Piccirilli v Benjamin
2022 NY Slip Op 35233(U)
October 21, 2022
Supreme Court, Broome County
Docket Number: Index No. EFCA2017000315
Judge: Joseph A. McBride
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.

At a Motion Term of the Supreme Court of the State of New York held in and for the Sixth Judicial District at the Tompkins County Courthouse, Ithaca, New York, on the 19th day of August 2022.

PRESENT: HON. JOSEPH A. MCBRIDE
Justice Presiding

STATE OF NEW YORK
SUPREME COURT : BROOME COUNTY

LUCIANO PICCIRILLI,

Plaintiff,

-vs-

RONALD R. BENJAMIN,

Defendants.

DECISION AND ORDER
Index No. EFCA2017000315

RONALD R. BENJAMIN,

Plaintiff,

-vs-

LUCIANO PICCIRILLI,

Defendants.

APPEARANCES:

Counsel for Plaintiff:
Piccirilli

COUGHLIN & GERHART
By: Alan J. Pope, Esq
99 Corporate Drive
PO Box 2039
Binghamton, New York 13902

Counsel for Defendant:
Benjamin

LAW OFFICE OF RONALD R. BENJAMIN
By: Ronald R. Benjamin, Esq.
126 Riverside Drive, PO Box 607
Binghamton, New York 13902-0607

JOSEPH A. MCBRIDE, J.S.C.

This matter is before the Court following several post-verdict motions. The Plaintiff Luciano Piccirilli ("Piccirilli") filed a motion seeking 1) an order to confirm the jury verdict of fraud and 2) for a judgment against Benjamin. Defendant, Ronald Benjamin ("Benjamin") filed a cross-motion pursuant CPLR §4404 seeking 1) to set aside the partial jury verdict (No. 1) in Piccirilli's as to the fraud cause of action and directing judgment be entered as a matter of law in favor of Benjamin; and 2) a directed verdict in favor of Benjamin on his affirmative defense with respect to jury verdict (No. 2) that the $200,000 contract was usurious, and denying entry of a judgment in Piccirilli's favor. The Court received opposition to each of the motions. The Court received and reviewed moving papers maintained by the County Clerk and decided as discussed below.

BACKGROUND FACTS

The case before the Court originated as a breach of contract matter filed by Piccirilli. Benjamin filed a separate claim that the original contract was void as usurious. In the answer to Benjamin's complaint, Piccirilli plead as an affirmative defense that he was induced by fraud. The two cases were consolidated and tried together. On June 6, 2022, a jury trial commenced. The testimony revealed that Benjamin secured a loan from Piccirilli in the amount of $200,000. The parties engaged in discussions about the amount of interest to be paid on the loan. The parties signed a promissory note for the $200,000 and a mortgage to secure the collateral. Simultaneously, the parties signed a separate "consulting agreement." The premise that Piccirilli would engage Benjamin for as a consultant and Benjamin would pay Piccirilli a sum that happens to be calculated to be 25% interest on $200,000. It is undisputed that no consultant services were ever engaged. Moreover, Benjamin testified that he never intended on paying back the $200,000. On June 8, 2022, the jury returned a verdict which found 1) Benjamin responsible for defrauding Piccirilli by forming the intent not to pay Piccirilli when Benjamin signed the Promissory Note and Mortgage; and 2) that the $200,000 loan was usurious.

The parties each filed post-verdict motions seeking to confirm and set aside the verdict respectively. The matter was scheduled for oral argument on August 19, 2022, via Microsoft Teams. At oral argument, Piccirilli's counsel argued that case law supports the premise that no one can profit from their own fraudulent inducement, which was supported by the testimony, and therefore Benjamin owes the $200,000 to Piccirilli. In opposition, Benjamin argued that the usurious side agreement renders the whole agreement void and therefore Benjamin gets to keep the $200,000. The Court determines as discussed below.

ANALYSIS AND DISCUSSION

Pursuant CPLR §4404 "the court may set aside a verdict or any judgment entered thereon and direct that judgment be entered in favor of a party entitled to judgment as a matter of law or it may order a new trial of a cause of action or separable issue where the verdict is contrary to the weight of the evidence." CPLR §4404(a). "The trial court must determine from the evidence presented at trial whether any rational basis exists for the conclusion on liability reached by the jury." Kozlowski v. Amsterdam, 111 A.D.2d 476, 477 (3rd Dept. 1985). "The test is not whether the jury erred in weighing the evidence presented, but whether any viable evidence exists to support the verdict." Id. at 477. "In order for a verdict to be stricken as against the weight of the evidence, it must appear that 'the evidence so preponderate[d] in favor of the [movant] that [the verdict] could not have been reached on any fair interpretation of the evidence'." Nolan v. Union Coll. Trust of Schenectady, N.Y., 51 A.D.3d 1253, 1255 (3rd Dept. 2008), quoting Biello v. Albany Mem. Hosp., 49 A.D.3d 1036, 1037 (3rd Dept. 2008).

The Court will start with Benajmin's Motion to set aside the verdict as against the weight of the evidence. As an initial matter, the Court finds that the affirmative defense of fraud was plead in Piccirilli's answer to Benjamin's cause of action. Therefore, the claim of fraud was properly before the Court and subsequently properly before the jury. Further, the Court finds that viable evidence exists to support the verdict. See Kozlowski, 111 A.D.2d at 477. It was clear from the record that Benjamin testified that he never intended to pay the loan back to Piccirili when they engaged in the discussions to secure the loan and when he signed the promissory note and mortgage. As a cornerstone of American Jurisprudence, the Court of Appeals has held that "No one shall be permitted to profit by his own fraud, or to take advantage of his own wrong, or to found any claim upon his own iniquity, or to acquire property by his own crime." Riggs v. Palmer, 115 NY 506, 511 (Ct. of App. 1889). Given the testimony that was elicited at trial, the Court finds no reason to disturb the jury's verdict. See Nolan, 51 A.D.3d at 1255. Therefore, Benjamin's Motion to Set Aside the Verdict is DENIED.

The Court will turn next to Piccirilli's Motion to confirm the verdict and impose a judgment. A plaintiff's cause of action for fraud in addition to a breach of contract claim is sustainable, when a plaintiff makes "allegations of intentional fraud, though 'parallel in many respects to the breach of contract claim', include claims of fraudulent misrepresentations made by defendants which induced them to enter into the contract and close on the property, they are not 'merely redundant' of the breach of contract claim." Gizzi v. Hall, 300 A.D.2d 879, 880 (3rd Dept. 2022); citing RKB Enters. v Ernst & Young, 182 A.D.2d 971, 972, (3rd Dept, 1992); *and* Clark-Fitzpatrick, Inc. v Long Is. R.R. Co., 70 N.Y.2d 382, 390 (Ct. of App. 1987). Moreover, the Court finds that it would be inappropriate for Benjamin to skirt his obligation to pay back a loan on the basis of a usury defense when he testimony clearly revealed that he, a lawyer by trade, fraudulently induced Piccirilli, a co-owner member of a business entity that Benjamin previously represented into a usurious loan. See Schaaf v. Borsher, 440 N.Y.S.2d 312, 313 (2nd Dept, 1981). Therefore, the Piccirilli's Motion is GRANTED, the Court confirms the jury verdict and will assess damages below.

DAMAGES

During trial, and with the consent of the parties, the Court agreed to assess damages given the various legal intricacies involved in this case. At the very basic level, as the testimony revealed, there was a breach of contract, on a usurious loan, that was induced by fraud. At the end of the trial, it was determined that this was a usurious loan, which would ordinarily be void. However, as the Court established above, Benjamin cannot profit by his own fraud. That being said, given the usurious nature of the loan, the Court does not feel comfortable assessing an initial interest amount of the proposed 15% from the time of the contract to the time of the jury verdict as suggested by Piccirilli. Therfore the Court will assess damages at the amount of $200,000 owed from Benjamin to Piccirilli with no interest up to the time of the jury verdict. The Court will then assess costs and disbursements in the amount of $1,857.79 and statutory interest at a rate of 9% from the date of the jury verdict (June 8, 2022) until payment.

CONCLUSION

Based on the foregoing and looking at the record evidence as it was presented at trial, the Court is unpersuaded that the jury verdict was against the weight of the evidence. Therefore, Benjamin's Motion to Set Aside the Verdict is DENIED. Piccirilli's Motion to confirm the jury verdict is GRANTED. It is further Ordered that Piccirilli's counsel submit a proposed judgment consistent with the decision on damages as outlined above.

This constitutes the **DECISION AND ORDER** of the Court. The transmittal of copies of this Decision and Order by the Court shall not constitute notice of entry (see CPLR 5513).

Dated: 10/21, 2022
Norwich, New York

HON. JOSEPH A. MCBRIDE
Supreme Court Justice