

First Trinity Life Ins. Co. v Advance Funding LLC

2024 NY Slip Op 30450(U)

February 8, 2024

Supreme Court, New York County

Docket Number: Index No. 652780/2020

Judge: Arlene P. Bluth

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

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

FIRST TRINITY LIFE INSURANCE COMPANY,

Plaintiff,

- v -

ADVANCE FUNDING LLC, DAN CEVALLOS, MONICA L.
RAY

Defendant.

-----X

INDEX NO. 652780/2020

MOTION DATE 02/06/2024

MOTION SEQ. NO. 011

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 011) 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 355

were read on this motion to/for SUMMARY JUDGMENT.

Defendant Monica L. Ray’s motion for summary judgment is denied.

Background

This case is about a lottery winner: former defendant Martinez. Martinez won a New York State Lottery game in April 2008 that had a minimum prize of \$2 million. In August 2016, Martinez entered into an agreement with defendant Advance Funding, LLC (“AF”) in which he agreed to assign 32 months of prize payments totaling over \$800,000 in exchange for a lump sum payment of \$465,000. AF then assigned its right to the money to plaintiff in exchange for a payment in excess of \$500,000. However, plaintiff contends that although AF represented that Martinez had been paid in full by AF (and even included a wire transfer), Martinez never received what he was owed and, therefore, plaintiff paid AF but didn’t receive any lottery payments.

In connection with Martinez's assignment to AF, a petition was brought in Schenectady to approve the transfer. However, Martinez later moved (via a new attorney) to strike the assignment and disavow an affidavit he signed in which he agreed to the transaction. He later withdrew the order to show cause in exchange for an increased lump sum payment. Then Martinez brought another application seeking to stop any more payments by the state's Lottery Commission because AF allegedly did not make the additional payments promised to him in the settlement.

The Court previously granted a default judgment as against all defendants and then Ms. Ray moved, successfully, to vacate that default (*see* NYSCEF Doc. No. 274).

Ms. Ray moves for summary judgment dismissing this case on the ground that she had no idea what happened here. She claims that as a favor to her boss, John Cevallos, she agreed to assist his brother, defendant Dan Cevallos's company (defendant AF). Ms. Ray insists that she brokered structured settlements for various winners (such as lottery winners) with large institutional funders such as plaintiff.

She claims that when she was reviewing documents to close AF's transaction with Trinity, she was provided with a wire transfer that plaintiff alleges to be fraudulent. This wire transfer showed that Martinez (the lottery winner) was paid \$335,000 and claims she had no reason to doubt the authenticity of that document.

Ms. Ray observes that she was employed by Northeastern Capital Funding LLC ("Northeastern") from May 2006 until June 2017 and never had any ownership interest in this entity. She emphasizes that her job responsibilities included contacting funding entities to inform them of transactions between Northeastern and winners/settlement recipients. Ms. Ray

argues she never had interactions with winners or structured settlement recipients. She observes she provided similar services for AF.

In opposition, plaintiff observes that Ms. Ray helped to facilitate hundreds of transactions for AF and Northeastern. It insists that in each transaction it entered into with AF and Northeastern, its sole contact person was Ms. Ray and that she held herself out as a senior officer for AF. Plaintiff insists that for the transaction at issue here—the purchase from AF of Martinez’s lottery winnings for \$552,000—it was Ms. Ray who provided the closing binder and other documents to plaintiff. Plaintiff insists it relied upon those documents and other representations from Ms. Ray when executing the transaction.

Plaintiff points to an email exchange in which Ms. Ray confirmed that not only had Mr. Martinez received payments from AF, but he had actually been “overfunded” by ten thousand dollars (NYSCEF Doc. No. 300). It alleges that the wire transfer was fraudulent, Mr. Martinez never received the money he was owed by AF and that plaintiff has not received the stream of lottery payments for which it paid \$552,000.

Plaintiff points out that bank statements show that Ms. Ray received significant payments from an entity called Majestic Funding LLC, an LLC owned by the same principals that own AF and Northeastern, despite the fact that she never worked for Majestic. It points out that Northeastern allegedly closed down in 2011 according to John Cevallos (president of Northeastern) and raises questions about how she could receive a salary from non-existent entity. Plaintiff contends that Ms. Ray was a key point person at AF and was not a mere low-level employee.

In reply, Ms. Ray argues that plaintiff did not show that she knew the wire confirmations were fake and that the agreement between AF and plaintiff was an arm’s length transaction,

thereby vitiating plaintiff's reliance on her statements. Ms. Ray also argues that she cannot be held personally liable for AF's alleged fraud.

Personal Jurisdiction

The Court rejects Ms. Ray's arguments that this Court lacks personal jurisdiction over her. The Court previously rejected those arguments in denying Ms. Ray's motion to dismiss; her attempt to rehash these arguments once again is denied. There is no dispute that this case involves a New York resident (Martinez) who won a lottery in New York and a transaction between AF and Martinez about those lottery winnings in New York (including a litigation in New York to approve the transaction between AF and Martinez).

As the Court observed in connection with Ms. Ray's previous attempt to claim that this Court lacks jurisdiction, Ms. Ray signed her emails with a signature block that indicated that she was the director of the legal department for AF and included an address on Wall Street (NYSCEF Doc. No. 205). Ms. Ray cannot claim surprise that she is subject to a lawsuit in New York about a New York lottery winner when she worked for a company that did business out of a New York office and represented to others that she did business out of that New York office. Simply put, there are numerous contacts to satisfy New York's long-arm statute, even despite Ms. Ray's claim that she never lived in New York.

Discussion

To be entitled to the remedy of summary judgment, the moving party "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case" (*Winegrad v New York*

Univ. Med. Ctr., 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such a prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*id.*). When deciding a summary judgment motion, the court views the alleged facts in the light most favorable to the non-moving party (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492 [1st Dept 2012]).

Once a movant meets its initial burden, the burden shifts to the opponent, who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 560, 427 NYS2d 595 [1980]). The court's task in deciding a summary judgment motion is to determine whether there are bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505, 942 NYS2d 13 [2012]). If the court is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied (*Tronlone v Lac d'Amiante Du Quebec, Ltee*, 297 AD2d 528, 528-29, 747 NYS2d 79 [1st Dept 2002], *affd* 99 NY2d 647, 760 NYS2d 96 [2003]).

Unjust Enrichment

“The basis of a claim for unjust enrichment is that the defendant has obtained a benefit which in “equity and good conscience” should be paid to the plaintiff” (*Corsello v Verizon New York, Inc.*, 18 NY3d 777, 790 [2012]).

The Court denies the branch of the motion that seeks summary judgment dismissing this cause of action. As plaintiff explains, Ms. Ray argues she is not bound by the agreement between AF and plaintiff regarding the Martinez winnings. Therefore, plaintiff is entitled to pursue a quasi-contract theory. That Ms. Ray argues she did not receive any compensation related to the

Martinez transaction is merely an issue of fact as the CEO of plaintiff argues in his affidavit that Ms. Ray “represented that she was paid a commission on the lottery assignment transaction she conducted between Trinity and Advance Funding, including the Martinez Transaction at issue in this lawsuit” (NYSCEF Doc. No. 314, ¶ 19). Plaintiff’s CFO also repeated this allegation in his affidavit in opposition (NYSCEF Doc. No. 322, ¶ 17).

Fraud

“The elements of a cause of action for fraud require a material misrepresentation of a fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the plaintiff and damages” (*Eurycleia Partners, LP v Seward & Kissel, LLP*, 12 NY3d 553, 559, 883 NYS2d 147 [2009]).

There are multiple issues of fact that compel the Court to deny the branch of the motion that seeks to dismiss this claim. Plaintiff met its burden to raise issues of fact about Ms. Ray’s knowledge of the false wire transfer and her intent to induce reliance. Plaintiff’s CFO explains that Ms. Ray, in connection with the AF and plaintiff agreement, provided AF with “a closing binder of transaction documents which included, inter alia, identification documents for Martinez, including his photo ID and W-9 form, affidavits by both Advance Funding and Martinez indicating that the assignment was fully authorized, as well as the court documents approving the assignment” (NYSCEF Doc. No. 300, ¶ 27).

Most critically, the CFO observed that when plaintiff requested confirmation of the check provided to Martinez and proof of the wire transfer to him “Monica Ray, on behalf of Advance Funding, provided this check and this wire transfer confirmation (the “Fraudulent Wire Transfer

Confirmation”) to demonstrate to Trinity that Martinez purportedly had been paid what he was due” (*id.* ¶ 29).

When plaintiff directly asked about Martinez’s payment, Ms. Ray included the alleged proof of funding and specifically confirmed that Martinez had been paid (NYSCEF Doc. No. 300 [email chain]). Plaintiff contends that the wire transfer representations were false and were made to induce plaintiff to go through with the agreement with AF. That Ms. Ray denies that she knew that Martinez had not been paid does not compel the Court to grant the motion. “Participants in a fraud do not affirmatively declare to the world that they are engaged in the perpetration of a fraud. The Court of Appeals has stated that an intent to commit fraud is to be divined from surrounding circumstances” (*Oster v Kirschner*, 77 AD3d 51, 55-56, 905 NYS2d 69 [1st Dept 2010]). In other words, because the circumstances raise a possible inference that Ms. Ray was involved in the fraudulent scheme, the Court cannot find as a matter of law that her subjective, self-serving statements about her intent suffice to dismiss the case against her.

Plaintiff also raised an issue of fact regarding Ms. Ray’s personal liability for the fraudulent scheme alleged here. “[A] corporate officer who participates in the commission of a tort may be held individually liable, regardless of whether the officer acted on behalf of the corporation in the course of official duties and regardless of whether the corporate veil is pierced” (*Am. Exp. Travel Related Services Co., Inc. v N. Atl. Resources, Inc.*, 261 AD2d 310, 311, 691 NYS2d 403 [1st Dept 1999]).

Here, Ms. Ray signed her emails with the signature line “Director, Legal Dept.” (*see* NYSCEF Doc. No. 300). That raises an issue about her role with AF and that she might be considered a corporate officer. Although Ms. Ray appears to insist that she was more of a low-level employee, the Court cannot make such a finding a motion for summary judgment.

The Court also rejects Ms. Ray's argument that plaintiff engaged in improper group pleading as plaintiff provided ample details about Ms. Ray's participation in the fraud: namely that she was the one who provided the fraudulent documents and falsely confirmed the fake wire transfer.

Summary

The fact is that a jury could conclude that Ms. Ray was part of the fraudulent scheme as she was the main contact person involved on behalf of AF. The jury could also believe her account and decide that she was not a part of the alleged fraud. But this Court cannot leap to credit Ms. Ray's account on this motion. Ms. Ray essentially argues that this Court should simply believe her because she did not know that the wire confirmation was fake. But that is tantamount to demanding that this Court find her credible and ignore plaintiff's documents in which Ms. Ray confirms that Mr. Martinez was paid by AF when specifically asked by plaintiff.

Ms. Ray's argument that plaintiff did not show that she knew the wire confirmation was fake is not a basis to dismiss this case. It was not plaintiff's burden in opposing a motion for summary judgment to prove anything about Ms. Ray; plaintiff merely had to raise issues of fact, which it did. And here plaintiff included an email thread in which Ms. Ray falsely represented that Mr. Martinez had been paid and included a fake wire confirmation.

The Court recognizes Ms. Ray's theory that she was simply passing along documents she received from others at AF and that she should not be held personally liable for purported fraud committed by others. But the record here shows that Ms. Ray represented herself as the director of the legal department for AF and that she was the key person with whom plaintiff interacted in what allegedly turned out to be a fraudulent scheme.

Accordingly, it is hereby

ORDERED that defendant Ray’s motion for summary judgment is denied.

2/8/2024

DATE



ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE