Ji Juan Lin v Bo Jin Zhu
2022 NY Slip Op 35132(U)
March 1, 2022
Supreme Court, Queens County
Docket Number: Index No. 707231/2018
Judge: Leonard Livote
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SHORT FORM ORDER

NEW YORK STATE SUPREME COURT - QUEENS COUNTY
Present: Honorable **Leonard Livote** Commercial Part A/IAS Part 33
Supreme Court Justice

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JI JUAN LIN and CHUNG SUM CHENG, individually and as Limited Partners and Shareholders and Creditors of 8220 BRITTON AVE REALTY CORP.,
Plaintiff,

Index No: 707231/18

-- against --

Motion Date: 8/17/21

BO JIN ZHU, WEN PING ZHU, 8220 BRITTON AVE REALTY CORP., LSL REALTY HOLDING LLC, XIUMIN CHEN CROWN MANSION LLC, 8220 BRITTON AVE REALTY CORP. LIMITED INVESTMENT PARTNERSHIP and AI YING ZHENG
Defendants

Seq: 6

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The following papers numbered 1 - 4 below read on this motion by defendant LSL Realty Holdings LLC and Xiumin Chen for an Order 1. Pursuant to CPLR § 3211(a)(1), dismissing LSL Realty and Xiumin Chen from the Second Amended Complaint ("SAC") based on defenses founded upon documentary evidence; or alternatively, 2. Pursuant to CPLR § 3211(a)(3), dismissing LSL Realty and Xiumin Chen from the SAC based on lack of standing or capacity to sue; or alternatively, 3. Pursuant to CPLR § 3211(a)(5), dismissing LSL Realty and Xiumin Chen from the SAC based on payment received by Plaintiffs as part of an accord and satisfaction; or alternatively, 4. Pursuant to CPLR § 3211(a)(7), dismissing LSL Realty and Xiumin Chen from the SAC based on its failure to state a cause of action or to properly plead fraud; or alternatively, 5. For Plaintiffs' failure to serve their business partner, defendant Ai Ying Zheng, with process despite an order from the Second Appellate Department to do so within thirty days.

	PAPERS NUMBERED
Notice of Motion, Affirmation, Affidavits and Exhibits..	1-4
Cross Motion, Affirmation, Affidavits and Exhibits..	
Answering Affirmations, Affidavits And Exhibits..	
Reply Affirmations, Affidavits And Exhibits..	
Other	

Upon the foregoing papers, the motion is granted without opposition.

This action arises out of the alleged illegal conversion and transfer of corporate and partnership assets of 8220 Britton Avenue Realty Corp. to LSL. The complaint alleges that the sale was perpetuated through fraud, fraudulent inducement and conspiracy of defendants Bo Jin Zhu, Wen Ping Zhu and Xiumin Chen. Plaintiffs seek to set aside the April 24, 2018 sale of the premises known as 43-01, 03, 05, 07, and 09 National Street, in Queens, New York, Block 1619, Lot 7 ("Property"), by defendant 8220 Britton Avenue Realty Corp., to LSL as a fraudulent conveyance; to recover damages for breach of a limited investment partnership agreement dated July 25, 2014; and for injunctive relief as against LSL.

Facts

On or about July 25, 2015, Ji Juan Lin and Chung Sum Cheng, as limited partners, entered into a Limited Investment Partnership Agreement (LIPA), with Ai Ying Zheng, as the third limited partner, and with defendants Bo Jin Zhu and Wen Ping Zhu as general partners. The LIPA created the limited partnership known as the 8220 Britton Ave Realty Corp. Limited Partnership. The purpose of the Limited Partnership was to invest in the development of 8220 Britton Ave Realty Corp., as contemplated by the company. General partners Bo Jin Zhu and Wen Ping Zhu were designated to represent the Limited Partnership in 8220 Britton Avenue Realty Corp., and to do "all that is necessary and required to achieve such purpose."

Pursuant to section 2.1 of the LIPA, the Limited Partners invested money in the Limited Partnership as follows: Ai Ying Zheng contributed $1,430,000; Ji Juan Lin contributed $1,000,000; and Chung Sum Cheng contributed $800,000. The monies were to be used by the general partners to pay debts and arrears of

8220 Britton Avenue Realty Corp. 8220 Britton simultaneously executed two promissory notes. One note is payable to Ji Juan Lin in the principal amount of $1,300,000 with a promise to repay the note in three monthly payments in the amount of $433,333.33 on August 1, 2016, September 1, 2016 and October 1, 2016. The second note is payable to Chung Sum Cheng in the principal amount of $1,040,000, with a promise to repay the note in three monthly installments on August 1, 2016, September 1, 2016 and October 1, 2016, in the amount of $346,666.66.

On September 19, 2017, an action was commenced in the Supreme Court, Queen County, entitled Ji Juan Lin and Chung Sum Cheng, et al., v Bo Jin Zhu, et al., Index No 713018/2017, against all defendants herein except LSL, for breach of the LIPA and for defaulting under the terms of the note payable to JI Juan Lin and Chung Sum Cheng. A notice of pendency was filed in connection with the 2017 action. On or about December 22, 2017, LSL signed a Contract of Sale to purchase the Property for $3,500,000. However, the sale could not proceed because of the notice of pendency.

On April 9, 2012, the parties entered into a stipulation of settlement which resolved the 2017 action. The notice of pendency was cancelled and on April 24, 2018, 8220 Britton conveyed the premises to LSL for $3,500,000. The deed was recorded against the premises on April 26, 2018. $1,605,195.74 of the sales proceeds were paid to satisfy an existing consolidated note and mortgage granted to Cathay Bank dated April 5, 2013, recorded against the premises on April 29, 2013. The Cathay Bank Mortgage was in foreclosure at the time of its payoff. After Cathay Bank received payment, it discontinued its foreclosure filed on March 14, 2014, in Supreme Court, Queens County, entitled Cathay Bank v 8220 Britton Ave Realty Corp., et al., Index No 704050/2018, on May 31, 2018. The notice of pendency was also canceled on May 31, 2018.

Shortly after the sale of the premises to LSL, plaintiffs commenced this action on May 8, 2018, by filing a summons, complaint and notice of pendency. In commencing the action, however, plaintiffs failed to name either the Limited Partnership or Ai Ying Zheng, as plaintiffs or even as nominal defendants. LSL moved to dismiss the action on the ground that plaintiffs failed to name either the Limited Partnership or Ai Ying Zheng as plaintiff or as even nominal defendants. By Order entered February 21, 2019, this Court determined that plaintiffs' partner, Ai Ying Zheng is a necessary and indispensable party to this case. By Order dated February 3, 2021, the Second Appellate Department ordered that Ai Ying Zheng be joined as a party and served with process by Plaintiffs within 30 days after service upon the plaintiffs of a copy of the Decision and Order. Notice of entry was filed on February 3, 2021.

On February 15, 2021, plaintiff filed an amended complaint which added Zheng as a defendant. Zheng was served on February 16, 2021. Defendant LSL Realty and Xiumin Chen, move to dismiss.

As a general rule, when considering a motion to dismiss a complaint for failure to state a cause of action pursuant to CPLR §3211(a)(7), the plaintiff's complaint is to be liberally construed in the light most favorable to the plaintiff's; and all factual allegations are accepted as true. (See, *Lo Pinto v. Mays, Inc.* 107 AD2d 582 [1991]). In the within action the plaintiff claims that the subject lease should be invalidated as an unreasonable restraint on alienation for the various reasons stated above. Where the ultimate question in an action is whether or not an act is unreasonable, there is a question of fact presented that should be determined at trial. (See, *Colonial Co-op Ins. Co. v. Desert Storm Const. Corp.*, 305 AD2d 363 [2nd Dept. 2003]). A fraud claim must be pleaded with particularity, pursuant to CPLR 3016(b) *(Eurycleia Partners, LP v. Seward & Kissel, LLP*, 12 NY3d 553, 559 [2009]).

The first cause of action for injunctive relief and the second cause of action for a declaratory judgment allege fraud by the movants. However, the allegations are wholly conclusory and fail to meet the particularity standard. Accordingly, these causes of action are dismissed as against movants.

The third cause of action seeks a monetary judgment based on an addendum to the partnership agreement. However, movants are not parties to the partnership or signatories to the addendum. Accordingly the third cause of action is dismissed as against movants.

The fourth through eighth causes of action allege violations of the Debtor and Creditor Law. However, the movants are not debtors of the plaintiffs. Thus, the fourth through eighth causes of action are dismissed as to movants. Accordingly, the motion is granted and it is,

ORDERED, that the action is dismissed as against defendants LSL Realty and Xiumin Chen.

Any other or further relief not specifically addressed is denied.

This constitutes the Order of the Court.

Dated: March 1, 2022

Leonard Livote, J.S.C.