

Caputo v Holt
2024 NY Slip Op 34993(U)
July 26, 2024
Supreme Court, Monroe County
Docket Number: Index No. E2024000703
Judge: Vincent M. Dinolfo
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STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

JAMES R. CAPUTO,
Plaintiff,

v.

Index. No. E2024000703

NATHAN HOLT, OWEN BILLET,
PREMIUM MORTGAGE CORPORATION,
ROBERT T. HOULE, HOULE SALES
CONSULTING INC., DONALD CHENEY, ESQ.,
CHENEY LAW FIRM PLLC, ABAR ABSTRACT
CORPORATION, MONROE COUNTY CLERK'S OFFICE,
Defendants.

APPEARANCES:

For Plaintiff: PRO SE
4278 Lafayette Road
Jamesville, NY 13078

*For Defendant
Monroe County
Clerk's Office:* JOHN BRINGEWATT, ESQ.
Monroe County Attorney
BY: MIGUEL A. MUNOZ, ESQ.
39 West Main Street
Rochester, NY 14614

*For Defendants Donald
Cheney, Esq. and Cheney
Law Firm, PLLC:* DONALD J. CHENEY, ESQ.
336 North Main Street
Canandaigua, NY 14424

*For Defendants Nathan
Holt, Owen Billet, Premium
Mortgage Corporation and
ABAR Abstract Corporation:* RELIN, GOLDSTEIN & CRANE, LLP
BY: KATHRYN E. ASSINI, ESQ.
28 East Main Street, Suite 1800
Rochester, NY 14614

DECISION AND ORDER

VINCENT M. DINOLFO, J.

Plaintiff James R. Caputo commenced this action *pro se* on January 11, 2024 via

summons and complaint seeking to foreclose a mechanic's lien against Defendants Nathan Holt and Owen Billet, and recovery for breach of contract against Defendant Premium Mortgage Corporation, breach of contract against Defendants Houle and Houle Sales Consulting, Inc., contempt of court against Defendants Houle and Houle Sales Consulting, Inc., breach of fiduciary duty against Defendants Cheney and Cheney Law Firm, PLLC, contempt of court and fraud against Defendants Cheney and Cheney Law Firm, PLLC, breach of fiduciary duty against Defendant ABAR Abstract Corporation, and breach of fiduciary duty against Defendant Monroe County Clerk's Office.

Before the Court are three motions. First, Defendant Monroe County moved to dismiss pursuant to Civil Practice Law and Rules ("CPLR") § 3211(a)(7) on the grounds that Plaintiff failed to file a notice of claim, that the statute of limitations expired, and that Plaintiff failed to state a claim. Plaintiff opposed.

Next, Defendants Donald Cheney, Esq. and Cheney Law Firm, PLLC moved to dismiss and sought sanctions, costs, and attorney's fees for frivolous conduct. Plaintiff opposed.

Last, Defendants Holt, Billet, Premium Mortgage Corporation, and ABAR Abstract Corporation moved for summary judgment dismissing the complaint and vacating the lien pursuant to CPLR § 3211. Plaintiff opposed.

After considering the parties' submissions (pursuant to CPLR § 2219[a], the specific papers considered were NYSCEF items 42-118)¹ and the relevant law, the following

¹ NYSCEF items 119-150 were considered for the limited purpose of Plaintiff's opposition to the above-described motions despite its supporting papers being filed on July 26, 2024 after the submissions deadline. As submissions closed on July 25, 2024 after the Court had already granted Plaintiff a two-week extension on the deadline, the Court declines to consider Plaintiff's cross-motion and it is struck.

constitutes the Decision and Order of the Court on the pending motions.

FINDINGS OF FACT

What follows is a recitation of the facts that is consistent with the procedural posture of the respective motions, that is either “view[ing] the evidence in the light most favorable to the party opposing the motion, giving that party the benefit of every reasonable inference” (*Esposito v Wright*, 28 AD3d 1142, 1143 [4th Dept. 2006]) or that “[e]ach and every allegation forwarded by the” complainant must be accepted as true (*219 Broadway Corp. v Alexander's, Inc.*, 46 NY2d 506, 509 [1979]).

Plaintiff’s causes of action arise out of an agreement between Plaintiff’s home improvement business, House Surgeon Renovations, and Defendant Houle Sales Consulting, Inc., executed August 3, 2021 wherein House Surgeon Renovations was to complete restoration of a water damaged single-family dwelling located at 4 Chambord Drive in Mendon, New York for Defendant Houle Sales Consulting, Inc. Relevantly, House Surgeon Renovations completed work for Defendant Houle Sales Consulting, Inc. and was not paid in accordance with the agreement. Plaintiff filed a Notice of Mechanic’s Lien against the property located at 4 Chambord Drive in the amount of \$25,000 on January 21, 2022, naming Defendant Houle as the owner of the property.

That lien was shortly thereafter subject to litigation wherein Defendant Houle sought, *inter alia*, an order of the Supreme Court compelling Plaintiff to withdraw the lien via order to show cause. On May 2, 2022, the Supreme Court (Valleriani, J.) denied the order to show cause.

On May 24, 2022, Defendant Cheney, on behalf of his client, Defendant Houle Sales Consulting, Inc., notified Plaintiff that a contract for the sale of 4 Chambord Drive was in

place, and closing would be in approximately 30 days. On June 29, 2022, the sale closed between Defendant Houle Sales Consulting, Inc. and Defendants Nathan Holt and Owen Billet.

On January 18, 2023 filed a Notice of Mechanic's Lien Extension at Defendant Monroe County Clerk's Office, naming the present owners as Defendants Billet and Holt, and the former owner as Defendant Houle Sales Consulting, Inc., rather than Defendant Houle as was named in the initial lien. There was no order of a court of record, of a judge or justice thereof extending the lien.

CONCLUSIONS OF LAW

Initially, the Court notes Plaintiff's *pro se* status warrants "some latitude" (*Duffen v State*, 245 AD2d 653, 653 [3d Dept. 1997] *lv. denied* 91 NY2d 810 [1998]), but confined by the bounds of the law, which does not "excuse a pro se litigant from compliance with procedural or other rules designed for the orderly conduct of an action" (*Yule v Comerford*, 140 AD2d 981, 982 [4th Dept. 1988]). Importantly, a "pro se litigant acquires no greater rights than those of any other litigant" (*Brooks v Inn at Saratoga Assn.*, 188 AD2d 921, 921 [3d Dept. 1992] [citation omitted]).

In evaluating a motion to dismiss pursuant to CPLR § 3211, a pleading is to "be liberally construed" (CPLR § 3026). "Each and every allegation forwarded by the" complainant must be accepted as true (*219 Broadway Corp.*, 46 NY2d at 509 [1979]). Such evaluation is to "determine simply whether the facts alleged fit within any cognizable legal theory" (*Morone v Morone*, 50 NY2d 481, 484 [1980] [citation omitted]). "Allegations consisting of bare legal conclusions, as well as factual claims inherently incredible or flatly contradicted by documentary evidence are not entitled to" the presumption that facts alleged in

complaint are true (*511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY 2d 144, 151-152 [2002]).

Summary judgment is a “drastic remedy” that should not be granted absent the clear appearance “that no material and triable issue of fact is presented” (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). “But when there is no genuine issue to be resolved at trial, the case should be summarily decided, and an unfounded reluctance to employ the remedy will only serve to swell the Trial Calendar and thus deny to other litigants the right to have their claims promptly adjudicated” (*Andre v Pomeroy*, 35 NY2d 361, 364 [1974]).

Practically, to “obtain summary judgment it is necessary that the movant establish his cause of action or defense ‘sufficiently to warrant the court as a matter of law in directing judgment in his favor’ (CPLR § 3212, subd [b]), and he must do so by tender of evidentiary proof in admissible form” (*Friends of Animals, Inc. v Associated Fur Mfrs., Inc.*, 46 NY2d 1065, 1067 [1979]).

To defeat a motion for summary judgment where a movant has made a *prima facie* case as to their cause of action or defense, an opponent must “show facts sufficient to require a trial of any issue of fact” (CPLR § 3212, subd [b]). Such showings consisting of “mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient” (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

In determining a such a motion, "a court's task is issue finding rather than issue determination," and, as discussed *supra*, "must view the evidence in the light most favorable to the party opposing the motion, giving that party the benefit of every reasonable inference and ascertaining whether there exists any triable issue of fact" (*Esposito*, 28 AD3d at 1143).

Defendant Monroe County Clerk's Office's motion to dismiss must be granted. Plaintiff did not comply with General Municipal Law § 50-e and County Law § 52(1) and file a notice of claim prior to commencing this action. Further, both General Municipal Law § 50-i and County Law § 52 stand for the proposition that a plaintiff must file suit within one year and 90 days after the events giving rise to a plaintiff's claims occur. Plaintiff's complaint alleges the lien in question was missing from "all active filings" upon his visit to Defendant Monroe County Clerk's Office on August 11, 2022. This action was commenced January 11, 2024, greater than one year and 90 days after the claim accrued on August 11, 2022.

Setting aside, *arguendo*, Plaintiff's failings with respect to his claim against Defendant Monroe County Clerk's Office, the claim must also be dismissed because it fails to state a cause of action for breach of fiduciary duty. Claims of breach of fiduciary duty must be plead with particularity under CPLR § 3016(b) (*Cohen & Lombardo, P.C. v Connors*, 169 AD3d 1399, 1401 [4th Dept 2019]). "To state a claim for breach of fiduciary duty, a plaintiff must allege that the defendant owed him [or her] a fiduciary duty, that the defendant committed misconduct, and that the plaintiff suffered damages caused by that misconduct" (*Northland E., LLC v J.R. Militello Realty, Inc.*, 163 AD3d 1401, 1402 [4th Dept 2018]). Plaintiff failed to allege the existence of a fiduciary duty owed to him by Defendant Monroe County Clerk's Office and that the alleged missing documents resulted from misconduct.

Plaintiff's other causes of action alleging breach of fiduciary duty asserted against Defendants Premium Mortgage Corporation, Donald Cheney, Esq., Cheney Law Firm, PLLC, and ABAR Abstract Corporation also fail, under either CPLR § 3211 or CPLR § 3211. There is no allegation of, nor triable issue of fact concerning the existence of a fiduciary duty owed by these Defendants to Plaintiff.

Defendants Cheney and Cheney Law Firm, PLLC's motion to dismiss Plaintiff's "contempt of court/fraud" cause of action must also be granted. Plaintiff alleged the order of the Supreme Court (Valleriani, J.) (for brevity, "Order" hereinafter) denying and dismissing Defendant Houle's order to show cause to, *inter alia*, vacate the lien was violated, and specifically that it was violated by Defendants Cheney and Cheney Law Firm, PLLC "engineering the illicit sale of a real property over and against a duly filed and Court affirmed mechanic's lien" (NYSCEF item 2, para. 93). To characterize Defendants Cheney and Cheney Law Firm, PLLC as having "engineer[ed]" the sale of the property is the kind of allegation "consisting of bare legal conclusions [. . .] are not entitled to" the presumption that facts alleged in complaint are true (*511 W. 232nd Owners Corp.*, 98 NY 2d at 151-152). In order to have "engineer[ed]" the sale, Defendants Cheney and Cheney Law Firm, PLLC must have induced or directed both the seller and the buyer to engage in the transaction. Searching the four corners of the complaint and its supporting documents there is simply no such allegation, and even were some scintilla present to make such a suggestion it would be the type of factual claim that is "inherently incredible" and not entitled to the presumption of truthfulness.

Summary judgment must also be granted in favor of Defendants Holt and Billet on the first cause of action seeking to foreclose on the lien. Courts recognize "Lien Law § 17 restricts methods of obtaining extensions of liens against residential property, in order to limit the period of time [such] real property could be burdened by a mechanic's lien" (*Cook v Carmin S. Pariso, Inc.*, 287 AD2d 208, 216 [4th Dept 2001]). Lien Law § 17's specific restriction in cases such as this is that a "lien on real property improved or to be improved with a single family dwelling may only be extended by an order of a court of record, or a judge or justice thereof." The lien was filed January 21, 2022, and thus Plaintiff was obligated to either

foreclose on the lien or seek a court order extending the lien by January 21, 2023. Because the lien was placed on a single-family dwelling, Plaintiff's filing of a notice of extension on January 18, 2023 is a legal nullity. The Chambord Drive home thus has not been encumbered by the lien since January 21, 2023. Defendants Billet and Holt made a *prima facie* case of entitlement to summary judgment, and Plaintiff has not "show[n] facts sufficient to require a trial of any issue of fact" (CPLR § 3212, subd [b]).

In sum, the law and the facts dictate that this dispute is one that is between Plaintiff and Defendants Houle and Houle Sales Consulting, Inc., and no cause of action can stand against any of the other complained of Defendants. Consistent with the foregoing, it is hereby

ORDERED

Defendant Monroe County Clerk's Office's motion to dismiss is GRANTED;

Defendants Cheney and Cheney Law Firm, PLLC's motion to dismiss is GRANTED;

Defendants Holt, Billet, Premium Mortgage Corporation, and ABAR Abstract Corporation's motion for summary judgment is GRANTED and to the extent not already effectuated by operation of law, the lien is VACATED; and it is further

ORDERED that any additional relief sought but not specifically granted is hereby DENIED.

The remaining causes of action involve only Plaintiff and Defendants Houle and Houle Sales Consulting, Inc. In order to effectively move the case forward, it is hereby

ORDERED, that all discovery, including any depositions, shall be completed on or before September 20, 2024, it is further

ORDERED, that all motions relating to disclosure shall strictly comply with 22 NYCRR § 202.7(a)(2) and all such motions and responses thereto shall be filed with a

proposed Order containing the specific relief requested and the exact amount of costs, disbursements and attorneys fees to be awarded to the prevailing party;


ORDERED, that a Note of Issue and Statement of Readiness shall be filed on or before September 27, 2024,

ORDERED, that pursuant to CPLR § 3212(a) no summary judgment motions shall be made later than sixty (60) days after the filing of the Note of Issue;

ORDERED, that a Pretrial Conference shall be held before this Court on September 30, 2024 at 11:00 AM. via Microsoft Teams, and it is further

ORDERED, that any request for an extension or amendment of this Scheduling Order must be made in writing, on notice, and must be accompanied by a proposed amended scheduling order.

Dated this 26th day of July, 2024, at Rochester, New York.


HONORABLE VINCENT M. DINOLFO
JUSTICE OF THE SUPREME COURT