

**Sharestates Invs., LLC v Republic Valuations NY,
LLC**

2024 NY Slip Op 32982(U)

August 19, 2024

Supreme Court, Kings County

Docket Number: Index No. 510889/2021

Judge: Leon Ruchelsman

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
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

-----X
SHARESTATES INVESTMENTS, LLC,

Plaintiff,

Decision and order

- against -

Index No. 510889/2021

REPUBLIC VALUATIONS NY, LLC and
VICTOR SCHLESINGER,

Defendants,

August 19, 2024

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

Motion Seq. #2 & #3

The defendant has moved pursuant to CPLR §3211 seeking to dismiss the complaint. The plaintiff has cross-moved pursuant to CPLR §3212 seeking summary judgement. The motions have been opposed respectively. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

According to the amended complaint the plaintiff made three loans. The first loan was for \$610,000 and was secured by property located at 1566 Dumont Avenue in Kings County. The defendant appraised the property at \$1,115,000. Based upon that appraisal the plaintiff extended the loan. The second loan was for \$2,313,100 and was secured by property located at 95 Court Street in Binghamton New York. The defendant appraised the property at \$2,100,000 and Value upon Completion (subject to the proposed plans) of \$4,650,000. Based upon that appraisal the plaintiff extended the loan. The third was for \$1,900,000 and was secured by property located at 2 Titchener Place in Binghamton, New York. The defendant appraised the property at

\$2,465,000. Based upon that appraisal the plaintiff extended the loan.

The amended complaint alleges the appraisals were all improper and that the plaintiff suffered losses as a result of the defaults. The plaintiff insists that if the appraisals would have been accurate the loans would never have been extended. A lawsuit was commenced and the plaintiff has asserted causes of action for negligence and professional malpractice and breach of contract for each appraisal. The above noted motions have now been filed.

Conclusions of Law

Where the material facts at issue in a case are in dispute summary judgment cannot be granted (Zuckerman v. City of New York, 49 NYS2d 557, 427 NYS2d 595 [1980]). Generally, it is for the jury, the trier of fact to determine the legal cause of any injury, however, where only one conclusion may be drawn from the facts then the question of legal cause may be decided by the trial court as a matter of law (Marino v. Jamison, 189 AD3d 1021, 136 NYS3d 324 [2d Dept., 2021]).

Thus, to succeed on a motion for summary judgment it is necessary for the movant to make a prima facie showing of an entitlement as a matter of law by offering evidence demonstrating the absence of any material issue of fact (Winegrad v. New York University Medical Center, 64 NY2d 851, 487 NYS2d 316 [1985]).

Moreover, a movant cannot succeed upon a motion for summary judgement by pointing to gaps in the opponents case because the moving party must affirmatively present evidence demonstrating the lack of any questions of fact (Velasquez v. Gomez, 44 AD3d 649, 843 NYS2d 368 [2d Dept., 2007]).

The plaintiff argues that "even assuming, *arguendo*, that questions of fact may exist regarding Defendants' liability, the calculation of damages cannot be controverted, as it is a matter of basic arithmetic utilizing the formulas set forth in the loan documents" (see, Memorandum of Law, pages 2,3 [NYSCEF Doc. No. 134]). Thus, the plaintiff concedes there may be questions of fact whether the defendant's are liable to the plaintiff. Indeed, such questions of fact exist. Furthermore, there are also questions of fact whether the plaintiff even suffered any damages and if the plaintiff did suffer such damages whether those damages were proximately caused by the defendants. The defendants have presented sufficient evidence raising questions of fact in this regard. Therefore, the plaintiff's request for a determination about the calculation of damages is simply premature. There need not be any determination regarding damages until it has been determined that damages are owed.

Moreover, there is no merit to the argument that, essentially, an appraisal made is subject to something akin to strict liability, where proof of any damage caused is somehow

waived. Rather, "[a] claim of professional negligence requires proof that there was a departure from the accepted standards of practice and that the departure was a proximate cause of the injury"...The same elements apply to a claim for professional malpractice" (Development Specialists Inc., v. Weiser Realty Advisors LLC, 2012 WL 242835 [S.D.N.Y. 2012]). Consequently, the motion seeking partial summary judgement concerning the method of damages calculations is denied.

Turning to the defendant's motion seeking to dismiss, it is well settled that a malpractice claim and a breach of contract claim are duplicative when they are based on the same factual allegations and seek the same damages (Berger & Associates Attorneys P.C., v. Reich, Reich & Reich P.C., 144 AD3d 543, 42 NYS3d 16 [1st Dept., 2016]). In this case the allegations of malpractice are identical to the allegations of breach of contract, namely that the defendants failed to provide proper appraisals and violated Uniform Standards of Professional Appraisal Practice ("USPAP"). Therefore, the motion seeking to dismiss all the malpractice causes of action is granted.


It is well settled that to succeed upon a claim of breach of contract the plaintiff must establish the existence of a contract, the plaintiff's performance, the defendant's breach and resulting damages (Harris v. Seward Park Housing Corp., 79 AD3d 425, 913 NYS2d 161 [1st Dept., 2010]). The motion seeking to

dismiss the breach of contract causes of action is denied. There are significant questions of fact whether such breaches occurred and those questions cannot be resolved in summary fashion. The parties are now directed to engage in discovery.

So ordered.

ENTER:

DATED: August 19, 2024
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC