

Mattone Group Springnex, LLC v Mattone

2024 NY Slip Op 31525(U)

April 15, 2024

Supreme Court, Queens County

Docket Number: Index No. 725196/2021

Judge: Leonard Livote

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

SHORT FORM ORDER

NEW YORK STATE SUPREME COURT - QUEENS COUNTY

Present: HONORABLE Leonard Livote

Supreme Court Justice

COMMERCIAL
DIVISION
PART A

-----X
MATTONE GROUP SPRINGNEX, LLC,

Index No: 725196/2021

Plaintiff,

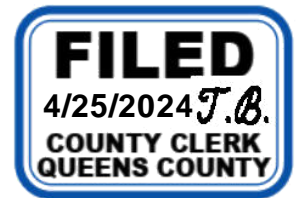
-against-

Motion Date: 3/5/2024

CARL F. MATTONE,

Seq. No: 3

Defendant.



-----X

The following papers numbered below read on this motion by Plaintiff for an Order: (i) pursuant to CPLR 3212, granting summary judgment as to liability on Springnex’s Third Cause of Action for breach of contract as against Defendant Carl F. Mattone (“Carl”); (ii) pursuant to CPLR 3212 (g), limiting the issues for trial and holding that the following facts are not in dispute or are incontrovertible: a. Before he filed the dissolution petition on August 7, 2020, Carl had actual knowledge that Springnex’s mortgage, previously held by Principal Life Insurance Company, was assigned to Medici Capital, LLC on July 1, 2020; b. Before he filed the dissolution petition on August 7, 2020, Carl had actual knowledge that Springnex was in negotiations with Sterling National Bank to refinance the mortgage; and c. After he filed the dissolution petition, Carl had actual knowledge that Springnex could not close on the Sterling refinance if he did not withdraw the petition; (iii) awarding such other and further relief as the Court deems just and proper.

PAPERS
NUMBERED

Notice of Motion, Affirmation, Affidavits
and Exhibits.....54-94

Cross Motion, Affirmation, Affidavits
and Exhibits.....

Answering Affirmations, Affidavits
And Exhibits.....95-118

Reply Affirmations, Affidavits
And Exhibits.....119-121

Other

Upon the foregoing papers, the motion is decided as set forth below.

Plaintiff Mattone Group Springnex, LLC (“Springnex”) was formed in 1999, the members of which are parties to an operating agreement. Springnex’s general manager is JMM SPE Corp., the president of which is Michael Mattone. Springnex holds the ground lease to a commercial shopping center known as the Springfield Gardens Shopping Center. Defendant Carl Mattone was a member of Springnex until 2013, when he assigned his membership interest in Springnex to his company CFM Development LLC. In or about May 2010, Springnex entered into a loan agreement in the amount of \$24 million, consolidating its prior mortgage loans through its lender, Principal Life Insurance Company (“Principal”). Carl Mattone personally guaranteed this mortgage loan. The mortgage was set to mature on July 1, 2020, on which date a balance of approximately \$20 million would be due. As the maturity date approached, Springnex sought a \$30 million refinancing from new lender, Sterling National Bank. To facilitate the refinancing deal, Springnex obtained a bridge loan from Medici Capital, LLC (“Medici”). When the mortgage matured on July 1, 2020, Principal assigned it, at Michael Mattone’s direction, to Medici. The relationship between Carl Mattone and Michael Mattone and Springnex’s other members deteriorated, and Carl Mattone petitioned to dissolve Springnex on August 7, 2020. Springnex has now instituted the instant action, alleging, in part, that Carl Mattone’s dissolution petition violated the operating agreement.

Summary judgment is a drastic remedy that should only be employed when there is no doubt as to the absence of any triable issues of a material fact (*Kolivas v Kirchoff*, 14 AD3d 493 [2nd Dept 2005]). "Issue finding, rather than issue determination is the court’s function. If there is any doubt about the existence of a triable issue of fact, or a material issue of fact is arguable, summary judgment should be denied" (*Celardo v Bell*, 222 AD2d 547 [2d Dept 1995]). "In the context of a motion for summary judgment, the court is obliged to draw all

reasonable inferences in favor of the non-moving party, and may not pass on issues of credibility" (*Rizzo v Lincoln Diner Corp.*, 215 AD2d 546 [2d Dept 2005]).

The party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, offering sufficient evidence to demonstrate the absence of a triable issue of fact (CPLR Section 3212(b); *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Megafu v. Tower Ins. Co. of New York*, 73 A.D.3d 713 [2d Dept 2010]). However, once the moving party has satisfied this obligation, the burden then shifts; "the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action" (*Zuckerman v. City of New York*, supra).

With respect to Plaintiff's cause of action for breach of contract, the Court need not consider the merits of the claim as it has been rendered moot by the parties' stipulation and agreement that Defendant did not retain any portion of his former membership interest. In Plaintiff's cause of action for breach of contract, Plaintiff pled "if and only if, the Court concludes that Carl retained for himself a portion of his former membership interest in Springnex, then Carl breached the Amended and Restated Operating Agreement." The parties have stipulated and agreed that as of 2013, Defendant has no membership interest in Plaintiff. Because Defendant admits that he has held no membership interest in Plaintiff since 2013, it is undisputed that Defendant did not retain any portion of his former membership interest following the assignment of his interest to CFM. Therefore, pursuant to Plaintiff's own language in his cause of action, the Court need not consider the breach of contract claim. Accordingly, Plaintiff's third cause of action for breach of contract is dismissed.

Plaintiff also moves pursuant to CPLR 3212(g) for the Court to limit the issues for trial and find that certain facts are incontrovertible. CPLR 3212(g) empowers the Court to specify what facts are not in dispute or are incontrovertible, so that they may be deemed established for all purposes in the action (*see, Phillip v D & D Carting Co., Inc.*, 136 AD3d 18, 25 [2d Dept 2015]). Here, Plaintiff seeks to have the Court determine the following three fact issues: (1) Defendant's actual knowledge of the mortgage assignment to Medici, (2) Defendant's actual knowledge of the mortgage refinance negotiations, and (3) Defendant's actual knowledge that Plaintiff could not close on the Sterling refinance if Defendant did not withdraw the petition.

First, Plaintiff asks the Court to declare incontrovertible that before he filed the dissolution petition on August 7, 2020, Defendant had actual knowledge that Plaintiff's mortgage, previously held by Principal Life Insurance Company, was

assigned to Medici Capital, LLC on July 1, 2020. The record establishes that on July 9, 2020, Defendant was made aware of a news article reporting the mortgage acquisition and public filings showing that Medici acquired the mortgage from Principal. The news article and public filings were also attached to the petition as exhibits. Further, Defendant admitted that he found out about the Medici assignment from the news article. Thus, the record establishes that it is incontrovertible that Defendant has actual knowledge that the mortgage had been assigned to Medici prior to filing the dissolution petition. Defendant argues that the information he had regarding the assignment was not sufficient to ensure that the assignment was sustainable as he was deprived of information regarding Medici's financial ability to hold the loan, the duration of the bridge loan, the loan terms, interest rate, and its impact on Defendant's personal guaranty. However, the Court makes no determination as to Defendant's knowledge of the viability or sustainability of the assignment, only that it had occurred. It is indisputable that Defendant knew Medici had acquired the mortgage before he filed the petition. Accordingly, the branch of motion regarding Defendant's actual knowledge of the Medici assignment is granted.

Second, Plaintiff asks the Court to declare incontrovertible that before he filed the dissolution petition on August 7, 2020, Defendant had actual knowledge that Plaintiff was in negotiations with Sterling National Bank to refinance the Mortgage. Here, Plaintiff relies on a memo Michael Mattone sent to Defendant stating that a refinance with Sterling was working its way through their approval process and anticipated to close in August or September. The memo does not mention anything relating specifically to negotiations. The mere statement by Michael Mattone that he anticipated to refinance with Sterling cannot be said have given Defendant actual knowledge that negotiations were taking place. Accordingly, the branch of motion regarding Defendant's actual knowledge of the mortgage refinance negotiations is denied.

Third, Plaintiff asks the Court to declare incontrovertible that after he filed the dissolution petition, Defendant had actual knowledge that Plaintiff could not close on the Sterling refinance if he did not withdraw the petition. In support of this alleged fact, Plaintiff relies on a letter sent from Plaintiff's counsel to Defendant's counsel stating that Sterling would not close on the loan refinance while the dissolution petition was pending. The fact that Plaintiff's counsel told Defendant's counsel that the dissolution petition would prevent the refinancing did not impart upon Defendant actual knowledge that Sterling would not close on the refinancing with the petition pending. The Court cannot say that a statement made in a litigious letter by an adverse attorney advocating for his client by itself provides actual knowledge of the facts alleged in the statement. Accordingly, the branch of motion regarding Defendant's actual knowledge that Plaintiff could not

close on the Sterling refinance if Defendant did not withdraw the petition is denied; and it is

ORDERED, that Plaintiff's third cause of action for breach of contract is dismissed; and it is further

ORDERED, that for all purposes in this action, the fact that before he filed the dissolution petition, Defendant had actual knowledge that Plaintiff's mortgage, previously held by Principal Life Insurance Company, was assigned to Medici Capital, LLC.

Any other and/or further relief requested and not specifically addressed is denied.

This constitutes the Order of the Court.

Dated: 4/15/2024



Leonard Livote, J.S.C.

