

Fluitt v Roberts

2023 NY Slip Op 31915(U)

May 30, 2023

Supreme Court, Kings County

Docket Number: Index No. 519374/2021

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73

Index No.: 519374/2021
Motion Date: April 17, 2023
Mot. Seq. No.: 1, 2

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YVETTE FLUITT, CHRISTA FLUITT and DESIREE
PURVIS,

Plaintiffs,

-against-

DECISION/ORDER

LINWOOD ROBERTS and PROFESSIONAL
SETTLEMENT CORP.,

Defendants.
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The following papers listed on NYSCEF as document numbers 7-31 to were read on these motions:

In this action based on three promissory notes, in motion sequence number 1 the plaintiffs, YVETTE FLUITT, CHRISTA FLUITT and DESIREE PURVIS, move for an order pursuant to CPLR 3212: (a) granting Summary Judgment and a money Judgment in favor of the plaintiffs, YVETTE FLUITT, CHRISTA FLUITT and DESIREE PURVIS, and against defendants LINWOOD ROBERTS and PROFESSIONAL SETTLEMENT CORP., and each of them, jointly and severally, for the aggregate principal sum of Two-Hundred and Twenty-Five Thousand (\$225,000.00) Dollars, plus interest thereon, together with reasonable attorney's fees and expenses in the enforcement of the note; (b) dismissing the Counterclaim; and (c) granting such other and further relief as the Court may deem just, equitable and proper, such be granted in all respects. In motion sequence number 2, the defendants, LINWOOD ROBERTS and PROFESSIONAL SETTLEMENT CORP., cross-move for an order pursuant to CPLR 3212(1) denying the motion of the Plaintiffs, (2) granting Summary Judgment in favor of the Defendants and against the Plaintiff dismissing their Complaint in its entirety, (3) granting an Order dismissing the Complaint as against the Defendant, Linwood Roberts, (3) granting summary judgment as against the Plaintiffs and in favor of the Defendants for the amount indicated in the Defendants Counterclaims (4) and for such other and further relief that this Court deems just and proper. The two motions are consolidated for disposition.

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Background:

The plaintiffs commenced this action claiming that defendants defaulted under three promissory notes, each of which was executed by defendant Linwood Roberts in connection the sale by each of the plaintiffs of their rights to a share of the Estate of Ruben Curry (the “decedent”). Mr. Roberts executed the promissory notes unconditionally agreeing to pay each of the plaintiffs the sum of \$75,000.00 for their respective share. Each of the plaintiffs was paid the sum of \$25,000 as a down payment and the plaintiffs now seek to recover the remaining amounts due.

The defendants maintain that they are not obligated to make payment under the promissory notes because the plaintiffs were never entitled to a share of the decedent’s estate. The defendants have also asserted a counterclaim seeking to recover the down payment that was made to each of the plaintiffs.

The decedent died intestate on November 10, 2004. While the decedent was alive, he was the owner of the real property located at 569 Madison Avenue, Brooklyn, New York. He never married, never had any children and both of his parents predeceased him. The decedent had three siblings, John Curry, who predeceased him in 1982 with no next of kin; Ida Mae Curry, who had six children and who died intestate in 2015; and Hattie Fluitt, who died intestate in 1970 and who had three (3) children, the plaintiffs herein, Yvette Fluitt, Christa Fluitt and Desiree Purvis. The defendants claim that pursuant to EPTL 4-1.1(a)(5), the plaintiffs were never entitled to a share of the decedent’s estate. This section, provides, in relevant part, as follows: “Descent and Distribution of a Decedent's Estate. The property of a decedent not disposed of by will shall be distributed as provided in this section. ... (a) If a decedent is survived by: (5) Issue of parents, and no spouse, issue or parent, the whole to the issue of the parents, **by representation.**” EPTL 1-2.16 defines “by representation” as follows:

By representation means a disposition or distribution of property made in the following manner to persons who take as issue of a deceased ancestor:

The property so passing is divided into as many equal shares as there are (i) surviving issue in the generation nearest to the deceased ancestor which contains one or more surviving issue and

(ii) deceased issue in the same generation who left surviving issue, if any. Each surviving member in such nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving issue of the deceased issue as if the surviving issue who are allocated a share had predeceased the decedent, without issue.

Discussion:

The plaintiffs established their prima facie entitlement to summary judgment by submitting copies of the promissory notes, executed by Linwood Roberts, containing an unequivocal and unconditional obligation to repay, as well as proof of Mr. Roberts' failure to pay the plaintiffs in accordance with the terms of the notes (see *Lugli v. Johnston*, 78 A.D.3d 1133, 1135, 912 N.Y.S.2d 108; see *Gullery v. Imburgio*, 74 A.D.3d 1022, 1022, 905 N.Y.S.2d 221). The defendants admit that Mr. Roberts was the President of defendant, Professional Settlement Corp., and that he signed the notes as an agent for Professional Settlement Corp.

To defeat the motion, the defendants were required to submit evidence establishing the existence of a triable issue with respect to a bona fide defense (see *Jin Sheng He v. Sing Huei Chang*, 83 A.D.3d 788, 789, 921 N.Y.S.2d 128). While consideration for a promissory note is not an element required to state a cause of action (see *American Realty Corp. of N.Y. v. Sukhu*, 90 A.D.3d at 793, 934 N.Y.S.2d 504), lack of consideration is a defense that can be raised by a defendant in opposition to a plaintiff's prima facie showing of entitlement to judgment as a matter of law (see *id.*). While the defendants raised lack of consideration as a defense to plaintiffs' claim in their answer and in opposition to plaintiffs' motion for summary judgment, this defense lacks merit as a matter of law. Contrary to defendants' contention, plaintiffs correctly assert that pursuant to EPTL 4-1.1(a)(5) and EPTL 1-16, each of the plaintiffs is entitled to 1/3 of Hattie Fluitt's 50% share of decedent's estate. The defendants are simply mistaken as to their interpretation of EPTL 4-1.1(a)(5) and EPTL 1-16. In sum, there was consideration for the promissory notes.

That branch of the cross motion seeking summary judgment dismissing the action insofar as asserted against Linwood Roberts is DENIED. Defendants maintain that Mr. Roberts executed each of the promissory notes as the President and agent of Professional Settlement Corp., that the plaintiffs knew this to be the case, and that Linwood Roberts therefore is not

personally liable on the notes. The defendants annexed to their opposition papers copies of the promissory notes which include the words “Professional Settlement Corp.” in someone’s handwriting directly underneath Robert Linwood’s signature. Defendants submit that this is clear proof that plaintiffs were aware that Mr. Roberts was the President of Professional Settlement Corp. and that he signed the three promissory notes on its behalf.

Plaintiffs claiming that the handwriting underneath Mr. Robert’s signature was inserted onto the promissory notes after they were delivered to plaintiffs, and the plaintiffs were unaware of the relationship between Mr. Roberts and Professional Settlement Corp. Notably, the copies of three promissory notes annexed to plaintiff’s motion for summary judgment do not contain the handwritten entry.

“An agent who acts on behalf of a disclosed principal will generally not be liable for a breach of contract” (*Matter of Anderson v. PODS, Inc.*, 70 A.D.3d 820, 821, 896 N.Y.S.2d 88; *see Savoy Record Co. v. Cardinal Export Corp.*, 15 N.Y.2d 1, 4, 254 N.Y.S.2d 521, 203 N.E.2d 206; *Yellow Book Sales & Distrib. Co., Inc. v. Mantini*, 85 A.D.3d 1019, 1021, 925 N.Y.S.2d 646; *Leonard Holzer Assoc. v. Orta*, 250 A.D.2d 737, 672 N.Y.S.2d 915). “A principal is considered to be ‘disclosed’ if, at the time of a transaction conducted by an agent, the other party to the contract had notice that the agent was acting for the principal and of the principal’s identity” (*Matter of Anderson v. PODS, Inc.*, 70 A.D.3d at 821, 896 N.Y.S.2d 88; *see* Restatement [Third] of Agency § 6.01). “Knowledge of the real principal is the test, and this means actual knowledge, not suspicion” (*Ell Dee Clothing Co. v. Marsh*, 247 N.Y. 392, 397, 160 N.E. 651; *see Tarolli Lbr. Co. v. Andreassi*, 59 A.D.2d 1011, 1012, 399 N.Y.S.2d 739; *Louis Gendelman Rigging & Trucking v. Koepfel*, 29 A.D.2d 540, 285 N.Y.S.2d 310). Conversely, it is well settled that an agent for an undisclosed or unidentified principal is individually liable on a contract between the agent and a third party (*see, McClure v. Central Trust Co.*, 165 N.Y. 108, 128, 58 N.E. 777; *Tarolli Lbr. Co. v. Andreassi*, 59 A.D.2d 1011, 1012, 399 N.Y.S.2d 739; *Rennert-Diana & Co. v. Costarino*, 128 A.D.2d 691, 513 N.Y.S.2d 190, 191).

“The defense of agency in avoidance of contractual liability is an affirmative defense and the burden of establishing the disclosure of the agency relationship and the corporate existence and identity of the principal is upon he [or she] who asserts an agency relationship” (*Safety Envtl., Inc. v. Barberry Rose Mgt. Co., Inc.*, 94 A.D.3d 969, 969, 942 N.Y.S.2d 200, quoting

Courthouse Corporate Ctr. LLC v. Schulman, 74 A.D.3d 725, 727, 902 N.Y.S.2d 160; *see Ingordo v. Square Plus Operating Corp.*, 276 A.D.2d 528, 714 N.Y.S.2d 693; 12 Richard A. Lord, *Williston on Contracts* § 35:35, at 359).

Here, the Court finds that the defendants did not meet their burden of demonstrating as a matter of law that the plaintiffs had actual knowledge that Mr. Roberts was acting for a principle and that the principal was Professional Settlement Corp.

Since the defendants admit that Mister Roberts was acting at all relevant times on behalf of Professional Settlement Corp, the plaintiffs are awarded summary judgment against Professional Settlement Corp. on the three promissory notes with interest from the date of breach. The plaintiffs are awarded reasonable attorneys' fees as the promissory notes provide for awards of attorneys' fees. This matter is hereby referred to a special referee to conduct an attorney 's fees hearing for the purpose of calculating the amount of attorneys' fees due and owing the plaintiffs. Once attorneys' fees are calculated, the plaintiffs are directed to settle a judgment on notice in accordance with this order against Professional Settlement Corp.

The action insofar has asserted against Linwood Roberts is severed and the plaintiff is a directed to purchase an index number for the severed action and shall file all relevant papers under that index number. The pleadings in in this action shall constitute the pleadings in the severed action.

For the above reasons, it is hereby

ORDRED that the motion and cross-motion are decided as indicated above.

This constitutes the decision and order of the Court.

Dated: May 30, 2023

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PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020