

**Mind Ctrs. II, LLC v Barr**

2024 NY Slip Op 32111(U)

June 18, 2024

Supreme Court, Kings County

Docket Number: Index No. 537272/2023

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

-----X  
MIND CENTERS II, LLC,

Plaintiff, Decision and order

- against -

Index No. 537272/2023

EVAN BARR, CARLENE MACMILLAN, OWEN MUIR,  
and MICHAEL SARMIENTO,

Defendants, June 18, 2024

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

Motion Seq. #1 & #2

The defendants have moved pursuant to CPLR §3211 seeking to dismiss the complaint on the grounds it fails to allege a cause of action. The plaintiff has cross-moved seeking to amend the complaint. The motions have been opposed respectively. Papers were submitted by the parties and after reviewing all the arguments this court now makes the following determination.

According to the complaint the plaintiff purchased a psychiatry office called Brooklyn Minds Psychiatry, P.C. owned by defendants Owen Muir and his wife Carlene MacMillan. The plaintiff also purchased the management company of Brooklyn Minds called Mind Centers, Inc. which is owned by defendants MacMillan, Evan Barr and Michael Sarmiento. The complaint alleges that an entity called Sphey Inc, a medical services provider, partly owned by defendant Muir loaned funds to Brooklyn Minds. Indeed, Sphey transferred funds to an account for an entity called Brooklyn Gate Bridge Inc., controlled by defendant Muir. Thereafter, two promissory notes were executed, one by MacMillan

on behalf of Mind Centers Inc., in the amount of \$400,000 and the other by Muir on behalf of Brooklyn Minds in the amount of \$451,000. Spheyr was the payee of both notes. The existence of part of this debt was concealed from the plaintiff when the plaintiff purchased the two entities. The purchase took place on April 8, 2022 whereby the plaintiff became the owner of Mind Centers and Brooklyn Minds for a sum of one million dollars. The plaintiff alleges that while the purchase agreement did disclose the debt in the amount of \$400,000, it was never made aware of the debt in the amount of \$451,000 and that such debt was intentionally concealed from the plaintiff. The plaintiff has instituted this action seeking a rescission of the contract on the grounds the debt was never disclosed. The defendants have moved seeking to dismiss the complaint. As noted, that 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 (Perez v. Y & M Transportation Corporation, 219 AD3d 1449, 196 NYS3d 145 [2d Dept., 2023]). Further, all the allegations in the complaint are deemed true and all reasonable inferences may be drawn in favor of the plaintiff (Archival Inc., v. 177 Realty Corp., 220 AD3d 909, 198 NYS2d 567 [2d Dept.,

2023)). 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, Lam v. Weiss, 219 AD3d 713, 195 NYS3d 488 [2d Dept., 2023]).

"As a general rule, rescission of a contract is permitted for such a breach as substantially defeats its purpose. It is not permitted for a slight, casual, or technical breach, but...only for such as are material and willful, or, if not willful, so substantial and fundamental as to strongly tend to defeat the object of the parties in making the contract'" (Kassab v. Kasab, 137 AD3d 1138, 27 NYS3d 680 [2d Dept., 2016]). Further, all parties to the agreement must be joined in any action for rescission (Tudor v. Riposanu, 93 AD2d 718, 461 NYS2d 6 [1<sup>st</sup> Dept., 1983]).

In this case the parties to the agreement have been joined in this action. The parties include the plaintiff and the individual defendants. Thus, pursuant to the Stock Purchase and Share Transfer Agreement Muir and MacMillan sold their shares of Brooklyn Minds and that MacMillan, Sarmiento and Barr sold their shares of Mind Centers. The entities themselves, namely Brooklyn Minds and Mind Centers are not parties to the transfer at all. CPLR §1001(a) states that joinder of a party is appropriate "if

complete relief is to be accorded between the persons who are parties to the action or who might be inequitably affected by a judgment in the action" (id). However, Brooklyn Minds and Mind Centers are not "necessary" for the plaintiff to pursue its claims against defendants. This is true since Brooklyn Minds and Mind Centers are unaffected by any decision against defendants (American Realty Company v. 64 B Venture, 176 AD2d 226, 574 NYS2d 344 [1<sup>st</sup> Dept., 1991]). It is true that those entities are the proper subject of the stock transfers, however, they are not necessary parties since the change of ownership does not implicate their rights in any way.

Next, a rescission claim is improper if the plaintiff maintains an adequate remedy at law (Basis Yield Alpha Fund (Master) v. Goldman Sachs Group, Inc., 115 AD3d 128, 980 NYS2d 21 [1<sup>st</sup> Dept., 2014]). Generally, actions for breach of contract that also contain rescission claims maintain an adequate remedy at law undermining the rescission claim (Lantau Holdings Ltd., v. General Pacific Group Ltd., 163 AD3d 407, 81 NYS3d 384 [1<sup>st</sup> Dept., 2018]). Thus, "in order to justify the intervention of equity to rescind a contract, a party must allege fraud in the inducement of the contract; failure of consideration; an inability to perform the contract after it is made; or a breach in the contract which substantially defeats the purpose thereof" (Babylon Associates v. County of Suffolk, 101 AD2d 207, 475

NYS2d 869 [2d Dept., 1984]). Thus, "generally, a party's unilateral mistake is a ground for rescission of a contract only where it was induced by fraud or other wrongful conduct by the other party" (Perlbinde v. Vigilant Insurance Company, 190 AD3d 985, 141 NYS3d 141 [2d Dept., 2021]). Consequently, it is not the mere monetary relief sought that bars a rescission claim on the grounds the plaintiff has an adequate remedy at law. Rather, where the entire contract was based upon a fraudulent misrepresentation then rescission is appropriate.

As noted, in this case, the complaint alleges the defendant's committed fraud by omitting the debt that was owed.

It is well settled that to succeed upon a claim of fraud it must be demonstrated there was a material misrepresentation of fact, made with knowledge of the falsity, the intent to induce reliance, reliance upon the misrepresentation and damages (Cruciata v. O'Donnell & McLaughlin, Esqs, 149 AD3d 1034, 53 NYS3d 328 [2d Dept., 2017]). Further, to succeed upon a claim of fraudulent concealment it must be demonstrated that in addition to the above requirements there was a fiduciary or confidential relationship which would impose a duty upon the defendant to disclose material information (Mitschelle v. Schultz, 36 AD3d 249, 826 NYS2d 14 [1<sup>st</sup> Dept., 2006], Wallkill Medical Development LLC v. Catskill Orthopaedics P.C., 178 AD3d 987, 115 NYS3d 67 [2d Dept., 2019]). Moreover, even absent a fiduciary relationship a

duty to disclose may arise under the 'special facts' doctrine where one party maintains superior knowledge of essential facts as to render the entire transaction inherently unfair absent the disclosure (Jana L. v. West 129<sup>th</sup> Street Realty Corp., 22 AD3d 224, 802 NYS2d 132 [1<sup>st</sup> Dept., 2005]). As with all fraud claims, these elements must each be supported by factual allegations containing details constituting the wrong alleged (see, JPMorgan Chase Bank, N.A. v. Hall, 122 AD3d 576, 996 NYS2d 309 [2d Dept., 2014]).

The complaint alleges that while Muir and MacMillan admitted debts were owned by the defendants they failed to disclose all the debts that were owed. These allegations are specific and detailed and are surely sufficient to survive a motion to dismiss.

Lastly, the defendants argue that a restoration of the status quo is impracticable and cannot be substantially restored. The defendants do not explain, in specific terms, why such restoration cannot take place other than to offer conclusory assertions about disruption and the fact the plaintiff has been running these companies for a year and a half. Thus, "rescission must return the parties to the same position they would have occupied had there been no contract" (see, Waymond Weil S.A., v. Theron, 585 F.Supp2d 473 [S.D.N.Y. 2008]). Moreover, the rule that rescission is not appropriate where the parties cannot be


returned to the status quo is not applicable where the party against whom the rescission is sought is the wrongdoer exploiting the change in position to shield itself from the rescission (Sokolow, Dunaud, Mercadier & Carreras LLC v. Lacher, 299 AD2d 64, 747 NYS2d 441 [1<sup>st</sup> Dept., 2002]). As the Court of Appeals observed in Butler v. Prentiss, 158 NY 49, 52 NE 652 [1899], "when, without fault on the part of the one defrauded...it is impossible to restore the one guilty of the fraud to his original condition, the general rule of restoration is not strictly applied, because it would become a loophole for the escape of fraud. Equity makes a reasonable application of the rule by requiring whatever fair dealing requires under all the circumstances...but it does not permit the rule to become a shield for wrongdoing" (id). In this case, the defendants, who have allegedly committed wrongdoing by concealing the debt owed cannot oppose rescission on the grounds the status quo cannot be restored.

Therefore, based on the foregoing the motion seeking to dismiss the lawsuit is denied. The motion seeking to amend the complaint is denied as moot.

So ordered.

ENTER:

DATED: June 18, 2024  
Brooklyn N.Y.

  
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Hon. Leon Ruchelsman  
JSC