim based upon non-payment of the Note (the first cause of action); breach of contract claim based upon a promissory note dated June 5, 2007 (the second cause of action); costs and attorneys' fees based upon the promissory notes (the third cause of action); unjust enrichment (the fourth cause of action); breach of an implied-in-fact contract (the fifth cause of action); quantum meruit (the sixth cause of action); breach of implied covenant of good faith and fair dealing (the seventh cause of action); conversion (the eighth cause of action); piercing the corporate veil (the ninth cause of action); and fraud (the tenth cause of action).

In an action commenced in 2015, entitled *Lincoln Building Services Inc. v. Dellwood Development Ltd.* (Queens County, Index Number 705630/2015), Lincoln asserted a single cause of action for breach of contract based upon the Note. The two actions were joined for trial.

A bench trial of the two actions took place before Justice Timothy J. Dufficy in October of 2016. In his decision dated February 23, 2017 (NYSCEF Doc. # 10), Justice Dufficy sets forth a procedural history of the two actions as well as his findings of fact and conclusions of law. With respect to the issue of whether Delengos had knowledge of the Note when he acquired Dellwood, Justice Dufficy stated "Here, the plaintiff demonstrated that Delengos purchased Dellwood with knowledge of, and subject to the existing promissory note between Lincoln and his predecessor-in-interest." He further stated: "In opposition, the defendant's unsupported and contradictory testimony as to when he acquired knowledge of the note, along with the rebuttal testimony that Delengos requested that the plaintiff reduce the amount, failed to overcome the plaintiff's showing that Delengos knew of the existence of the note, and that the plaintiff was entitled to recovery thereunder."

After considering the testimony of seven witnesses and after reviewing the extensive documentary evidence, Justice Dufficy concluded as follows:

The testimony demonstrated that, until 2014, defendant Dellwood had millions of dollars, including, of course, the \$2.5 million that Lincoln loaned it, so that it could reap the rewards of the lucrative construction contracts it sought. Between 2008 and 2014, Dellwood had gross assets of \$24 million. Delengos testified at trial that, at the time of trial, Dellwood had less than \$50,000 in assets. Thus, it could not even return the cash collateral that it had borrowed from the plaintiff. Delengos' explanations were plainly dishonest, and defied logic and reason. He obviously diverted corporate monies in order to render the corporation insolvent and judgment-proof. There is no doubt in the Court's mind that millions of dollars which were loaned by the plaintiff were diverted to the individual defendant for his and his family members' personal use, which included purchases from local stores, casino debts, as well as investments in automobiles and racing cars. The Court has rarely seen a more poignant example of abuse of the corporate form. Thus, justice requires that Mr. Delengos be held personally responsible for the subject debt, in its full amount.

Justice Dufficy found in favor of Lincoln and held that Lincoln was entitled to judgment against Dellwood and Delengos, jointly and severally, in the sum of \$4,454,241, with interest from May 30, 2007, at 15% per annum; less \$150,000 paid by defendant Dellwood in August

2009, and attorneys fees. On April 9, 2017, Dellwood and Delengos appealed from Justice Dufficy decision and order.

This Action:

Plaintiffs commenced this action on February 28, 2019. Plaintiffs alleged seven causes of action. In the first cause of action, sounding in legal malpractice, plaintiffs allege that prior to the closing of the Purchase Agreement, Attorney Coffinas was negligent in failing to advise Delengos of the existence of the Note and that Dellwood would have to pay the Note after the closing. In the second cause of action, which also sounds in legal malpractice, plaintiffs allege that Attorney Coffinas knew or should have known of the existence of the Note and should have asserted counterclaims against Porat in the Porat action alleging that he concealed the existence of the Note. In the third cause of action, which also sounds in legal malpractice, plaintiffs allege that Attorney Coffinas should have known that he was a necessary witness in the Porat action his involvement with Dellwood's acquisition by Delegos and that his negligence in failing to recognize this inherent conflict, which ultimately led to Coffinas' disqualification, caused plaintiffs damages. In the fourth cause of action, alleging breach of fiduciary duty, plaintiffs' claims are similar to those asserted in the third cause of action. In the fifth cause of action, plaintiffs alleged that Attorney Coffinas failed to properly prepare trial in the Porat action and improperly failed to prepare Delengos to testify at the trial. In the sixth cause of action, plaintiffs repeat essentially the same allegations as in the third cause of action but couch the cause of action as sounding in breach of fiduciary duty. In the seventh cause of action, which sounds in legal malpractice, plaintiffs alleged that Attorney Coffinas committed legal malpractice in this representation of them in the two actions that were joined for trial in Queens County.

Discussion:

1. Statute of Limitations

Attorney Coffinas contends that plaintiffs' causes of action arising out of his alleged negligent representation of Delengos in the acquisition of Dellwood and in the Porat action are time barred. The court agrees. An action to recover damages arising from an attorney's

malpractice must be commenced within three years from accrual (*see* CPLR 214 [6]) accrues when the malpractice is committed (*see, Glamm v. Allen*, 57 N.Y.2d 87, 93, 453 N.Y.S.2d 674, 439 N.E.2d 390). “What is important is when the malpractice was committed, not when the client discovered it” (*id.*, at 95, 453 N.Y.S.2d 674, 439 N.E.2d 390). A legal malpractice claim accrues “when all the facts necessary to the cause of action have occurred and an injured party can obtain relief in court” (*Ackerman v. Price Waterhouse*, 84 N.Y.2d 535, 541, 620 N.Y.S.2d 318, 644 N.E.2d 1009 [1994]).

Applying these principles, any negligence on Attorney Coffinas’ part in failing to properly advise Delengos with respect to the Note accrued no later than October 31, 2007, when the closing of the Purchase Agreement took place. Plaintiffs commenced this action on February 28, 2019, more than 11 years later. The first cause of action was therefore untimely.

The continuous representation doctrine did not toll the time in which plaintiffs had to commence the first cause of action. Plaintiffs maintains that Attorney Coffinas’ representation of the Dellwood and Delengos was continuous from the time of the closing of the Purchase Agreement to when the Notice of Appeal was filed in the two Queens County actions. The Court disagrees. Application of the continuous representation doctrine is generally limited to the course of representation concerning a specific legal matter (*Shumsky v. Eisenstein*, 96 N.Y.2d 164, 168, 750 N.E.2d 67, 70). Stated differently, the continuous representation doctrine tolls the Statute of Limitations only where the continuing representation pertains specifically to the matter in which the attorney committed the alleged malpractice (*see, Glamm. supra*, at 94, 453 N.Y.S.2d 674, 439 N.E.2d 390; *see also, Weiss v. Manfredi*, 83 N.Y.2d 974, 977, 616 N.Y.S.2d 325, 639 N.E.2d 1122). The doctrine is “not applicable to a client’s ... continuing general relationship with a lawyer ... involving only routine contact for miscellaneous legal representation ... unrelated to the matter upon which the allegations of malpractice are predicated” (*Shumsky v. Eisenstein*, 96 N.Y.2d 164, 168, 726 N.Y.S.2d 365, 750 N.E.2d 67). Here, the closing took place on October 31, 2007. The Porat action, was commenced on July 16, 2010, over 2.5 years after the closing. The first Queen County action was commenced in 2012. Attorney Coffinas’ representation of the plaintiffs in the Porat Action and in the two Queens County Actions was insufficiently related to his representation of Delengos in connection with the purchase of Dellwood to invoke the continuous representation doctrine (*see Nuzum v. Field*,

106 A.D.3d 541, 965 N.Y.S.2d 113, 114; *Shumsky v. Eisenstein*, 96 N.Y.2d 164, 168, 726 N.Y.S.2d 365).

The statute of limitations also bars plaintiffs' legal malpractice claims arising out of Attorney Coffinas' representation of the plaintiffs in the Porat action. Attorney Coffinas' involvement in the Porat Action ceased on November 14, 2012, when the Hon. Bruce E. Tolbert granted Porat's cross-motion to disqualify him on the grounds that he was a material witness. Thus, the plaintiffs had until November 15, 2015, to commence an action against him sounding legal malpractice in connection with the Porat action. Commencement of this action on February 28, 2019, was therefore untimely.

2. The Collateral Estoppel Issue:

As stated above, plaintiffs' claims that Attorney Coffinas committed legal malpractice by failing to advise Delengos prior to the closing of the Purchase Agreement of the existence of the Note and that Dellwood would be responsible for paying the Note after the closing are time barred. Thus, whether plaintiffs are collaterally estopped for arguing that Delengos knew of the Note prior to the closing is largely academic. Nevertheless, defendants have not demonstrated that the doctrine of collateral estoppel applies. This doctrine allows "the determination of an issue of fact or law raised in a subsequent action by reference to a previous judgment on a different cause of action in which the same issue was necessarily raised and decided." (*Gramatan Home Investors Corp. v. Lopez*, 46 N.Y.2d 481, 485, 414 N.Y.S.2d 308, 386 N.E.2d 1328). What is controlling is the identity of the issue which has necessarily been decided in the prior action or proceeding (*Ryan v. New York Tel. Co.*, 62 N.Y.2d 494, 500, 467 N.E.2d 487, 490). While Justice Dufficy clearly determined that Delengos knew of the Note between Lincoln and his predecessor-in-interest when he purchased Dellwood, defendants have not demonstrated that whether Delengos' had such knowledge of the Note was an issue necessarily decided by Justice Dufficy.

3. Miscellaneous

Plaintiffs' breach of fiduciary duty allegations alleged in the sixth cause of action are based upon the same operative facts as the legal malpractice allegations in connection with

Attorney Coffinas' representation of Delengos and Dellwood in the Porat action. Plaintiffs' attempts to couch the allegations in the form of breach of fiduciary duty and not legal malpractice fees does not change the nature of the request for monetary relief. The action is for legal malpractice. The sixth of action must therefore be dismissed.

Finally, the Court rejects Attorney Coffinas' claim that the documentary evidence demonstrates his freedom from negligence as a matter of law on the remaining cause of action.

For the above reasons, it is hereby

ORDERED that those branches of the motion in which Attorney Coffinas seeks to dismiss plaintiffs' first, second, third, fourth, fifth and sixth causes of action, which arise out of plaintiffs' claims that he failed to properly represent the Delengos in connection with the Purchase of Dellwood and in the Porat action, are dismissed as time barred; it is further

ORDERED that the branch of the motion seeking to dismiss the seventh Cause of action is **DENIED**. The plaintiffs, however, are precluded from arguing in that cause of action that Attorney Coffinas was negligent in failing to properly advise Delengos with respect to the Note prior to the closing of the Purchase Agreement.

This constitutes the decision and order of the Court.

Dated: July 5, 2022

PPS

PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020

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