

Spitzer v Deutsch

2024 NY Slip Op 30288(U)

January 19, 2024

Supreme Court, Kings County

Docket Number: Index No. 514327/2023

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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ARTHUR SPITZER, individually and on
behalf of J & M PROSPECT PLACE ENTERPRISES
LLC,

Plaintiff,

Amended
Decision and order

Index No. 514327/2023

- against -

MENDEL DEUTSCH, 1097 PROSPECT PLACE
NY LLC, RELMO 1097 PROSPECT PLACE LLC,
and J & M PROSPECT PLACE ENTERPRISES
LLC, nominal defendant,

January 19, 2024

Defendants,

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

Motion Seq. #1

The defendant Relmo 1097 Prospect Place LLC has moved pursuant to CPLR §3211 seeking to dismiss the complaint. The plaintiff opposes the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

According to the complaint the plaintiff Arthur Spitzer and the defendant Mendel Deutsch are each half owners of an entity called J & M Prospect Place Enterprises LLC [hereinafter J & M]. On October 21, 2014 J & M purchased property located at 1097 Prospect Place in Kings County for \$3,050,000.00. The parties obtained a loan in the form of a mortgage from Investors Bank in the amount of \$2,287,500.00. The parties intended to renovate the premises, however, due to various factors, defaulted on the loan. According to the complaint, to avoid foreclosure Deutsch suggested to Investors Bank to sell the mortgage to a third

party. Thus, on July 18, 2022 Investors assigned the mortgage to defendant Relmo 1097 Prospect Place LLC. The complaint alleges that prior to the assignment Deutsch, without the consent of Spitzer, conveyed the deed to another entity called 1097 Prospect Place NY LLC. The complaint asserts that entity is owned by the same individuals that own Relmo 1097 Prospect Place LLC. Spitzer instituted this lawsuit and has asserted derivative and individual claims against Deutsch for a breach of fiduciary duty, claims for usurpation of corporate opportunity, a declaratory judgement, a claim under RPAPL Article 15 and unjust enrichment.

Relmo 1097 Prospect Place LLC has now moved seeking to dismiss the action against it on the grounds there are really no allegations of any wrongdoing against it contained in the complaint at all. As noted, the motion is opposed.

Conclusions of Law

It is well settled that upon a motion to dismiss the court must determine, accepting the allegations of the complaint as true, whether the party can succeed upon any reasonable view of those facts (Ripa v. Petrosyants, 203 AD3d 768, 160 NYS3d 658 [2d Dept., 2022]). Further, all the allegations in the complaint are deemed true and all reasonable inferences may be drawn in favor of the plaintiff (BT Holdings, LLC v. Village of Chester, 189 AD3d 754, 137 NYS2d 458 [2d Dept., 2020]). Whether the complaint will later survive a motion for summary judgment, or whether the

plaintiff will ultimately be able to prove its claims, of course, plays no part in the determination of a pre-discovery CPLR §3211 motion to dismiss (see, Redwood Property Holdings, LLC v. Christopher, 211 AD3d 758, 177 NYS3d 895 [2d Dept., 2022]).

A review of the complaint reveals that, except for the last cause of action, it does not discuss or allege any wrongdoing by Relmo 1097 Prospect Place LLC at all. The only information the complaint contains in reference to Relmo 1097 Prospect Place LLC is the fact Investors Bank assigned the mortgage to that entity (see, Verified Complaint, ¶14 [NYSCEF Doc. No. 1]) and that Deutsch improperly conveyed the deed to 1097 Prospect Place NY LLC which is wholly or jointly owned by Relmo 1097 Prospect Place LLC. The complaint does allege that the transfer caused damage to the plaintiff (see, Verified Complaint, ¶18 [NYSCEF Doc. No. 1]) however, none of the causes of action, except for the last cause of action, concern Relmo 1097 Prospect Place LLC. Thus, the first, fourth and fifth causes of action are all derivative and only concern J & M. The second cause of action is an individual breach of fiduciary claim directed at Deutsch as a member of J & M. The third cause of action, usurpation of corporate opportunity, is based on the fact that Deutsch, as a member of J & M owed duties to the plaintiff. None of these causes of action even mention Relmo 1097 Prospect Place LLC and surely do not contain any valid claims against that entity.

The last cause of action alleges unjust enrichment. The elements of a cause of action to recover for unjust enrichment are that "(1) the defendant was enriched, (2) at the plaintiff's expense, and (3) that it is against equity and good conscience to permit the defendant to retain what is sought to be recovered" (see, GFRE, Inc., v. U.S. Bank, N.A., 130 AD3d 569, 13 NYS3d 452 [2d Dept., 2015]). Thus, "the essential inquiry in any action for unjust enrichment or restitution is whether it is against equity and good conscience to permit the defendant to retain what is sought to be recovered" (see, Paramount Film Distributing Corp., 30 NY2d 415, 344 NYS2d 388 [1972]). The complaint states that "Defendants New 1097 LLC and/or Relmo Prospect have been unjustly enriched by and through the fraudulent transfer of the Premises to Defendant New 1097 LLC for a mere payment of \$10,000.00, though the Premises has a fair market value in the millions" (see, Verified Complaint, ¶53 [NYSCEF Doc. No. 1]). While it is true that earlier the complaint asserted that the deed had been improperly transferred to 1097 Prospect Place NY LLC and not to Relmo 1097 Prospect Place LLC, the complaint also asserted that 1097 Prospect Place NY LLC is "wholly owned by Relmo Prospect or is jointly owned by Relmo Prospect and Defendant Deutsch" (see, Verified Complaint, ¶15 [NYSCEF Doc. No. 1]). Thus, the complaint does assert allegations of potential improper conduct that must be explored. Relmo 1097 Prospect


Place LLC argues that "there can be no dispute that an adequate remedy at law exists such that this Court should not entertain the equitable cause of action of unjust enrichment" (see, Memorandum of Law in Support, page 10 [NYSCEF Doc. No. 16]). However, all the remaining causes of action have been dismissed, thus there is no other remedy for the plaintiff to pursue. Therefore, the complaint has adequately alleged that Relmo 1097 Prospect Place LLC has obtained a benefit that is unjust. Of course, further discovery will narrow these issues. However, at this juncture this cause of action has merit.

Therefore, the motion seeking to dismiss all the causes of action except for the cause of action for unjust enrichment is granted.

So ordered.

ENTER:

DATED: January 19, 2024
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC