

Trump Vil. Section 4, Inc. v Vilensky

2023 NY Slip Op 31179(U)

April 13, 2023

Supreme Court, Kings County

Docket Number: Index No. 522355/2016

Judge: Ingrid Joseph

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 83 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 13th day of April, 2023.

P R E S E N T:

HON. INGRID JOSEPH,

Justice.

-----X

TRUMP VILLAGE SECTION 4, INC.,

Plaintiff

-against-

Index No. 522355/2016

GENE VILENSKY a/k/a GENE VILENSKIY,

ORDER

Defendant.

-----X

The following e-filed papers read herein:

NYSCEF Nos.:

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and

Affidavits (Affirmations) Annexed _____

358-359

Opposing Affidavits (Affirmations) _____

366

Affidavits/ Affirmations in Reply _____

372

Upon the foregoing papers, Plaintiff Trump Village Section 4, Inc. ("Plaintiff"), moves for an order, pursuant to CPLR 2221, granting reargument and/or renewal of both Plaintiff's motion for summary judgment (mot. seq. no. 11) and its opposition to Defendant Gene Vilensky's ("Defendant") motion for summary judgment (mot. seq. no. 9). Upon granting reargument and/or renewal, Plaintiff seeks an order granting: (i) Plaintiff summary judgment on liability as to all the causes of action set forth in its complaint; (ii) judgment in favor of Plaintiff and against Defendant finding that

Defendant breached the Occupancy Agreement as a matter of law and ordering a trial as to damages including fees, expenses, fines, attorney's fees and other costs related to said breach; and (iii) judgment in favor of Plaintiff and against Defendant ordering (a) that Plaintiff be granted rescission of the approval of Defendant's Cooperative Purchase Application ("CPA"), (b) that Plaintiff shall have the right to exercise its right of first refusal, and (c) a trial to determine the appropriate and equitable compensation to be paid to Defendant upon the exercise of Plaintiff's right of first refusal. In the alternative, Plaintiff seeks an order denying Defendant's motion for summary judgment (mot. seq. no. 9).

On December 16, 2016, Plaintiff commenced the instant action against Defendant seeking, among other relief, to rescind the sale of shares appurtenant to a cooperative apartment purchased by Defendant. This action is predicated on the alleged unauthorized subletting of the apartment by Defendant as an "Airbnb" in violation of the terms of his Occupancy Agreement. On March 3, 2014, Defendant submitted a CPA to purchase the shares appurtenant to Apartment 2E in the subject building. The CPA included acknowledgments and agreements that Defendant, without prior written consent of Plaintiff's board of directors, will not sublease the apartment, permit persons other than those permitted by the Proprietary Lease to live in the apartment or use the apartment other than for residential purposes. Plaintiff alleges that based on the representations in the CPA regarding the intended use of the apartment, Plaintiff waived its right of first refusal and approved the sale of the unit to Defendant.

In the complaint, Plaintiff set forth causes of action for (1) fraud in the inducement based on Defendant's deliberate failure to disclose in the CPA that he was purchasing the apartment for commercial use; (2) rescission of Plaintiff's waiver of its right of first refusal; (3) rescission of the cooperative share certificates and Occupancy Agreement; (4) a permanent injunction enjoining Defendant from breaching Plaintiff's bylaws, rules and the Occupancy Agreement; and (5) an award of attorneys' fees, costs and disbursements.

On April 27, 2021, Defendant moved for an order granting summary judgment dismissing Plaintiff's complaint, among other relief. Plaintiff subsequently brought its own motion seeking summary judgment on its complaint and the relief requested therein. By order entered on April 15, 2022, the Court granted that part of Defendant's motion for summary judgment dismissing Plaintiff's complaint and denied Plaintiff's motion for summary judgment. Plaintiff brings the instant motion for reargument on the ground that the Court overlooked the import of an order by Justice Carl Landicino which denied Defendant's motion to dismiss the fraud cause of action (which order was affirmed by the Appellate Division) and overlooked or misapprehended other matters. In particular, Plaintiff argues that in dismissing the fraud cause of action the Court overlooked or misapprehended Plaintiff's claim of suffering "special damages" as a result of its waiver of the right of first refusal above and apart from the damages it suffered by reason of Defendant's breach of the Occupancy Agreement.

A motion for leave to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion" (CPLR 2221[d][2]).

“Although a motion for leave to reargue is not designed to provide an unsuccessful party with successive opportunities to present arguments different from those originally presented . . . , motions for reargument are addressed to the sound discretion of the court” (*Coke-Holmes v Holsey Holdings, LLC*, 189 AD3d 1162, 1164 [2d Dept 2020][citation omitted]).

Contrary to Plaintiff’s interpretation of the prior decision, this Court did not find the fraud cause of action was duplicative of the contract cause of action seeking rescission of the Occupancy Agreement, or that the waiver of the right of first refusal did not constitute “special damages” apart from the contractual damages alleged. Rather, the Court’s basis for dismissal was that the record was devoid of proof that the special damages were monetary in nature or that Plaintiff suffered any pecuniary loss as a result of its waiver of the right of first refusal, as was alleged in the fraud cause of action.¹ With respect to the separate cause of action for rescission of the right of first refusal, this Court noted in its prior decision that while “[f]raud sufficient to support the rescission requires only a misrepresentation that induces a party to enter into a contract resulting in some detriment, and ‘unlike a cause of action in damages on the same ground, proof of scienter and pecuniary loss is not needed,’” the equitable remedy of rescission “is not available where there is an adequate legal remedy.” This Court determined that Plaintiff failed to show that the legal remedies, including termination of Defendant’s leasehold pursuant to the terms of the Occupancy Agreement, constituted inadequate relief for any

¹ In the complaint, Plaintiff alleged that it suffered damages of not less than \$1 million.

injury caused by Defendant's misrepresentations in the CPA as to his intended use of the unit.

Upon revisiting the facts and issues presented in this matter, the Court recognizes that the legal remedies set forth for breach of the Occupancy Agreement (which the CPA authorized Plaintiff to employ in the event of a misrepresentation therein), in particular termination of the leasehold, may not necessarily constitute an adequate remedy for Plaintiff's waiver of its right of first refusal and approval of the sale of the shares appurtenant to the unit. As such, the Court finds an issue of fact exists as to the viability of Plaintiff's second cause of action for rescission of the waiver of the right of first refusal (*see Board of Mgrs. of the Soundings Condominium v Foerster*, 138 AD3d 160, 164 [1st Dept 2016]). However, to the extent Plaintiff is seeking summary judgment on the second cause of action, there remains an issue of fact as to whether Plaintiff was actually induced by any representations in the CPA when it waived the right of first refusal on Defendant's unit.²

Insofar as Plaintiff's second cause of action is restored, Plaintiff's fifth cause of action for recovery of contractual attorney's fees (which may be awarded upon Plaintiff's successful prosecution of this action) is likewise restored.

Accordingly, it is

ORDERED that Plaintiff's motion for reargument is granted; and it is further

² In the prior decision, the Court noted Defendant's argument that Plaintiff's own witnesses testified that they did not rely on any statements in the CPA in waiving the right of first refusal and approving the CPA.

ORDERED that upon reargument, the prior decision of this court entered on April 15, 2022 is modified to the extent that those parts of Defendant's motion for summary judgment dismissing Plaintiff's complaint is denied as to the second cause of action and fifth cause of action; and it is further

ORDERED that Plaintiff's complaint is restored as to the second and fifth causes of action; and it is further

ORDERED that any relief not expressly granted herein, has been considered, and is denied.

The foregoing constitutes the decision and order of the court.

E N T E R,



HON. INGRID JOSEPH, J.S.C.

Hon. Ingrid Joseph
Supreme Court Justice