

Tuthill v Golden

2024 NY Slip Op 34844(U)

July 12, 2024

Supreme Court, Suffolk County

Docket Number: Index No. 614592/2021

Judge: Maureen T. Liccione

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SHORT FORM ORDER

INDEX No. 614592/2021
CAL. No. 202300848OT

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 78 - SUFFOLK COUNTY

PRESENT:

Hon. MAUREEN T. LICCIONE
Justice of the Supreme Court

MOTION DATE 10/25/23 (002)
MOTION DATE 11/27/23 (005 & 006)
ADJ. DATE 12/20/23
Mot. Seq. # 002 MotD
Mot. Seq. # 003 XMotD
Mot. Seq. # 004 XMotD
Mot. Seq. # 005 MD
Mot. Seq. # 006 MD

-----X
LESLIE P. TUTHILL,

Plaintiff,

- against -

SHAUN P. GOLDEN, GOLDEN WEALTH
MANAGEMENT, INC., GOLDEN WEALTH
PROPERTIES, LLC and REBECCA
GOLDEN,

Defendants.
-----X

RUSKIN MOSCOU FALTISCHEK, P.C.
Attorney for Plaintiff
1425 RXR Plaza
Uniondale, New York 11556

LAW OFFICE OF MARC GOIDELL, ESQ.
Attorney for Defendants Shaun P. Golden,
Golden Wealth Management, Inc. and
Golden Wealth Properties LLC
600 Old Country Road
Garden City, New York 11530

GERTLER LAW GROUP, LLC
Attorney for Defendant Rebecca Golden
6851 Jericho Turnpike, Suite 110
Syosset, New York 11791

Upon the following papers read on these motions for summary judgment: (1) Notice of Motion and supporting papers by plaintiff, filed October 3, 2023; (2) Notice of Cross Motion and supporting papers by Rebecca Golden, filed October 17, 2023; (3) Notice of Cross Motion and supporting papers by Shaun Golden, Golden Wealth Management, Inc., and Golden Wealth Properties, LLC, filed October 26, 2023; (4) Notice of Motion and supporting papers by Rebecca Golden, filed November 8, 2023; (5) Notice of Motion and supporting papers by Shaun Golden, Golden Wealth Management, Inc., and Golden Wealth Properties, LLC, filed November 9, 2023; (6) Answering Affidavits and supporting papers by plaintiff, filed November 20, 2023; (7) Replying Affidavits and supporting papers by Rebecca Golden, filed November 22, 2023; and (8) Replying Affidavits and supporting papers by Shaun Golden, Golden Wealth Management, Inc., and Golden Wealth Properties, LLC, filed November 22, 2023, it is

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ORDERED that these motions are consolidated for the purpose of this determination; and it is further

ORDERED that plaintiff's motion for summary judgment in her favor on the complaint is granted to the extent set forth herein, and is otherwise denied; and it is further

ORDERED that Rebecca Golden's cross motion for summary judgment dismissing the complaint against her is granted to the extent set forth herein, and is otherwise denied; and it is further

ORDERED that the cross motion by Shaun Golden, Golden Wealth Management, Inc., and Golden Wealth Properties, LLC, for summary judgment dismissing the complaint against them is granted to the extent set forth herein, and is otherwise denied; and it is further

ORDERED that Rebecca Golden's motion for leave to file a late motion for summary judgment is denied as academic; and it is further

ORDERED that the motion by Shaun Golden, Golden Wealth Management, Inc., and Golden Wealth Properties, LLC, for leave to file a late motion for summary judgment is denied as academic.

I. Facts and procedural history

This action revolves around money allegedly transferred by plaintiff, Leslie Tuthill, to defendants Shaun Golden (Shaun), Golden Wealth Management, Inc. (GWM), and Golden Wealth Properties, LLC (GWP) (collectively, the Golden Advisors). Defendant Rebecca Golden (Rebecca) is Shaun's wife. Plaintiff alleges that she paid the Golden Advisors \$483,964.43 to invest for her benefit, but that they used the funds for Shaun and Rebecca's personal expenses and did not invest them. The complaint asserts claims for breach of fiduciary duty (against the Golden Advisors), negligence (against the Golden Advisors), fraud (against the Golden Advisors), fraudulent inducement (against the Golden Advisors), conversion (against all defendants), breach of contract (against GWP), money had and received (against all defendants), and unjust enrichment (against all defendants). The complaint also requests punitive damages.

Meanwhile, in 2022, the New York State Attorney General's Office charged Shaun with two counts of grand larceny in the second degree (Penal Law § 155.40), one count of grand larceny in the third degree (*id.* § 155.35), one count of falsifying business records in the first degree (*id.* § 175.10), one count of scheme to defraud in the first degree (*id.* § 190.65), and one count of violating the Martin Act (General Business Law § 352-C). He pleaded guilty to the six felony charges in the complaint under a plea agreement.

In the plea agreement, Shaun admitted to "engag[ing] in a scheme constituting a systematic ongoing course of conduct with intent to defraud ten or more persons by false or fraudulent pretenses, representations, or promises, and so obtained property from one or more such persons," including plaintiff. He conceded to promising his victims that he would use their money "to purchase, develop and

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rent real estate . . . and he failed to disclose that he was using victims' monies for his own personal use and titling property in his own name as an individual and not the investment company, GWP. In addition, Golden never gave the victims any money in return." As part of the criminal action, Shaun paid plaintiff \$211,866.28 in restitution. And in a confession of judgment in plaintiff's favor in the amount of \$266,163.93 executed pursuant to the plea agreement, plaintiff conceded that he "advised and induced [plaintiff] to deposit [\$478,030.21] into [GWP]. Thereafter, I fraudulently invested her capital into real estate holdings under the umbrella of [GWP]. As a result, [plaintiff] incurred significant losses."

Plaintiff now seeks summary judgment in her favor on the complaint. In support of her motion, plaintiff submits, among other things, her affidavit, transcripts of the depositions of Shaun and Rebecca, the plea agreement, and a judgment by confession. The Golden Advisors (1) oppose plaintiff's motion; (2) cross-move for summary judgment dismissing the conversion, unjust enrichment, and money had and received claims against GWM and GWP, and dismissing all claims against Shaun; and (3) move for leave to file a late motion for summary judgment. Rebecca (1) opposes plaintiff's motion, (2) cross-moves for summary judgment dismissing the complaint against her, and (3) moves for leave to file a late motion for summary judgment.

II. Analysis

On a motion for summary judgment, the movant has the burden to show, through evidence in admissible form (*Bush v St. Clare's Hosp.*, 82 NY2d 738, 602 NYS2d 324 [1993]; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]), that it is entitled to judgment as a matter of law and that there are no disputed issues of material fact (CPLR 3212; *Matter of New York City Asbestos Litig.*, 33 NY3d 20, 99 NYS3d 734 [2019]). If the movant meets its burden, then the non-movant must show that there is a material issue of fact to be resolved at trial (*Matter of Eighth Jud. Dist. Asbestos Litig.*, 33 NY3d 488, 105 NYS3d 353 [2019]). If the movant does not meet its burden, then the motion must be denied without consideration of any opposing papers (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 942 NYS2d 13 [2012]). On summary judgment, the Court must view the evidence in the light most favorable to the non-moving party (*id.*).

i. Plaintiff's motion

1. Transfer of the Sagaponack Property

Defendants Shaun and Rebecca Golden owned a multi-million dollar home and property at 496 Wainscott Harbor Road in Sagaponack, New York ("Sagaponack Property"). A deed indicated that they became the owners on January 21, 2013. Accordingly, they owned the property when this action was commenced in November, 2021.

On November 5, 2021 a temporary restraining order was issued in this action (Bergman, J.S.C.) (Judge Bergman TRO) granting an order of attachment with respect to the Sagaponack Property, which prohibited its transfer.

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In defiance of Judge Bergman's Order, three months after it was issued defendants Shaun and Rebecca Golden transferred the Sagaponack Property to a trust on February 3, 2022. The deed to the trust was recorded on May 3, 2022, about two months after the permanent order of attachment was issued on March 18, 2022 by Acting Supreme Court Justice St. George. Plaintiff characterizes the trust as a sham because Rebecca Golden's mother was the original trustee and because neither Shaun or Rebecca Golden could identify the beneficiaries when asked to do so at their depositions.

Since the conveyance to the trust was in violation of the Supreme Court orders, the branch of plaintiff's motion which seeks to vacate that transfer is granted.

2. Claims against the Golden Advisors

Plaintiff is granted summary judgment in her favor on her breach of contract claim against GWP and, to the extent not duplicative, her fraud claim against the Golden Advisors. It is undisputed that Shaun engaged in a criminally fraudulent scheme to take plaintiff's money, and plaintiff has shown that he did so through GWM and GWP, two of his corporate entities. Plaintiff has also shown that this fraud extended to the Golden Advisors' assurances that certain transactions would not cause her to incur tax consequences, though they allegedly did so. Significantly, Shaun interposed his Fifth Amendment right against self-incrimination at his deposition in response to questions about plaintiff's dealings with GWM and GWP, allowing the Court to assume that his answers to those questions would support plaintiff's claims (*Republic of Haiti v Duvalier*, 211 AD2d 379, 626 NYS2d 472 [1st Dept 1995] [in the context of summary judgment]; see generally *Andrew Carothers, M.D., P.C. v Progressive Ins. Co.*, 33 NY3d 389, 104 NYS3d 26 [2019]). In opposition, GWM and GWP failed to raise a material issue of fact. Thus, these branches of plaintiff's motion are granted.

So much of plaintiff's motion as seeks summary judgment on her other claims against the Golden Advisors is denied, as the other claims appear to be duplicative of the fraud and breach of contract claims (see e.g. *Matarazzo v Herrmann*, 216 AD3d 764, 189 NYS3d 542 [2d Dept 2023]; *Hahn v Stone House Props. LLC*, 206 AD3d 408, 170 NYS3d 25 [1st Dept 2022]).

The Court notes that plaintiff's total damages against the Golden Advisors cannot include the \$211,866.28 that she has already received as restitution from Shaun, as this would constitute a double recovery (see *Matter of Wynyard v Beiny*, 82 AD3d 665, 919 NYS2d 165 [1st Dept 2011]; *Singleton Mgt. v Compere*, 243 AD2d 213, 673 NYS2d 381 [1st Dept 1998]). Nor can any judgment against Shaun include the confession of judgment in plaintiff's favor from him. However, the confession of judgment from Shaun does not appear to have been satisfied, so awarding plaintiff that amount against GWM and GWP would not constitute a double recovery (CPLR 3002 [a]; *Gillespie v Flight Line Pub*, 2 AD3d 1014, 768 NYS2d 410 [3d Dept 2003]; *Seaman v Fichet-Bauche N. Am.*, 176 AD2d 793, 575 NYS2d 122 [2d Dept 1991]; *Gatz v Foster*, 159 AD2d 482, 552 NYS2d 850 [2d Dept 1990]).

Plaintiff's motion seeking summary judgment on her request for punitive damages is granted in an amount to be determined at trial. Shaun's admittedly criminal misdeeds are the type of conduct for which punitive damages may be awarded and Shaun has raised no questions of fact with regard to the

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wanton and wilful nature of his action (*see generally Giblin v Murphy*, 73 NY2d 769, 536 NYS2d 54 [1988]; *Walker v Sheldon*, 10 NY2d 401[1961]).

3. Claims against Rebecca

Plaintiff interposed claims against Rebecca for conversion, money had and received, and unjust enrichment. Regarding conversion, plaintiff failed to show that Rebecca improperly interfered with her right to possession over the funds at issue (*see Roos v King Constr.*, 179 AD3d 857, 116 NYS3d 344 [2d Dept 2020]; *Zell & Ettinger v Berglas*, 261 AD2d 613, 690 NYS2d 721 [2d Dept 1999]). Plaintiff has not submitted any bank records from any account that was allegedly jointly owned by Shaun and Rebecca. To the extent that plaintiff relies on the felony complaint against Shaun, its averments on any alleged joint bank accounts or other jointly-owned property constitute hearsay, for they rely on information from an auditor, or violate the Best Evidence Rule (*see Guide to NY Evid rule 10.03, Best Evidence Rule*). For the same reasons, plaintiff failed to demonstrate her prima facie entitlement to summary judgment on the claim against Rebecca for money had and received (*see generally Board of Educ. of Cold Spring Harbor Cent. School Dist. v Rettaliata*, 78 NY2d 128, 572 NYS2d 885 [1991]). For the same reasons, plaintiff failed to show, as a matter of law, that Rebecca was unjustly enriched from the monies paid by plaintiff to the Golden Advisors (*see McMorrow v Angelopoulos*, 113 AD3d 736, 979 NYS2d 353 [2d Dept 2014]; *Zell & Ettinger v Berglas*, 261 AD2d 613, 690 NYS2d 721). Thus, this branch of plaintiff's motion is denied.

ii. Defendants' motions

The Golden Advisors and Rebecca separately cross-move for summary judgment. Although the cross motions are untimely (CPLR 3212 [a]; *Podlaski v Long Is. Paneling Ctr. of Centereach, Inc.*, 58 AD3d 825, 873 NYS2d 109 [2d Dept 2009]; *Rivers v City of New York*, 37 AD3d 804, 830 NYS2d 767 [2d Dept 2007]), a court may consider an untimely cross motion for summary judgment that is made on nearly identical grounds as a timely motion for summary judgment (*Connor v AMA Consulting Engrs. PC*, 213 AD3d 483, 184 NYS3d 316 [1st Dept 2023], *lv dismissed in part & denied in part* 40 NY3d 1088, 203 NYS3d 248 [2024]; *Martinez v ST-DIL LLC*, 192 AD3d 511, 144 NYS3d 687 [1st Dept 2021]; *Whitehead v City of New York*, 79 AD3d 858, 913 NYS2d 697 [2d Dept 2010]). In any event, this Court, in deciding plaintiff's timely motion, may search the record and award summary judgment to a nonmovant (CPLR 3212 [b]). Thus, the Court will consider defendants' cross motions for summary judgment.

The Golden Advisors are correct that plaintiff is not entitled to a double recovery; however, this does not compel dismissal of any claim and is only pertinent to the amount of damages. For the reasons explained above, the Golden Advisors have not shown that plaintiff's request for punitive damages is meritless. To the extent that they seek a ruling on whether a certain amount of punitive damages would be impermissible, the request is premature. The Golden Advisors are correct, however, that to the extent that the conversion and quasi-contractual claims are premised upon a breach of the May 20, 2016 agreement between GWP and plaintiff, they are duplicative and must be dismissed (*see Toobian v Toobian*, 209 AD3d 907, 177 NYS3d 124 [2d Dept 2022]; *Jeffers v American Univ. of Antigua*, 125

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AD3d 440, 3 NYS3d 335 [1st Dept 2015]), and the Golden Advisors' motion is granted to this extent, and is otherwise denied.

Turning to Rebecca's motion, she failed to show, prima facie, that she was not unjustly enriched with money that plaintiff gave to her husband. The Court notes that an innocent party may be unjustly enriched (*see Simpson & Simpson, PLLC v Lippes Mathias Wexler Friedman LLP*, 130 AD3d 1543, 14 NYS3d 258 [4th Dept 2015]; *Alan B. Greenfield, M.D., P.C. v Long Beach Imaging Holdings, LLC*, 114 AD3d 888, 981 NYS2d 135 [2d Dept 2014]). Rebecca's argument regarding the claim for money had and received is expressly tied to her unsuccessful arguments regarding unjust enrichment; thus, it is not persuasive. Regarding conversion, Rebecca presses two arguments: (1) that there is no evidence "that she intentionally did anything with respect to the plaintiff's funds," and (2) that "she had no dominion and control over the joint account(s), and never did anything to intentionally interfere with plaintiff's right to possession." The first argument merely points to purported gaps in plaintiff's case, which is insufficient (*e.g. Bourne v Martin Dev. & Mgt., LLC*, 219 AD3d 684, 195 NYS3d 220 [2d Dept 2023]). As to the second argument, Rebecca necessarily had dominion and control over accounts in which she was a joint owner (*see Johnson v Kilpatrick*, 233 AD2d 205, 649 NYS2d 686 [1st Dept 1996]). Furthermore, Rebecca participated in the conveyance of the Sagaponack Property to a trust in violation of Judge Bergman's TRO. Accordingly, there are questions of fact as to whether she acted with "spite or malice, or a fraudulent or evil motive" necessary to impose punitive damages (*Ciminello Prop. Assoc. v New 970 Colgate Ave. Corp.*, 214 AD3d 447, 448, 186 NYS3d 12, 14 [1st Dept 2023] [quotation marks and citations omitted]).

In light of the foregoing, defendants' motions for leave to file a late motion for summary judgment are denied as academic.

Dated: July 12, 2024



MAUREEN T. LICCIONE, J.S.C.

FINAL DISPOSITION NON-FINAL DISPOSITION