

Brooke v Streit

2023 NY Slip Op 34422(U)

December 14, 2023

Supreme Court, New York County

Docket Number: Index No. 653085/2023

Judge: Gerald Lebovits

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. GERALD LEBOVITS PART 07

Justice

-----X

INDEX NO. 653085/2023

PETER BROOKE,

MOTION SEQ. NO. 001

Plaintiff,

- v -

MICHAEL STREIT and HOME ENTERPRISES GROUP
LLC,

**DECISION + ORDER ON
MOTION**

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33

were read on this motion for SUMMARY JUDGMENT IN LIEU OF COMPLAINT .

Welby, Brady & Greenblatt LLP, White Plains, NY (Costas Cyprus of counsel), for plaintiff.
Esses Law Group LLC, New York, NY (Leo L. Esses of counsel), for defendants.

Gerald Lebovits, J.:

Plaintiff, Peter Brooke, moves for summary judgment in lieu of complaint to enforce a settlement agreement he entered into with defendants Michael Streit and Streit's single-member LLC, Home Enterprises Group LLC (collectively, Streit). In 2019, Brooke and Streit began work on a home-development project in the Town of Southampton, New York. Brooke handled the financing, providing partial funding and securing the remainder from a bank. Streit oversaw the development aspects of the project, including hiring a builder and managing the day-to-day home design and construction.

The Southampton project exceeded the partners' initial cost predictions. Priceless Custom Homes, Inc., the construction company hired for the project, provided the remaining funds needed for its completion. After further delays and unforeseen costs, Brooke terminated Priceless' services and sued Priceless in Supreme Court for fraud and unjust enrichment. (*32 Westway LLC, v Priceless Custom Homes, Inc.*, Index No. 606025/2017 [Sup Ct, Suffolk County].) As that action progressed, Brooke and Streit entered into a settlement agreement to resolve who would pay for the legal fees and expenses incurred from the prolonged litigation. (NYSCEF No. 3.) Four amended agreements were signed by Brooke and Streit, with the most recent version executed on January 28, 2021.

Streit claims he was forced to enter the agreements under economic duress. He argues that Brooke threatened to sue him and exclude him from all future projects, leveraging his financial vulnerability stemming from an 18-month jail term for grand larceny. (NYSCEF No. 23

at 7.) Brooke maintains that Streit voluntarily agreed to reimburse him for the legal fees and expenses resulting from the Priceless Lawsuit. (NYSCEF No. 3.) Brooke now moves under CPLR 3213 to enforce the terms of the settlement agreement.

DISCUSSION

I. Whether Brooke's Claim May be Asserted through CPLR 3213

To qualify for CPLR 3213 treatment, an agreement must be an instrument for the payment of money only. Agreements guaranteeing both payment and performance do not qualify for CPLR 3213 treatment. (*See Punch Fashion, LLC v Merch. Factors Corp.*, 180 AD3d 520, 521 [1st Dept. 2020].) An instrument qualifies as one for the payment of money only when it does not require any additional performance on the plaintiff's part as a condition precedent to repayment. (*See PDL Biopharma, Inc. v Wohlstadter*, 147 AD3d 494, 495 [1st Dept 2017].)

Streit argues that the settlement agreement is not an instrument for the payment of money only, because it discusses other projects he worked on with Brooke. (*See* NYSCEF No. 23 at 5.) But the settlement agreement's discussion of auxiliary projects between Brooke and Streit does not establish that additional performance from those projects is required for payment. The obligations imposed by the settlement agreement involve only the payment of money, without any non-monetary performance. (NYSCEF No. 4 at § 2.1.) Brooke's claim comes within the scope of CPLR 3213.

II. Whether Streit has Viable Defenses to Brooke's CPLR 3213 Claim

A. Streit's Economic Duress Defense

In his affidavit in opposition, Streit claims that the settlement agreement should be voided because he was forced to enter it under economic duress. Streit bases his duress claim on threats that Brooke made to sue him and remove him from future projects. (NYSCEF No. 23 at 7.)

Economic duress may void a contract when a party is compelled to agree to its terms by means of a wrongful threat which precluded the exercise of a party's free will. (*See 767 Third Ave. LLC v Orix Capital Markets, LLC*, 26 AD3d 216, 218 [1st Dept 2006].) The party asserting an economic-duress defense has the burden to establish it. (*See Austin Instrument v Loral Corp.*, 29 NY 2d 124, 130 [1971].)

Financial pressure and unequal bargaining pressure are insufficient to constitute economic duress. (*See Edison Stone Corp. v 42nd St. Dev Corp.*, 145 AD2d 249, 256 [1st Dept 1989].) That a defendant felt economically constrained to accept the terms of an agreement is immaterial to a defendant's economic duress claim. (*See Dreyer and Traub v Rubinstein*, 191 AD2d 236, 237 [1st Dept 1993].) Similarly, a party's using financial leverage and a person's difficult financial circumstances to the party's advantage does not create economic duress. (*See Matter of Will of Bryer*, 72 AD3d 532, 532 [1st Dept 2010]; *accord Bethlehem Steel Corp. v Solow*, 63 AD2d 611 [1st Dept 1978] [holding that although the "defendant was subject to

financial pressures and may have lacked equal bargaining power,” this leverage did not constitute economic duress requiring that the contract be voided].)

Here, Streit agreed to a valid contract that was duly executed on January 28, 2021. (NYSCEF No. 4.) He provided no evidence that he was compelled to agree to the terms of the settlement agreement by means of a wrongful threat that precluded his exercise of free will. To the contrary, email communications show that Streit actively participated, and negotiated in, the formation of the settlement agreement. (*See* NYSCEF No. 30.) In an email dated April 9, 2019, Streit wrote, “there are 2 items that need to be changed and then we are good to go [on the terms of the Agreement].” (*Id.* at 3.) In another email later that day, Brooke and Streit’s lawyer asked Streit to “please confirm you’re ok with everything now so we can execute.” Streit later responded saying he was indeed ok with the changes. (*Id.* at 1.) This level of active participation suggests that Streit had the opportunity to negotiate terms, propose changes, and express concerns—thus foreclosing his duress defense.

B. Streit’s Conflict-of-Interest Defense

Streit signed a retainer agreement that waived any conflict of interest arising out of simultaneous representation and that acknowledged he had the opportunity to consult with an independent lawyer of his choosing to discuss all matters relating to the subject matter of the agreement. (NYSCEF No. 28 at § 6.) The agreement further acknowledges that Streit was aware that counsel also represented Brooke and that the parties “have determined that it is in each of their individual and mutual interests to have a single law firm represent them jointly in connection with the transaction which is the subject of this.” (*Id.*)

Streit argues, though, that Brooke used financial leverage and Streit’s difficult financial circumstances to force him to use an attorney who also represented Brooke, thus creating an improper conflict of interest. (NYSCEF No. 17 at 10.) This court is not persuaded, though, that a disinterested lawyer would believe it impossible to competently and diligently represent the interests of both Brooke and Streit in preparing the settlement agreement. And each side consented to the simultaneous representation after full disclosure of the implications and risks involved, as required by Rule 1.7 of the New York Rules of Professional Conduct. (*See* 22 NYCRR 1200.00 [Rule 1.7 [b]; *Gustavo G.*, 9 AD3d 102, 105 [1st Dept 2004].) Streit’s conflict-of-interest defense is unavailing.

III. The Damages to which Brooke is Entitled on his CPLR 3213 Claim

Streit is in default of the terms of the settlement agreement and does not contest that he has not cured his defaults. Accordingly, Brooke is entitled to the principal amount, pre-judgment interest, and attorney fees, as stipulated to in the settlement agreement.

The outstanding principal amount of the settlement is \$355,154.50. The settlement agreement provides that the principal amount becomes due within five days of the earliest of “(a) Streit’s and/or Home Enterprises’ receipt of compensation from the Sagaponack Project”; (b) receipt of compensation from the Sagaponack Project by any company or other entity in “which Streit has direct or indirect ownership interest; (c) Streit’s receipt of inheritance when his mother

dies”; or (d) June 30, 2021. (NYSCEF No. 4 at § 2.1.) Here, the applicable triggering date was June 30, 2021. Brooke was then entitled to the full principal amount within five business days, or July 8, 2021.

Streit is also liable for pre-judgment interest, as specified in § 2.5 of the settlement agreement. Section 2.5 provides that in the event Streit defaults, interest would accrue unless *all* of four conditions pertaining to the sale of a property located at 407-409 East 158 Street (“Bronx Property”) have been fully satisfied. Because the Bronx Property did not close until January 25, 2022, condition (b) – that the sale of the Bronx Property closes within 60 days after March 20, 2021 – was not satisfied. (NYSCEF No. 22.) Streit is thus liable for interest on the unpaid principal amount, running at 8% from the payment due date (July 8, 2021) through April 30, 2022; and running at 16% from May 1, 2022, through the date of payment in full. (NYSCEF No. 4 at § 2.5.)


Finally, under § 11 of the settlement, Brooke is entitled to prevailing-party attorney fees incurred in this motion-action. (NYSCEF No. 4 at § 11.)

Accordingly, it is

ORDERED that Brooke’s CPLR 3213 motion for summary judgment in lieu of complaint is granted, and Brooke is awarded a judgment against defendants, jointly and severally, for (i) \$355,154.50; plus (ii) interest on \$355,154.50, running at the contractual default rate of 8% from July 8, 2021, through April 30, 2022, inclusive; plus (iii) interest on \$355,154.50, running at the contractual default rate of 16% from May 1, 2022; plus (iv) costs and disbursements as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that Brooke may enter a supplemental judgment for the amount of his reasonable attorney fees, with the amount of those fees to be determined by motion made on notice, supported by appropriate documentation; and it is further

ORDERED that Brooke shall serve a copy of this order with notice of its entry on defendants and on the office of the County Clerk, which shall enter judgment accordingly.

| | | | | | | | | |
|---|--|--|---|---|--|---------------------------------|--------------------------------|---------------------|
| <p style="text-align: center;"><u>12/14/2023</u> DATE</p> |  HON. GERALD LEBOVITZ J.S.C. | | | | | | | |
| <p>CHECK ONE:</p> | <table border="0" style="width: 100%;"> <tr> <td style="width: 50%;"><input type="checkbox"/> CASE DISPOSED</td> <td style="width: 50%;"><input checked="" type="checkbox"/> NON-FINAL DISPOSITION</td> </tr> <tr> <td><input checked="" type="checkbox"/> GRANTED</td> <td><input type="checkbox"/> GRANTED IN PART</td> </tr> <tr> <td><input type="checkbox"/> DENIED</td> <td><input type="checkbox"/> OTHER</td> </tr> </table> | <input type="checkbox"/> CASE DISPOSED | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION | <input checked="" type="checkbox"/> GRANTED | <input type="checkbox"/> GRANTED IN PART | <input type="checkbox"/> DENIED | <input type="checkbox"/> OTHER | <p>APPLICATION:</p> |
| <input type="checkbox"/> CASE DISPOSED | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION | | | | | | | |
| <input checked="" type="checkbox"/> GRANTED | <input type="checkbox"/> GRANTED IN PART | | | | | | | |
| <input type="checkbox"/> DENIED | <input type="checkbox"/> OTHER | | | | | | | |
| <p>CHECK IF APPROPRIATE:</p> | <table border="0" style="width: 100%;"> <tr> <td style="width: 50%;"><input type="checkbox"/> SETTLE ORDER</td> <td style="width: 50%;"><input type="checkbox"/> FIDUCIARY APPOINTMENT</td> </tr> <tr> <td><input type="checkbox"/> INCLUDES TRANSFER/REASSIGN</td> <td><input type="checkbox"/> REFERENCE</td> </tr> </table> | <input type="checkbox"/> SETTLE ORDER | <input type="checkbox"/> FIDUCIARY APPOINTMENT | <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/> REFERENCE | | | |
| <input type="checkbox"/> SETTLE ORDER | <input type="checkbox"/> FIDUCIARY APPOINTMENT | | | | | | | |
| <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/> REFERENCE | | | | | | | |