

Stein v 594 Marcy Villa LLC

2023 NY Slip Op 34414(U)

December 4, 2023

Supreme Court, Kings County

Docket Number: Index No. 523445/2020

Judge: Ingrid Joseph

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At an IAS Part 83 of the Supreme Court of the State of New York held in and for the County of Kings at 360 Adams Street, Brooklyn, New York, on the 4th day of December, 2023.

PRESENT: HON. INGRID JOSEPH, J.S.C.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
JORDAN STEIN,

Index No: 523445/2020

Plaintiff,

-against-

DECISION AND ORDER

594 MARCY VILLA LLC and SHARONE MEISHAR,

Defendants.
-----X

The following e-filed papers considered herein:

	<u>NYSCEF Doc. Nos.</u>
Notice of Motion/Affirmation in Support.....	59-60
Affirmation in Opposition/ Exhibits.....	71-73

Plaintiff Jordan Stein (“Plaintiff”) moves for leave to reargue portions of the Court’s decision dated March 23, 2022, which (a) granted Defendants 594 Marcy Villa LLC (“Marcy Villa”) and Sharone Meishar’s (“Meishar”) (collectively, “Defendants”) motion to dismiss, in part, all causes of action against Meishar and (b) denied Plaintiff’s cross-motion to amend the complaint to add a cause of action for negligent misrepresentation; and upon reargument, denying Defendants’ motion and granting Plaintiff’s cross-motion (Mot. Seq. No. 3). Defendants oppose Plaintiffs’ motion, arguing that the Court did not overlook or misapprehend any issues of fact or law.

Plaintiff commenced this action seeking monetary damages and equitable relief arising out of Defendants’ alleged breaches of contract and fraudulent, intentional and tortious acts and omissions in the development, construction, marketing, sale and management of Marcy Villa Condominium (the “Condo”). Defendant Marcy Villa is the sponsor of the Condo’s offering plan and Defendant Meishar is a principal of Marcy Villa. Plaintiff signed a purchase agreement for a unit in the Condo on or about April 2019. Prior to his signing of the agreement, Plaintiff claims that he met with Marcy Villa’s seller agent Jennifer Rhodes and viewed evidence of water damage.

Ms. Rhodes allegedly informed Plaintiff that the sponsor had represented that the condition was caused by construction, had been remedied and was not a recurrent issue. In his Verified Complaint, Plaintiff alleges that Defendants knew that the actual cause of the damage was pervasive structural defects in the exterior walls. Since the closing on the unit, Plaintiff alleges that there has been a regular occurrence of leaks into and flooding of the unit. Plaintiff claims that Defendants have hired unqualified professionals to identify and repair the leaks. In total, Plaintiff asserts nine causes of actions against Defendants.¹

Subsequently, Defendants moved to dismiss (Mot. Seq. No. 1) all causes of action, except the first, second and seventh. With respect to the causes of action against Meishar, Defendants argued that she was not a party to the purchase agreement and was shielded from liability. In addition, Defendants argued that Plaintiff's conclusory allegations were insufficient to pierce the corporate veil. As to the other causes of action, Defendants argued that pre-contractual representations were expressly disclaimed in the purchase agreement, there could be no implied covenant or unjust enrichment because of the agreement and fraud against Meishar was not particularly plead. Plaintiff opposed the motion and filed a cross-motion (Mot. Seq. No. 2) seeking to amend his complaint to (a) clarify one word, (b) add an additional factual allegation and (c) assert a cause of action for negligent misrepresentation against Defendants.

On March 23, 2022, the Court granted Defendant's motion to dismiss to the extent that (i) all causes of action asserted against Meishar were dismissed and (ii) the third and ninth causes of action for breach of implied covenant of good faith and fair dealing and unjust enrichment, respectively, were dismissed; and denied Plaintiff's cross-motion to add a negligent misrepresentation cause of action. Plaintiff now seeks reargument of the Court's decision.

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]). The decision to grant leave to reargue is at the sound discretion of the court (*see HSBC Bank USA, N.A. v Halls*, 98 A.D.3d 718, 720–721 [2d Dept 2012]; *Itzkowitz v King Kullen Grocery Co.*, 22 AD3d 636, 638

¹ As against Defendant 594 Marcy alone, Plaintiff asserts five causes of action: (1) Breach of Contract – Offering Plan and Purchase Agreement; (2) Breach of Contract – Warranty; (4) Negligence; (7) Mutual Mistake; and (8) Negligent Infliction of Emotional Distress (NY St Cts Elec Filing [NYSCEF] Doc No. 4). As against Defendant Meishar, Plaintiff asserts the tenth cause of action, Piercing the Corporate Veil (*id.*). As against both Defendants, Plaintiff asserts three causes of action: (5) Fraud; (6) Deceptive Acts and Practices in Violation of New York General Business Law § 349 and (9) Unjust Enrichment (*id.*).

[2d Dept 2005]; *Rodney v New York Pyrotechnic Prod. Co.*, 112 AD2d 410, 411 [2d Dept 1985]). However, a motion for leave to reargue is “not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented” (*McGill v Goldman*, 261 AD2d 593, 594 [2d Dept 1999] [internal citations omitted]). Accordingly, the movant must demonstrate in what manner the court, in rendering its original determination, overlooked or misapprehended the relevant facts or law and cannot include facts not offered on the prior motion (*Anthony J. Carter, DDS, P.C. v Carter*, 81 AD3d 819, 820 [2d Dept 2011]). Upon the court’s review of the merits of the movant’s arguments, the motion for reargument is essentially granted (see *McNamara v Rockland Cnty. Patrolmen’s Benevolent Ass’n, Inc.*, 302 AD2d 435, 436, [2d Dept 2003]). Thus, the only remaining question is whether the Court will adhere to its prior determination.

In his current motion, Plaintiff first asserts that Meishar is personally liable for Plaintiff’s damages because she was involved in the fraud and/or negligent misrepresentation alleged in the fifth and proposed eleventh causes of action. In the proposed second amended complaint, Plaintiff seeks to clarify that it was Meishar, not Marcy Villa, who made the representations conveyed by Ms. Rhodes to Plaintiff.² Thus, Plaintiff argues he is seeking to hold Meishar personally liable for her *own* acts and omissions, rather than Marcy Villa’s. Second, Plaintiff contends that Meishar’s actions as the principal of Marcy Villa are sufficient to hold her liable since she executed the certification page of the offering plan and directly participated in the transaction at issue, thereby exercising dominion and control over Marcy Villa. Third, Plaintiff asserts that certain misrepresentations were made after the purchase agreement was signed; thus, there was a privity-like relationship to sustain a negligent misrepresentation claim.

In opposition to the instant motion, Defendants argue that the Court properly found that Plaintiff had not plead allegations sufficiently to hold Meishar personally liable. Defendants contend that even if Meishar had supplied incorrect information to Ms. Rhodes, this would have been in her capacity as a member of Marcy Villa and thus, Plaintiff would still need to plead the elements to pierce the corporate veil. Defendants further contend that Plaintiff’s argument that Meishar is liable because she executed the certification page and directly participated in the

² Paragraph 23 of Plaintiff’s Verified Complaint reads, in part: “Ms. Rhodes advised that the *Sponsor* had represented that the problem resulted from subsequent construction in and on the Building because the Unit was the first to be completed, had been remedied, and was not a recurrent issue” (*id.*) (emphasis added). In the amended second complaint, Plaintiff seeks to replace “Sponsor” with “Meishar” (NYSCEF Doc No. 18, at 36).

transaction was improperly raised for the first time in this motion. Even if the Court were to consider Plaintiff's new argument, Defendants argue that merely certifying the offering plan as a member and principal of Marcy Villa is insufficient to pierce the corporate veil. As to Plaintiff's claim for negligent misrepresentation, Defendants assert that the Court correctly found that there was no privity-like relationship when Plaintiff was allegedly told incorrect information. Even if Plaintiff's claim relates to misrepresentations made after the purchase agreement was executed, Defendants aver that this claim would be duplicative of Plaintiff's breach of contract claim.

Preliminary, in its prior decision, the Court correctly applied the standard regarding the doctrine of piercing the corporate veil to the facts presented at the time of Defendants' motion and Plaintiff's cross-motion. Now, Plaintiff raises for the first time in the instant motion a new argument that it is enough to pierce the corporate veil where a principal of a condominium sponsor executes the certification page of the offering plan and directly participates in the transaction.³ This is impermissible (*see Litton Loan Servicing, L.P. v Wasserman*, 202 AD3d 1074 [2022]) and the court cannot overlook or misapprehend an argument that was not initially raised (*People v D'Alessandro*, 13 NY3d 216, 219 [2009]). Assuming *arguendo* that the Court considers Plaintiff's new argument, the Court's initial decision still stands and Plaintiff's reliance on *Board of Managers of Beacon Tower Condominium v. 85 Adams Street, LLC* (136 AD3d 680 [2d Dept 2016]) is unavailing. In *Board of Managers of Beacon Tower Condominium*, the Second Department found that the principal and managing member of the sponsor were not protected from liability because the complaint alleged that they executed the certification page of the offering plan and directly participated in the transactions at issue (*id.* at 682). However, the complaint had also specifically alleged that they knowingly made affirmative misrepresentations in the offering plan and purchase agreements and disseminated marketing materials and promotional information which contained affirmative misrepresentations (*id.* at 681). Here, Plaintiff has made no allegation of misrepresentations in the offering plan or purchase agreement themselves, either in the Verified Complaint or proposed second amended complaint (*see Bd. of Managers of 125 N. 10th Condo. v. 125North10, LLC*, 150 AD3d 1065, 1066 [2d Dept 2017] [the mere signing of the certification page in a representative capacity of the sponsor is insufficient]). On this basis, the Court finds that

³ In opposition to Defendants' motion and in support of his cross-motion, Plaintiff argued that Meishar could not be protected by the corporate veil because she participated in or had knowledge of the fraud (NYSCEF Doc No. 19, at 16-17).

Plaintiff has failed to proffer a sustainable argument for holding Meishar liable solely for being the principal of Marcy Villa.

As to the proposed negligent misrepresentation cause of action, Plaintiff further argues that the Court incorrectly found that there was no special or privity-like relationship at the time because all the alleged misrepresentations occurred before the purchase agreement was executed. The only factual allegation under this proposed new cause of action is: "Defendants represented to Plaintiff that the water intrusion was related to the construction of the Building and not an ongoing issue when they knew or should have known the same to be false" (NYSCEF Doc No. 18, at 23). The Court fails to comprehend how a privity-like relationship existed at the time of this representation since Plaintiff claims it occurred *prior to* the purchase agreement. To salvage this cause of action, Plaintiff contends that Defendants misrepresented and continued to misrepresent the true state of the Condo up to and including the date of the closing, which occurred after the purchase agreement was executed. Plaintiff cites to his allegation in paragraphs 94 of the Verified Complaint and 95 of the proposed second amended complaint: "Defendants' contractors, at the direction of the Defendants, painted over water-stained material, replaced or resurfaced water-stained drywall, cleaned or replaced water-stained tile and grout, and performed similar cosmetic repairs or replacements in the Unit with the purpose of concealing latent defects in the Building of which Defendants had special knowledge" (NYSCEF Doc No. 4, at 17; NYSCEF Doc No. 18, at 21). The Court notes that these identical paragraphs are contained under the fraud cause of action. Under CPLR 3013, allegations in a complaint must be "sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense." Plaintiff seemingly asks the Court to make the inference that these allegations occurred after the purchase agreement and before closing. Even accepting them as true, these allegations then would be duplicative of Plaintiff's breach of contract claim, which alleges that the Condo and the subject unit materially differed from the specifications in the offering plan, materially deviated from prevailing standards and were not free of leaks (*Bd. of Managers of Beacon Tower Condominium*, 136 AD3d at 684). The Court finds that Plaintiff's proposed negligent misrepresentation claim fails to allege a breach of duty separate from the obligations set forth in the offering plan and purchase agreement (*Bd. of Managers of Soho N. 267 W. 124th St. Condo. v NW 124 LLC*, 116 AD3d 506, 507 [1st Dept 2014]).

The sole issue here is whether Plaintiff's proposed second amended complaint is sufficient to keep Meishar in the action and assert a cause of action for negligent misrepresentation. The Court finds that it properly concluded that the answer is no, and Plaintiff failed to proffer any evidence that the court overlooked or misapprehended any matters of fact or law.

Accordingly, it is

ORDERED, that Plaintiff's motion (Mot. Seq. No. 3) is granted solely as to reargument, and upon reargument, the Court adheres to its earlier determination.

All other issues not addressed herein are either without merit or moot.

This constitutes the decision and order of the Court.



HON. INGRID JOSEPH, J.S.C.

Hon. Ingrid Joseph
Supreme Court Justice