

Lapin v Verner

2023 NY Slip Op 33774(U)

October 24, 2023

Supreme Court, Kings County

Docket Number: Index No. 511987/2023

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS ; CIVIL TERM; COMMERCIAL 8

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BENJAMIN LAPIN,

Plaintiff,

Decision and order

- against -

Index No. 511987/2023

ADAM VERNER and SPRINGHOUSE PARTNERS, INC.,
Defendants,

October 24, 2023

-----X
PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #2

The plaintiff has moved pursuant to CPLR §2221 seeking to reargue a decision and order dated August 3, 2023 which granted the defendant's motion to dismiss the complaint. The defendant has opposed the motion. Papers were submitted by the parties and arguments were held. After reviewing all the arguments this court now makes the following determination.

As recorded in the prior order, the defendants solicited the plaintiff to invest in a real estate project located at 51 Irving Street in Kings County. The plaintiff insisted upon a conservative investment and the defendants represented as such. The plaintiff ultimately invested \$250,000 and moved seeking a return of the funds on the grounds the defendants committed fraud and breached their fiduciary duties. The court dismissed the complaint concluding that promises of a conservative investment do not constitute fraud and that in any event the fraud claim was not sufficiently specific.

Upon reargument the plaintiff argues that the court failed to consider the plaintiff's affidavit and further erred by not

considering the alleged omissions concerning the true nature of the investment which the defendant's concealed from the plaintiff. The defendants oppose the motion.

Conclusions of Law

A motion to reargue must be based upon the fact the court overlooked or misapprehended fact or law or for some other reason mistakenly arrived at in its earlier decision (Deutsche Bank National Trust Co., v. Russo, 170 AD3d 952, 96 NYS2d 617 [2d Dept., 2019]).

In the prior decision the court noted that the complaint did not sufficiently describe the fraud committed and that promising a "conservative" investment is not fraud. The affidavit of Mr. Lapin does not substantiate the fraud with the necessary specificity at all. Concerning the inducement that alleges fraud the affidavit states that the plaintiff met an individual who said he was aware the plaintiff was a conservative investor and proposed a real estate investment. The affidavit states the individual "told me that he knew that I was a conservative investor and that this was the perfect investment for me, as it was a very conservative investment that was prime Manhattan real estate" (see, Affidavit of Benjamin Lapin, ¶3 [NYSCEF Doc. No. 14]). The affidavit then states that the individual "provided me with the offering materials from the Defendants regarding the

project" (id., at ¶4). Finally, the affidavit notes that based on those "statements and the documents he provided to me, I decided to invest \$250,000, which as I state in the Complaint, was a tremendous amount of money for me, and which I only invested based on the assurances I was getting that this was a safe, very conservative investment with an expert in the field who would be running the entire project" (id., at ¶5). This affidavit hardly supplements any specificity deficiencies contained in the complaint. Indeed, the affidavit merely confirms the promises were that the investment was "conservative" was nothing more than puffery that is not actionable fraud. The affidavit does not explain, with the detail required, the manner in which a reasonable inference of any alleged misconduct can be established (Goldin v. TAG Virgin Islands Inc., 149 AD3d 467, 53 NYS3d 258 [1st Dept., 2017]). Indeed, statements that are too general to cause a reasonable investor to rely upon them, including statements the investment is conservative, are not actionable (In re Wachovia Equity Securities Litigation, 753 F.Supp2d 326 [S.D.N.Y. 2011]).

Further, paragraph 65 of the complaint does not support a claim for a fraudulent omission. That paragraph states that "in soliciting the investment, Defendants failed to disclose to investors like BENJAMIN known and foreseeable risks to Defendants, such as the fact that the project was overleveraged


and would be very susceptible to any interest rate changes" (see, Verified Complaint, ¶65 [NYSCEF Doc. No. 1]). Again, that allegation is wholly conclusory. Neither the complaint nor any affidavit explains the nature of the debt incurred, how such risk existed and why such debt could therefore lead to rising interest rates. Thus, that passing reference fails to support any allegation of fraud. Thus, the plaintiff has failed to adequately allege any fraud.

Consequently, based on the foregoing, the motion seeking reargument is denied.

So ordered.

ENTER:

DATED: October 24, 2023
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC