Holiday House Owners Corp v Carro-Caputo
2022 NY Slip Op 35265(U)
September 30, 2022
Supreme Court, Queens County
Docket Number: Index No. 712693/2015
Judge: Leonard Livote
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE LEONARD LIVOTE IA Part 33
Justice

HOLIDAY HOUSE OWNERS CORP, Plaintiff	Index Number 712693/15
- -against -	Motion Date 1/25/22
MARYANN CARRO-CAPUTO, TRIBOR MANAGEMENT, INC. and 140-65 BEECH AVENUE OWNERS CORP., BOARD OF MANAGERS OF QUEENS CENTER PLAZA CONDOMINIUM, QUEENS CENTER PLAZA CONDOMINIUM, BROOKVILLE ENTERPRISES, LLC., BOARD OF MANAGERS OF SHENG RAINBOW CONDOMINIUM and SHENG RAINBOW CONDOMINIUM, Defendant	Motion Seq. No. 8

The following numbered papers read on this motion by defendants Board of Managers of Queens Center Plaza Condominium and Queens Center Plaza Condominium (Queens Center defendants) for summary judgment dismissing the amended complaint against them; and on this cross motion by plaintiff for summary judgment in its favor on the third cause of action for conversion and the ninth cause of action for money had and received against the Queens Center defendants.

	Papers Numbered
Notice of Motion - Affidavits - Exhibits	EF 129 - 147
Notice of Cross Motion - Affidavits - Exhibits	EF 149 - 167
Reply Affidavits	EF 168 - 176

Upon the foregoing papers it is ordered that the motion and cross motion are determined as follows:

Plaintiff is a cooperative apartment building located at 143-30 Roosevelt Avenue in Flushing, New York, which hired defendant Maryann Carro-Caputo of defendant Tribor Management Inc. (Tribor) to serve as the property manager for plaintiff and the remaining co-defendants. In the amended complaint, plaintiff alleges, inter alia, that, without plaintiff's knowledge or consent, Ms. Carro-Caputo electronically transferred certain funds from plaintiff's bank accounts to defendants' bank accounts. With regard to the Queens Center defendants, it is alleged that the following transfers were made: (1) on July 26, 2010, the sum of $68,750.00 from plaintiff's business account at Hudson Valley Bank to the Queens Center defendants' bank account also maintained at Hudson Valley Bank; (2) on April 26, 2012, the sum of $50,000.00 from plaintiff's business account at Hudson Valley Bank to the Queens Center defendants' bank account also maintained at Hudson Valley Bank; and (3) on January 25, 2013, the sum of $60,000.00 from plaintiff's business account at Chase Bank to the Queens Center defendants' bank account also maintained at Chase Bank. As against the Queens Center defendants, plaintiff alleged causes of action for conversion, fraud, unjust enrichment, money had and received, and attorneys' fees. Pursuant to orders of this court dated January 17, 2018 and January 18, 2018, it was determined that the conversion and unjust enrichment claims arising out of the July 26, 2010 and April 26, 2012 transfers were time-barred by the applicable statute of limitations and, thus, dismissed. As such, the only transfer remaining at issue is the January 25, 2013 transfer. In addition, the causes of action alleging fraud and attorneys' fees were dismissed.

That branch of the motion by the Queens Center defendants for summary judgment dismissing the third cause of action for conversion asserted against them is granted, and that branch of the cross motion by plaintiff for summary judgment on said claim is denied. Conversion "takes place when someone, intentionally and without authority, assumes or exercises control over personal property belonging to someone else, interfering with that person's right of possession" (*Colavito v New York Organ Donor Network, Inc.*, 8 NY3d 43, 49-50 [2006]). "Money may be the subject of conversion if it is specifically identifiable and there is an obligation to return it or treat it in a particular manner" (*Hoffman v Unterberg*, 9 AD3d 386 [2d Dept 2004]; *see Petrone v Davidoff Hutcher & Citron, LLP*, 150 AD3d 776 [2d Dept 2017]).

Contrary to the contention of the Queens Center defendants, the alleged transfer on January 25, 2013 in the sum of $60,000.00 from plaintiff's business account held at Chase Bank to the Queens Center defendants' account also maintained at Chase Bank is sufficiently specific and identifiable to support a claim for conversion of money (*see e.g. Swartz v Swartz*, 145 AD3d 818, 830 [2d Dept 2016]). In any event, while the Queens Center defendants are not alleged to have been the initial actor in the conversion, they are alleged to have received these funds. "[A] person may be liable for conversion by conniving with another in an act of conversion . . . . liability for conversion may therefore be established by evidence that a party received wrongfully taken funds, knowing them to have been wrongfully taken, and he or she is chargeable with culpable knowledge of the wrongful act" (*SH575 Holdings LLC v Reliable Abstract Co., L.L.C.*, 2020 NY Slip Op 31293[U] [Sup Ct, New York County 2020], *citing Revankar v Tzabar*, 16 Misc 3d 1127[A] [Sup Ct, Kings County 2007]; *see Leve v C. Itoh & Co.*, 136 AD2d 477 [1st Dept 1988]); *see also Weinstein v CohnReznick, LLP*, 144 AD3d 1140 [2d Dept 2016]). In this case, there is no proof in the record demonstrating that the Queens Center defendants had knowledge of the wrongful acts of Ms. Carro-Caputo and Tribor.

Those branches of the Queens Center defendants' motion for summary judgment dismissing the ninth cause of action for money had and received against them and plaintiff's cross motion for summary judgment in its favor on said claim are denied. "The essential elements of a cause of action for money had and received are (1) the defendant received money belonging to the plaintiff, (2) the defendant benefitted from receipt of the money, and (3) under principles of equity and good conscience, the defendant should not be permitted to keep the money" (*Goel v Ramachandran*, 111 AD3d 783, 790 [2d Dept 2013]; *see DeGroat v Whalen*, 201 AD3d 875 [2d Dept 2022]). To be entitled to summary judgment on a cause of action for money had and received, the plaintiff must demonstrate, prima facie, that the defendant received sums of money to which the plaintiff is entitled (*see DeGroat*, 201 AD3d at 877).

Here, while it is undisputed that certain funds were transferred into bank accounts belonging to the Queens Center defendants, a careful review of the evidence in the record, including various bank statements and the parties' affidavits, reveals triable issues of fact, at least, as to whether said funds were utilized for the benefit of the Queens Center defendants. In support of their motion, the Queens Center defendants offered the affidavits of Edgar Ortiz, a property manager for the Queens Center defendants, and Syed N. Haque, a certified public accountant for the Queens Center defendants, purporting to establish that the Queens Center defendants never kept or benefitted from the monies which are the subject of this litigation because the bank records show that Ms. Carro-Caputo transferred the funds into the Queens Center defendants' bank accounts on three separate occasions and then immediately transferred them out of such accounts on the very same dates. However, on the cross motion, plaintiff submitted the affidavit of Sing Tung Cheng, the president of plaintiff's Board of Directors, who averred that the relevant bank records demonstrate that the subject monies were used by the Queens Center defendants to pay for building maintenance and operating expenses and to repay third parties money that the Queens Center defendants borrowed from them on prior occasions.

Likewise, that branch of the motion by the Queens Center defendants for summary judgment dismissing the eighth cause of action for unjust enrichment insofar as asserted against them is denied. To establish a claim for unjust enrichment, the plaintiff must show that the defendant was enriched at the expense of the plaintiff, and that it is against equity and good conscience to permit the defendant to retain what is sought to be recovered (*see Georgia Malone & Co., Inc. v Rieder*, 19 NY3d 511, 516 [2012]). As discussed above, there are triable issues of fact, at least, as to whether the Queens Center defendants used the subject funds belonging to plaintiff for their benefit.

Accordingly, that branch of the motion by the Queens Center defendants for summary judgment dismissing the third cause of action for conversion against them is granted. In all other respects, the motion is denied. Plaintiff's cross motion for summary judgment on the third cause of action for conversion and the ninth cause of action for money had and received insofar as asserted against the Queens Center defendants is denied.

Dated: September 30, 2022

J.S.C.