Underhill Venture LLC v Sarang
2024 NY Slip Op 35698(U)
April 12, 2024
Supreme Court, Nassau County
Docket Number: Index No. 604830/2023
Judge: Felice J. Muraca
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

PRESENT:
HON. FELICE J. MURACA, A.J.S.C. **IAS/TRIAL PART 42**

UNDERHILL VENTURE LLC,

Plaintiff,

-against-

HANSNEET SARANG and MANDEEP KAINTH,

Defendants.

DECISION & ORDER
Index No. 604830/2023
Motions Seq. #: 005

E-filed documents 103-106, 112-118 and 120 were reviewed in preparing this Decision and Order.

Plaintiff/Seller commenced this action on March 22, 2023, alleging Defendants/Buyers breached a contract of sale for the purchase of real estate for premises located at 25 Underhill Avenue, Oyster Bay, New York ("Premises"). Plaintiff claims it is entitled to retain the $80,000.00 downpayment. Issue was joined by Defendants/Buyers upon filing of their Answer on May 15, 2023. The Answer contained nine affirmative defenses and contained counterclaims for breach of contract, breach of implied warranties, and a request for attorney's fees.

On May 17, 2023, Defendants/Buyers filed a Notice of Pendency on the Premises. Plaintiff/Seller then sought to cancel the Notice of Pendency. This Court denied the application in a Decision and Order entered September 21, 2023 ("Pendency Decision"). Plaintiff sought to renew and reargue the Pendency Decision. The Court denied the motion (Seq.#003) in a Decision entered on December 18, 2023 (Muraca, J.) ("Reargument Decision"). In the Reargument Decision the Court also denied Plaintiff's application to amend the Complaint. The proposed amendment, sought $1.2 million dollars damages from Plaintiff's inability to close on a *new contract of sale*, based on Defendant filing the *lis pendens*, allegedly in violation of the contract (Proposed Second Cause of Action).

Plaintiff now moves (Seq.#005) this Court for leave to reargue pursuant to CPLR § 2221[d] the Reargument Decision denying the amendment. In addition to reargument, Plaintiff also seeks to add additional causes of action for slander of title, tortious interference with a contract, tortious interference with a prospective business advantage and punitive damages.

Reargument

Pursuant to CPLR § 2221(d), a motion for leave to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion but shall not include any matters of fact not offered on the prior motion." A motion to reargue is addressed to "the sound discretion of the court which decided the prior motion and may be granted upon a showing that the court overlooked or misapprehended the facts or law, or for some reason mistakenly arrived at its earlier decision." (*Beverage Marketing USA, Inc. v. South Beverage Co., Inc.* 58 A.D.3d 657 [2d Dept. 2009]; CPLR § 2221). But a motion for leave to reargue "is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented." (*Mazinov v. Rella*, 79 A.D.3d 979, 980 [2d Dept. 2010], *quoting McGill v. Goldman*, 261 A.D2d 593, 594 [2d Dept. 1999]; *see also Ahmed v. Pannone*, 116 A.D.3d 802 [2d Dept. 2014]).

Plaintiff seeks reargument claiming the Court mistakenly denied its request to add a second breach of contract claim. The Court notes that in Plaintiff's original motion (Seq. # 003) they set forth bare bone allegations and conclusions to attempt to demonstrate the sufficiency of the pleadings. Plaintiff provided no case law to support its application. However, Plaintiff claims the Court overlooked the sufficiency of the proposed amendment, as the Reargument Decision denied the application based on the *new contract between Plaintiff and a non-party, new buyer*. Plaintiff argues there is a sufficient basis for the proposed amendment, pleading the Defendant breached the contract by filing a *lis pendens*, thereby causing Plaintiff damages in allegedly preventing a sale and decreasing the property's value. Plaintiff alleges "the elements of such claim are, of course, a contract, a breach there of and damages." In Plaintiff's footnote they attempt to reargue the Court's Pendency Decision *again*. The Court will not entertain this argument. The Plaintiff had remedies under the CPLR and an appeal is pending as it relates to the Pendency Decision.

A breach of contract claim requires a showing by the moving party that a contract existed, that the moving party performed under the contract and that the non-moving party breached the contract, resulting in damages. (*Junger v. John V. Dinan Associates, nc.* 164 Ad3D 1428 [2D Dept 2018]). Plaintiff counsel's affirmation is devoid of specific facts that would proffer a sufficient showing of a palpably sufficient pleading at this point in the litigation. Plaintiff opted to move for summary judgment and to cancel the Notice of Pendency and this Court cannot *now* ignore the law of the case as it has already been decided. '[T]he 'law of the case' operates to foreclose re-examination of [the] question absent a showing of subsequent evidence or change of law'" (*Strujan v Glencord Bldg. Corp.*, 137 AD3d 1252, 1253 [2d Dept 2016]). "The doctrine applies only to legal determinations that were necessarily resolved on the merits in [a] prior decision." (*Id.*)

The proposed amendment seeks to hold Defendant liable for damages from a *new contract* of a "potential" sale price of $1.2 million dollars, because the *lis pendens* is preventing the sale. Plaintiff continues to argue the *lis pendens* is improper and therefore, the claim is appropriate. This Court already made a legal determination on that issue. The Notice of Pendency was proper based on the Court's review of the pleadings pursuant to CPLR § 6501. Based on the law of the case, the second proposed amendment is palpably insufficient. Plaintiff is attempting to circumvent the Court's prior Orders by attempting to amend allegations which are all directly related to punishment and damages for Defendant's filing the Notice of Pendency. Plaintiffs have not cited any authority in support of it's claims, considering the Court has already ruled on this issue. Notwithstanding, Plaintiff is also relying on the same evidence it relied on in Motion Seq. #003, an email, claiming Defendants' request for *lis pendens* was made in bad faith. "[P]laintiff's subsequent motion did not point to a change of law, nor was it supported by new evidence." (*Strujan* at 1254).

The Court cannot freely grant leave to amend when there are overwhelming insufficiencies in the pleadings and sales contract. The contract contains clear contradictory terms which was decided as a matter of law in the Reargument Decision. Plaintiff cannot be successful in its arguments, as it is claiming two inconsistent theories. First, Plaintiff wants to claim it has performed under the terms of contract warranting the amendment. Then, Plaintiff also wants the Court to enforce a clause of the contract (paragraph 4), specifically to cancel the notice of pendency, *based on Plaintiff's breach of the contract*. Plaintiff is clearly frustrated with the

Court's Pendency Decision. However, the remedy is an appeal. Plaintiff's continuous frivolous attempts to reargue the Pendency Decision are a waste of judicial resources.

Slander and Tortious Interference and Punitive Damages Amendments

The determination to permit the amendment of a pleading by a party rests within the sound discretion of the court. (*Trataros Const. Inc. v. New York City School Const. Authority*, 46 A.D.3d 874 [2d Dept. 2007]). Leave to amend a pleading will be freely granted where the proposed amendment is not palpably insufficient or patently devoid of merit and will not prejudice or surprise the opposing party. (*Shovak v. Long Island Commercial Bank*, 50 A.D.3d 1118, 1120 [2d Dept. 2008]; *Lucido v. Mancuso*, 49 A.D.3d 220 [2d Dept. 2008]).

Plaintiff's Proposed Third, Fourth, and Fifth Causes of Action seek damages in the amount of 1.3 million dollars, respectively. All three claims stem from the accusation that Defendant's filing of the Notice of Pendency was improper and prevented a *new contract of sale* in the amount of $1.2 million dollars.

Plaintiff's proposed amendments are denied for the same reason as stated above. The Plaintiff is patently ignoring the law of the case. Plaintiff is attempting to add claims related to issues previously decided by this Court. The Plaintiff attempts to claim damages for $3.9 million dollars and seeks additional punitive damages based on an improperly filed *lis pendens*. As stated in the Pendency Decision, the Notice of Pendency was properly filed based on the Court's review of the pleadings pursuant to CPLR § 6501. The Third, Fourth and Fifth proposed Causes of Action are palpably insufficient and patently devoid of merit based on the law of this case. An amendment to the contrary is against the law of the case.

It must be noted that Plaintiff objected to Defendant's seven-day late opposition. Opposition would have been accepted and Plaintiff would have been provided an opportunity to reply, however, since Plaintiff's papers are insufficient there was no need to review the opposition.

Accordingly, it is hereby

ORDERED, that Plaintiff's motion (Seq. #005) is DENIED.

Any relief requested not specifically addressed herein is denied.

This constitutes the Decision and Order of this Court.

Dated: April 12, 2024
Mineola, NY

ENTER:

HON. FELICE J. MURACA, A. J. S. C.

ENTERED
Apr 18 2024
NASSAU COUNTY
COUNTY CLERK'S OFFICE