Sullivan v Santa Maria
2025 NY Slip Op 35552(U)
February 14, 2025
Supreme Court, Westchester County
Docket Number: Index No. 63433/2024
Judge: William J. Giacomo
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To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
PRESENT: HON. WILLIAM J. GIACOMO, J.S.C.

- -

DANIEL AND KAREN SULLIVAN,
Plaintiffs,

– against –

RICARDO SANTA MARIA,
Defendant.

- x

Index No. 63433/2024

Motion Seq. 01

DECISION & ORDER

In this underlying action alleging fraud, defendant Ricardo Santa Maria moves, pursuant to CPLR 3211 (a)(7), for an order dismissing plaintiffs' complaint.

Papers Considered **NYSCEF Doc No. 8-23**

1. Notice of Motion/Affirmation of Steven V. Debraccio, Esq. in Support/Exhibits A-D/Memorandum of Law
2. Memorandum of Law in Opposition
3. Affirmation of Steven V. Debraccio, Esq. in Reply

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs commenced this action with the filing of the summons and complaint on or about June 4, 2024. Defendant joined issue by filing of its answer on or about September 18, 2024. The complaint states that plaintiffs are individuals residing in Ossining, New York and that defendant is the owner of the limited liability company Santa Maria Builders, LLC d/b/a Roundtree Construction (Roundtree). In the Spring of 2021, plaintiffs engaged defendant and his company construct a new, custom home for them. Plaintiffs advised defendant that they were "looking to spend between $4 million and $5 million on their new home." Defendant allegedly provided plaintiffs with detailed cost information, which included a scope of work and a schedule of values, based upon recently completed custom homes similar to what plaintiffs desired. Defendant represented that the total cost to construct the home would be $4,183,639.00, plus a 10% fee of $418,364.00, for the total amount of $4,602,003.00. Plaintiffs allege that they relied on defendant's experience as a home builder and his proposal to build the new home, prior to entering into a contract with Roundtree.

On April 23, 2021, plaintiffs and Roundtree entered into a contract for Roundtree to build the home. The contract set forth the same terms as defendant had presented to plaintiffs. Specifically, the cost of the work was anticipated to be, subject to reasonable adjustments by change order, $4,183,639.00, plus a fee in the amount of $418,364.00, as indicated on defendant's April 1, 2021 Scope of Work and Schedule of Values. In addition, the schedule in the contract provided that construction would begin on August 2, 2021 and would be substantially complete by September 1, 2022, subject to adjustment by change order.

The complaint alleges, among other things, that defendant engaged in a pattern of inducing plaintiffs to agree to increase the scope of the project by misleading them as to what the costs would be. As an example, defendant provided plaintiffs with a detailed estimate that it would cost $215,941.98 to construct an outbuilding. Plaintiffs allege that they agreed to add the outbuilding for the cost identified in the estimate, and executed Change Order #15 for this scope of work. Defendant then sought payment of an additional $97,127.77 to construct the outbuilding, and represented to the plaintiffs that the additional costs were legitimately incurred by Roundtree in the performance of the work. The complaint alleges that plaintiffs paid these additional costs, relying on defendant's representations. Between July 2021 and November 2023, defendant submitted 88 change orders to the plaintiffs requesting, in total, $5,226,634.39 in additional payments over and above the amount stated in the contract. Plaintiffs ultimately paid defendant the total amount of $9,408,790.67.

The complaint continues that, after the expected completion date of the house had passed, defendant refused to answer plaintiffs' inquiries about the completion. In December 2023, plaintiffs advised defendant "they would not agree to any further change orders until they received a complete accounting of the Project funds and a commitment as to when their home would be completed." Defendant purportedly refused to provide an accounting and advised plaintiffs that he would no longer work on the house unless plaintiff executed the additional change orders and paid for them. Defendant subsequently allegedly caused Roundtree to abandon the project and its contractual obligations to plaintiffs.

Plaintiffs allege that they subsequently spoke to several former Roundtree employees who were involved in the project. Plaintiffs purportedly gleaned, among other things, that the cost of the project was initially much higher than the agreed upon value, but defendant had under estimated his proposed costs to secure plaintiffs' business. Defendant allegedly developed internal estimates for the construction project but had concealed them from plaintiffs. Further, defendant purportedly knew at the time the contract was signed that the house would not be complete by the expected completion date.

The complaint sets forth numerous examples of how defendant allegedly engaged in fraud after the contract had commenced. For example, defendant allegedly routinely charged plaintiffs for correcting Roundtree's defective work, such as paying for replacing subflooring that had sustained water damage as a result of the failure to waterproof. The complaint also provides several examples of how change orders were falsified and/or misrepresented. For instance, plaintiffs claim that they paid certain change orders, believing that the change orders were legitimate costs of the work, when the money was used for a different purpose. For example, defendant misrepresented what was on the invoices by billing unskilled employees (laborers), as skilled employees (mechanics), with plaintiffs paying the higher rate. According to plaintiffs, had they known that the invoices and change orders were "inflated, fraudulent, and illegitimate," they would not have paid them.

The complaint contains two causes of action. In the first cause of action, fraudulent inducement, the complaint alleges that plaintiffs entered into a contract with Roundtree for construction of their new home as a direct and proximate result of defendant's misrepresentations. Plaintiffs are seeking punitive damages, alleging that defendant not only engaged in fraudulent patterns and practices with them, but also with other customers.

The second cause of action, fraud, alleges fraudulent actions taken after construction commenced, and incorporates the numerous invoices and change orders that defendant submitted to plaintiffs which he purportedly knew were inflated, fraudulent or illegitimate. These misrepresentations were made for the purpose of inducing plaintiffs to pay the invoices and change orders, to their detriment.

Defendant now moves to dismiss the complaint pursuant to CPLR 3211 (a) (7) for failure to state a cause of action. At the outset, although defendant is alleged to be the owner of Roundtree, he is not a party to the construction contract between plaintiffs and Roundtree. Defendant submits an affirmation in support affirming that he is the owner of the construction company and that he executed the contract with plaintiffs on behalf of the company. According to defendant, plaintiffs' claims are insufficient to pierce the corporate veil and hold defendant liable for Roundtree's contract performance. In any event, the complaint's allegations are purportedly vague and fail to meet the CPLR 3016 (b) pleading standard for a fraud or fraudulent inducement claim. Defendant argues that the "upon information and belief" allegations are insufficient to sustain the scienter requirement.

In opposition, plaintiffs argue that, as they allege defendant personally participated in the fraud against them, he can be held individually liable without the need for veil piercing. Plaintiffs also claim that the complaint's allegations are detailed and specific as to defendant's fraudulent actions and satisfy the pleading requirement to permit a reasonable inference of fraudulent conduct. For example, plaintiffs allege that they discovered fraudulent conduct after speaking with Roundtree employees involved in the project. They also allege facts identifying how and why defendant's conduct was fraudulent.

DISCUSSION

Dismissal

On a motion to dismiss pursuant to CPLR 3211 (a) (7), "the facts as alleged in the complaint are accepted as true, the plaintiff is given the benefit of every possible favorable inference," and the court must determine simply "whether the facts as alleged fit within any cognizable legal theory." *Mendelovitz v Cohen*, 37 AD3d 670, 671 (2d Dept 2007). "Whether the complaint will later survive a motion for summary judgment, or whether the plaintiff will ultimately be able to prove its claims ... plays no part in the determination of a pre-discovery 3211(a)(7) motion to dismiss." *Shaya B. Pac., LLC v Wilson, Elser, Moskowitz, Edelman & Dicker, LLP*, 38 AD3d 34, 38 (2d Dept 2006). However, "bare legal conclusions as well as factual claims flatly contradicted by the record are not entitled to any such consideration." *Silverman v Nicholson*, 110 AD3d 1054, 1055 (2d Dept 2013) (internal quotation marks and citation omitted).

Piercing the Corporate Veil

At the outset, according to defendant, as the owner of Roundtree and a nonparty to the contract, plaintiffs are unable to "pierce the corporate veil" and hold him liable for any alleged breach of his company's contract. However, defendant's argument is without merit. Where, like here, plaintiffs' causes of action are grounded in fraud, "corporate officers and directors may be held individually liable if they participated in or had knowledge of the fraud, even if they did not stand to gain personally." *Emby Hosiery Corp. v Tawil*, 196 AD3d 462, 465 (2d Dept 2021) (internal quotation marks omitted); *see also American Exp. Travel Related Services Co., Inc. v North Atlantic Resources, Inc.*, 261 AD2d 310, 311 (1st Dept 1999) ("a corporate officer who participates in the commission of a tort may be held individually liable, regardless of whether the officer acted on behalf of the corporation in the course of official duties and regardless of whether the corporate veil is pierced").

Fraudulent Inducement and Fraud

"To state a cause of action to recover damages for fraudulent inducement, there must be a knowing misrepresentation of material present fact, which is intended to deceive another party and induce that party to act on it, resulting in injury." *Tsinias Enters. Ltd. V Taza Grocery, Inc.*, 172 AD3d 1271, 1273 (2d Dept 2019) (internal quotation marks omitted). To establish a claim for fraud, plaintiff must demonstrate "a misrepresentation or a material omission of fact which was false and known to be false by defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury." *Id.* at 1272. Pursuant to CPLR 3016 (b), where the cause of action is grounded in misrepresentation or fraud, the circumstances constituting the wrong shall be stated in detail.

Here, assuming the facts to be true and according the plaintiff the benefit of every favorable inference, the allegations in the complaint set forth cognizable causes of action grounded in fraud. Plaintiffs allege that they were fraudulently induced to enter into a contract with Roundtree based on defendant's misrepresentations regarding the cost of construction and the timeline of completion. According to plaintiffs, they advised defendant of the specific budget required to construct the home. Plaintiffs then relied on defendant's assertions made to them regarding the agreed-upon cost of the project and the completion time. Plaintiffs allege that, at the time defendant made the misrepresentations, he knew they were false. They claim that defendant had developed much higher internal estimates for the project, however he had concealed them from plaintiffs. Plaintiffs continue that, had they known of the actual projected cost of the project as well as the actual timeline to complete the project, they would not have entered into a contract with Roundtree.

Accordingly, plaintiffs have sufficiently plead a cause of action for fraudulent inducement, related to defendant's actions taken prior to when plaintiffs entered into a contract with Roundtree. *See e.g. Introna v Huntington Learning Ctrs., Inc.,* 78 AD3d 896, 898 (2d Dept 2010) (internal citation omitted) (While "[g]eneral allegations that a defendant entered into a contract with the intent not to perform are insufficient to support a cause of action grounded in fraud . . a misrepresentation of a material fact which is collateral to the contract and serves as an inducement to enter into the contract is sufficient to sustain a cause of action sounding in fraud").

Plaintiffs have also adequately pleaded allegations against defendant for fraudulent actions taken by him after the construction commenced. As one of the numerous examples proffered in the complaint, the complaint alleged that defendant routinely and intentionally improperly charged plaintiffs to correct Roundtree's defective work. Although plaintiffs were relying on defendant for the accuracy of these invoices, defendant misrepresented to plaintiffs that the invoices were legitimate. Plaintiffs paid the invoices and sustained damages as a result.

According to defendant, plaintiffs failed to plead sufficient facts to state their causes of action. However, "the complaint alleged all of the elements constituting fraud, and further stated the basic facts to establish those elements, as required by CPLR 3016 (b)"). *Minico Ins. Agency, LLC v AJP Contr. Corp.,* 166 AD3d 605, 607 (2d Dept 2018) (internal quotation marks and citations omitted). Although fraud claims have a heightened pleading requirement, courts have held that the purpose of this requirement "is to inform a defendant with respect to the incidents complained of and should not be confused with unassailable proof of fraud." *Id.* at 607-608. As noted above, here, plaintiffs alleged a specific misrepresentation, intentionally made by defendant prior to retaining plaintiffs as customers, which plaintiffs' relied on to their detriment and incurred substantially more costs than anticipated. *See e.g. Emby Hosiery Corp. v Tawil,* 196 AD3d at 465 ("The plaintiff alleged specific misrepresentations, intentionally made by the individual defendants in the context of purchasing more goods from the plaintiff despite outstanding balances owed to the plaintiff, and that the plaintiff relied upon that misrepresentation to its detriment").

Further, contrary to defendant's contention, while some of the plaintiffs' allegations begin with "upon information and belief," they satisfy the pleading standard. Courts have held that "[w]hile information peculiarly within the opposing party's knowledge may be pleaded generally, or upon information and belief, the allegations must be accompanied by a statement of the facts upon which the belief is based." *Board of Mgrs. of Beacon Tower Condominium v 85*

Adams Street, LLC, 136 AD3d 680, 686 (2d Dept 2016) (internal citation omitted). With respect to the allegedly fraudulent invoices, the complaint sets forth that plaintiffs spoke to Roundtree employees who had worked on the project and plaintiffs provide specific details of the purported misrepresentations. For example, the complaint sets forth the following:

> "Upon information and belief, Mr. Santa Maria routinely charged the Sullivans for correcting Roundtree's own defective, nonconforming, or incomplete work. For example, Mr. Santa Maria billed the Sullivans for correcting Roundtree's improper framing on the back porch of the house, improper stonework on the fireplace, improper framing on several of the houses doors, improper framing of windows and doors, and improper installation of the siding on the exterior of the house, and for replacing subflooring that suffered water damage as a result of a failure to weatherproof."

Thus, the Court finds that "the facts are sufficient to permit a reasonable inference of the alleged conduct," and the pleading requirement of CPLR 3016 (b) has been satisfied. *Minico Ins. Agency, LLC v AJP Contr. Corp.*, 166 AD3d at 608.

Accordingly, for the reasons provided above, defendant's motion to dismiss is denied. *See e.g. Great Eagle Intl. Trade, Ltd. v Corporate Funding Partners, LLC,* 104 AD3d 731, 732 (2d Dept 2013) ("At this early juncture, accepting the factual allegations in the complaint as true, including the allegations as to the corporate positions and titles of these individual appellants, and according the plaintiffs every favorable inference, the plaintiffs adequately pleaded facts from which it could be inferred that these individuals were involved in or knew about the alleged fraudulent conduct").

All other arguments raised on this motion and evidence submitted by the parties in connection thereto have been considered by this court, notwithstanding the specific absence of reference thereto.

CONCLUSION

Accordingly, it is hereby

ORDERED that defendant's motion to dismiss the complaint is denied.

The parties are reminded of their upcoming virtual compliance conference scheduled for March 31, 2025 at 10:30 a.m., subject to confirmation by the virtual conference link emailed by this Court.

Dated: White Plains, New York
February 14, 2025

William J. Giacomo

HON. WILLIAM J. GIACOMO, J.S.C.