

Meyers v Rothman

2025 NY Slip Op 34912(U)

December 11, 2025

Supreme Court, New York County

Docket Number: Index No. 653198/2023

Judge: Lyle E. Frank

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

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HOWARD M. MEYERS,

Plaintiff,

- v -

WENDY H. ROTHMAN, MITCHELL R. ALFUS, JOAN L. GREENBERG

Defendant.

-----X

INDEX NO. 653198/2023
MOTION DATE 09/09/2025
MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, the motion is granted in part.

Background

This proceeding arises out of a proposed but failed sale of a co-op unit. In May of 2023, Plaintiff Howard M. Meyers entered into a purchase agreement with Wendy H. Rothman and Mitchell R. Alfus (the “Defendants”) for a co-op sale that was contingent on board of directors approval. According to the terms of the agreement, Plaintiff (the prospective buyer) made a down payment which is currently being held by the escrow agent Joan L. Greenberg (“Nominal Defendant” or “Escrow Agent”). Another provision in the purchase agreement stated that Plaintiff was not required to submit his tax returns as part of the purchase application, and that he would be entitled to a return of the down payment if the co-op board rejected his application for a failure to include tax returns. If, however, board approval was not given due to bad faith conduct by Plaintiff, then the down payment would be forfeited.

A plan was proposed whereby two board members for the co-op would privately meet with Plaintiff in his home to partially view the tax returns in lieu of submitting the records to the board online. Plaintiff accepted this offer, and the meeting was held on June 5, 2023. Prior to the meeting, Plaintiff's counsel reached out to Defendants and proposed that the purchase agreement be canceled, and a new agreement be negotiated with a difference purchase price. The Defendants declined this offer. Related to the application, Plaintiff prepared two different financial statements. Defendant alleges that the reason for the two statements is because Plaintiff was aware that one of them would then require the submission of tax records to the board, due to the lower amounts listed.

In June of 2023, the board denied Plaintiff's sale application but declined to give a reason for the decision. Plaintiff then demanded return of the deposit, and Defendants directed the Escrow Agent not to release the funds. Plaintiff brought this underlying proceeding the next month in an attempt to reclaim the down payment, pleading claims of breach of contract and conversion. Defendants timely answered and have asserted counterclaims for breach of contract and breach of the covenant of good faith and fair dealing.

Discussion

Defendants bring the present motion seeking summary judgment in their favor on the counterclaims, and to dismiss the complaint. Plaintiff opposes the motion. Under CPLR § 3212, a party may move for summary judgment and the motion "shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." CPLR § 3212(b). Once the movant makes a showing of a prima facie entitlement to judgment as a matter of law, the burden then shifts to the opponent to "produce evidentiary proof in admissible form sufficient to

establish the existence of material issues of fact which require a trial of the action.” *Stonehill Capital Mgt. LLC v. Bank of the W.*, 28 N.Y.3d 439, 448 [2016]. The facts must be viewed in the light most favorable to the non-moving party, but conclusory statements are insufficient to defeat summary judgment. *Id.*

Questions of Fact Defeat Summary Judgment on the Breach of Contract and Breach of Fiduciary Duty Claims

Defendants argue that emails and other documents show that Plaintiff failed to pursue the application in good faith. They argue that he purposefully caused the board to deny his application because he no longer wished to pay the purchase price in the agreement. Plaintiff counters by arguing that the statements on which Defendants rely are inadmissible hearsay and Defendants have otherwise failed to meet their burden. Ultimately, the Court finds that there are multiple material issues of fact that preclude summary judgment in this matter. For instance, while Defendants argue that Plaintiff intentionally sabotaged his board application and Plaintiff disputes that assertion, there is nothing in the record showing the board’s reason for rejecting the application. Without knowing why the application was denied, it cannot be said that any of Plaintiff’s alleged actions led to the rejection, therefore it cannot be said whether Plaintiff acted in good faith or bad. Furthermore, there are disputes over what occurred at the private meeting with the two board members, and to what extent certain emails sent by Plaintiff’s counsel accurately represent his position and actions regarding the proposed sale.

The Conversion Claim Should Be Dismissed as Barred by the Plain Language of the Purchase Agreement

Defendants have also sought to dismiss the claim for conversion in the complaint. This claim is based on the directions Defendants gave the Escrow Agent to retain the funds in escrow.

Under the plain terms of the purchase agreement, if one party files a notice of objection to the other party’s demand for the funds after a closing did not occur, the escrow agent is to continue holding on to the funds until there is a judicial order or a joint notice from the parties directing otherwise. It is not disputed that here, there has been no judicial order directing the release of the funds nor a joint notice from the parties. Therefore, an objection to Plaintiff’s demand for return of the funds cannot constitute conversion, and instead merely constitutes Defendants’ exercise of the rights granted them by the plain language of the purchase agreement. The Court finds Plaintiff’s argument that there can still be tort liability despite admitting that the purchase agreement directs this course of action to be unavailing. The conversion claim therefore fails to state a claim and should properly be dismissed. Accordingly, it is hereby

ORDERED and ADJUDGED that the motion is granted in part as the conversion claim is hereby dismissed, and the motion is otherwise denied.


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12/11/2025
 DATE

 LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED
 SETTLE ORDER
 INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
 GRANTED IN PART
 SUBMIT ORDER
 FIDUCIARY APPOINTMENT

OTHER
 REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: