Mujica v Wells Park Dr. Condominium Assn.
2022 NY Slip Op 35223(U)
November 3, 2022
Supreme Court, Westchester County
Docket Number: Index No. 64406/2019
Judge: Sam D. Walker
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To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
PRESENT: HON. SAM D. WALKER, J.S.C.

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GABRIEL MUJICA

Plaintiff,

-against-

WELLS PARK DRIVE CONDOMINIUM ASSOCIATION et al,

Defendants

DECISION & ORDER
INDEX NO. 64406/2019
Sequence # 1

The following papers were received and considered in connection with the above-captioned matter:

Notice of Motion/Affirmation/Affidavit/Exhibits 1-13	1-15
Affirmation/Affidavit in Opposition/Exhibits A-J	16-26
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Wells Park Drive Condominium Association (the "Condominium") consists of eight residential units. Plaintiff owns a unit in the Condominium with the mailing address of 7 Wells Park Dr., Unit 2, Yonkers, New York 10705 (hereinafter the "Unit"). Defendant is not and has never been a member of the Condominium. Wells Park Drive LLC is organized by the Board, and Defendant does not possess an interest nor is an officer or agent of same.

On or about October 2010, Plaintiff installed awnings on the exterior of the Unit without Board approval. The exterior of the Unit is classified as a common element which is under the control of the Board, and not of Plaintiff. Although Plaintiff removed the awnings, the installation and mainly the removal of the awnings resulted in damage to the exterior of the Unit. Plaintiff has not repaired the damage to the exterior of the Unit when the awnings were removed nor paid the Board the costs of repairing same.

Non-parties, Mr. and Mrs. Ho, are the owners and residents of 7 Wells Park Dr., Unit 1, Yonkers, New York 10705. On or about August 9, 2019, Plaintiff and Mr. and Mrs. Ho, entered into a contract for the purchase of 7 Wells Park Dr., Unit 1, Yonkers, New York 10705. Pursuant to Article 7.2(A) of the By-Laws, "promptly after any contract of sale or lease is fully executed by a unit owner, he shall send written notice thereof to the Condominium Board by certified or registered mail, return receipt requested." Such notice was never received by the Board.

Pursuant to Article 7.2(B) of the By-Laws,

> "sending of the notice referred to in Paragraph A of this Section 7.2 will constitute an offer by the Offeree Unit to sell his Unit, together with its Appurtenant Interest, or to lease his Unit, as the case may be, to the Condominium Board or to his designee, corporate or otherwise, on behalf of all Unit Owners, upon the same terms and conditions as are contained in such Sale or lease Agreement."

Article 7.2(C) of the By-Laws provides that:

> "the Condominium Board may elect, by sending written notice thereof by certified or registered mail, return receipt requested, to the Offeree Unit owner before the expiration of such twenty (20) day period, to purchase such Unit together with its Appurtenant Interest or to lease such Residential Unit, as the case may be on behalf of all Unit Owners upon the same terms and conditions as contained in the Sale or Lease Agreement and stated in the response by the Offeree Unit Owner to any request for additional information pursuant to the terms of Paragraph (B) hereof."

Therefore, the Board had a right of first refusal to the subject contract of sale between Plaintiff and Mr. and Mrs. Ho and the offer to purchase the property was not a valid offer because notice was not given.

The Board was not in a position to exercise its right of first refusal due to the notice required pursuant to Article 7.2 not being sent to the Board. In or about September 2019, the Board discovered that Plaintiff had filed a purported First Amendment to the Declaration of the Wells Park Drive Condominium dated June 16, 2016, by misrepresenting himself as the president of Wells Park Drive, LLC and providing same as a notarized document with the Clerk of the Court.

Similarly, Plaintiff unlawfully attempted to modify section 7.6, page 48 of the By-Laws. Plaintiff committed this act in order to later bypass the Board in obtaining a loan from the United States Department of Veterans Affairs to purchase Mr. and Mrs. Ho's unit. As a result of the fraud committed by Plaintiff, the Board, justifiably informed Wells Fargo as to its right of first refusal and the actions committed by Plaintiff.

As a result of not being able to purchase the Hos' Unit, Plaintiff commenced an action against the Condominium Board alleging interference with contract with the Hos. Plaintiff now moves for an order granting summary judgment to Gabriel Mujica on the claims in his Complaint; granting partial summary judgment to Gabriel Mujica on the claims by the Condominium; and for such other and further relief as appears just and proper in the circumstance.

<u>DISCUSSION</u>

On a motion for summary judgment, a court's task is issue finding rather than issue determination (*see, Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 404, 165 N.Y.S.2d 498, 144 N.E.2d 387). The movant's position must be established by submission of evidentiary proof in admissible form sufficient to warrant judgment as a matter of law (*see Zuckerman v. City of New York*, 49 N.Y.2d 557, 562, 427 N.Y.S.2d 595, 404 N.E.2d 718). If the proponent of such motion does not tender evidence which would eliminate material issues of fact, the motion must be denied regardless of the sufficiency of the opposition (*see Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642). However, where the movant meets that burden, the burden shifts to the party opposing the motion to show facts sufficient to require a trial of an issue of fact (*see Burton v. Ertel*, 107 A.D.2d 909, 910, 483 N.Y.S.2d 854).

An action for intentional interference with contractual relations requires proof of the existence of a valid contract between plaintiff and a third party; the defendant's knowledge of that contract; the defendant's intentional procurement of a breach of that contract by the third party without justification; an actual breach of the contract and damages caused by the breach. (*Kaminski v. United Parcel Service*, 120 A.D.2d 409, 412, 501 N.Y.S.2d 871 (1st Dept.1986), *citing Israel v. Wood Dolson Co.*, 1 N.Y.2d 116, 120, 151 N.Y.S.2d 1, 134 N.E.2d 97 (1956).

For there to be a valid contract, there must be a valid offer, acceptance and consideration, (*see Matter of Civ. Serv. Empts. Assn., Inc. v Baldwin Union Free Sch. Dist.*, 84 A.D.3d 1232, 1234 (2d Dept 2011). The contract between Plaintiff and the third party sellers, Mr. & Mrs Ho contained a "Right of First Refusal" provision which states that

> Right of First Refusal: If so provided in the Declaration or By-Laws, this sale is subject to and conditioned upon the waiver of a right of

> first refusal to purchase the Unit held by the Condominium and exercisable by the board, Seller agrees to give notice promptly to the Board of the contemplated sale of the Unit to Purchaser, which notice shall be given in accordance with the terms of the Declaration and By-Laws, and Purchased agrees to provide promptly all applications, information and references reasonably requested by the Board..."

Plaintiff and the third-parties, Mr., and Mrs. Ho failed to notify the Board of the sale of the property as required by the Board By-Laws and the "contract" between the third-parties and Plaintiff. Furthermore, Article 7.2(B) of the By-Laws provides that “the sending of the notice referred to in Paragraph A of this Section 7.2 will constitute an offer by the Offeree Unit Owner to sell his unit, together with its Appurtenant Interest, or to lease his Unit to the Condominium Board or to its designee, corporate or otherwise, on behalf of all Unit Owners, upon the same terms and conditions as are contained in such Sale or Lease Agreement.

The sellers are required to give notice to the Board and by not doing so, they failed to give the Board the “Right of First Refusal.” Since Plaintiff and the third-parties failed to give notice to the Board, there was no offer, and hence no valid contract. The Board’s exercise of its right of first refusal converts the offer of purchase into a binding contract (*see Williams Oil Company, Inc., v. Randy Luce E-Z Mart One, LLC , et al*, 302 A.D.2d 736, 757 N.Y.S.2d 341 (3d Dept 2003) *citing Matter of LIN Broadcasting Corp. v. Metromedia, Inc.*, 74 N.Y.2d 54, 60, 544 N.Y.S.2d 316, 542 N.E.2d 629). Without proper notice to the Board in accordance with the By-Laws, as to its right of first refusal, there no is valid or binding contract.

As to Defendants’ knowledge of the existence of a contract, Article 7.2 of the By-Laws provides that once a contract of sale or lease is fully executed by the unit owner, the unit owner shall notify the Board in writing by certified or registered mail. Here, the Board was never notified by certified or registered mail, and hence had no formal knowledge of the existence of an offer to purchase or a contract.

The Board found out about the sale when a Board member received an email from Wells Fargo Bank seeking insurance information pertaining to a mortgage application regarding a Wells Park Condominium Association Unit. The email from Wells Fargo listed the name of the purchaser and identified the address of the Unit being purchased. Therefore, there was no question that the Board knew that Mr Mujica was purchasing the Hos' property. However, the Hos never followed the procedures for notifying the Board as set forth in the By-Laws. There is no question that if Defendants had any concern about the veracity of the request from Wells Fargo, a simply phone call could have confirmed the transaction.

Therefore, the Board member clearly had knowledge of the existence of an agreement between Plaintiff and the third-parties. However, the Hos' never followed the procedures as set forth in the By-Laws to allow the Board to exercise its right of first refusal. The thought that this may have been some kind of mortgage fraud seems implausible and may just have been designed to detract from what appears to be a problem between the Board and Mr. Mujica.

In an attempt to interfere with the contract between Mr. Mujica and the Hos', Plaintiff contends that the Condominium refused to provide the requested information regarding the insurance for the Condominium, and as a result Wells Fargo was unable to complete its underwriting and approve Mr. Mujica's loan. If the Condominium had timely supplied the insurance, the Hos' would have never had the opportunity to cancel the contract. That is if the contract was canceled because of the Condominium's failure to provide insurance information. However, if Plaintiff committed the acts for which he is being accused, the Condominium may have been totally justified in not providing the information to Wells Fargo. It is clear from the record that the Hos did not follow the proper procedure by notifying the Board of the Sale. Therefore, the Board finding out about the pending sale by other means, does not mean that the Board was formally given an opportunity to exercise its "Right of First Refusal" in conformance with the By-Laws.

As to whether the Board has ever exercised its "Right of First Refusal" or ever intended to purchase the property is of no significance. In either case, the By-Laws must be adhered to. Plaintiff also tries to diminish the significance of the alleged amendment to the By-Laws. Providing forged documents to a bank to facilitate issuance of a mortgage commitment is unacceptable and should never be tolerated. The Condominium may have thought that this was part of a fraudulent scheme, and could be justified in not providing the information to Wells Fargo, but the Board's mere belief should not excuse compliance with the By-Laws as to the exercise of the "Right of First Refusal." There are clearly questions of facts as to whether or not Wells Park was ever given an opportunity to exercise its right of first refusal; whether or not Plaintiff submitted fraudulent documents to Wells Fargo to facilitate issuance of a mortgage commitment, or whether or not the action of the Board had anything to do with Mr. & Mrs Ho not granting Mr. Mujica an extension. of time for a commitment.

As to the issue of damages, the Court must first determine the fair market value of the property. There is no fixed method in determining the value of property, Generally, one of three methods of valuation of property is employed: 1) the cost approach, 2) the income capitalization approach, 3) the market approach, (*see Oneonta Tennis Club, Inc. v. City of Oneonta Assessor*, 163 Misc.2d 826, 622 N.Y.S.2d 414 (Supreme Ct., Otsego Cty, 1994). However, in determining the value of a property, all relevant factors must be taken into consideration. Such factors include the uniqueness of the property if any. Notwithstanding the above methods, the best evidence of value, of course, is a recent sale of the subject property between a seller under no compulsion to sell and a buyer under no compulsion to buy (*see Matter of Grant Co. v. Srogi*, 52 N.Y.2d 496, 511, 438 N.Y.S.2d 761, 420 N.E.2d 953).

Here, the contract price between Plaintiff and Mr. & Mrs. Ho was $500,000. The selling price to the new purchasers after the termination by the Hos was $522,000. Plaintiff offered no testimony as to the uniqueness of this property to justify a special value. Mr. Mujica claims that he is entitled to damages in the amount of $22,000. Mr. Mujica contends that he is entitled to the difference the selling price post termination and his contract purchase price. However, Plaintiff did not suffer any damages as a result of the breach because the fair market value of the unit when Plaintiff was set to purchase was estimated to be approximately $496,000, $4,000 less than Plaintiff offered to pay, (*see People ex rel. Ryder v. Woodworth*, 178 Misc. 921,922 (Sup. Ct. Monroe County,1942). Therefore, Plaintiff suffered no damage as a result of the third-parties selling their home to another party. There is no indication in the record as to whether or not Mr. & Mrs. Ho was under any compulsion to sell and Mr. Mujica was under any compulsion to buy.

MUJICA'S CLAIM FOR PARTIAL SUMMARY JUDGMENT

The Condominium is seeking compensation for damages allegedly caused by the installation of awnings on the unit that is currently owned by Mr. Mujica. The installation allegedly occurred in October 2010. However, the Condominium did not file its Complaint until November 14, 2019, more than 9 years later. In its Complaint, the Condominium based its theories of liability for the installation of the awning on breach of contract, negligence and trespass/property damage.

Plaintiff argues that since he was not an owner in 2010, he could not be subject to a breach of contract claim for violation of the Condominium's By-Laws. However, even if Mr. Mujica was subject to the By-Laws of the Condominium, the statute of limitations in a breach of contract action is six years, while for both negligence as well as property damage/trespass it is three years. (CPLR § 213; CPLR § 214). When an action is not commenced within the period permitted by the statute of limitations, summary judgment is a proper method to resolve and dismiss such claims, (*see Cox v. Kingsboro Med. Group.*, 88 NY2d 904, 906 [1996]. Here, the Condominium's allegations regarding the installation of the awning - whether based upon breach of contract, negligence, or property damage - are clearly barred by the statute of limitations, and entitles Mr. Mujica to partial summary judgment.

The Condominium argues that a claim for property damage accrues when the damage was discovered and in this case when the awnings were removed by Mr. Mujica because the Board could not have discovered the true extent of all the damages from the awnings installation until it was removed from the common area. However, New York does not apply the "discovery" rule to statutes of limitations in contract actions (*see Ely-Cruikshank Co. v. Bank of Montreal*, 81 N.Y.2d 399, 403, 599 N.Y.S.2d 501, 615 N.E.2d 985 [1993]). Rather, the "statutory period of limitations begins to run from the time when liability for wrong has arisen even though the injured party may be ignorant of the existence of the wrong or injury" (*id.*; *see Ace Securities Corp v. DB Structured Products, Inc.*, 25 N.Y.3d 581, 36 N.E.3d 623, 15 N.Y.S.3d 716 [2015]). Therefore, Mujica is entitled to partial summary judgment with respect to the Condominium's claims for damages related to the awnings.

Based on the foregoing, it is

ORDERED that Plaintiff's application for an order granting summary judgment on the claims in his Complaint is DENIED; and it is further

ORDERED that Plaintiff's application for an order granting partial summary judgment on the claims in the Condominium's Complaint is GRANTED.

To the extent any relief requested in motion sequence 1 were not addressed by the court, it is hereby deemed denied. The foregoing constitutes the Opinion, Decision and Order of the Court.

Dated: White Plains, New York
November 3, 2022

Sam D. Walker

HON. SAM D. WALKER, J.S.C.