Yano v Old Republic Natl. Tit. Ins. Co.
2016 NY Slip Op 30788(U)
April 25, 2016
Supreme Court, New York County
Docket Number: 652180/12
Judge: Saliann Scarpulla
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 39

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NORIKO YANO,

Plaintiff,

Index No. 652180/12

-against-

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY,

Defendant.

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Saliann Scarpulla, J.:

This is an action for breach of contract in connection with a title insurance policy issued by defendant Old Republic National Title Insurance Company ("Old Republic") to plaintiff Noriko Yano ("Yano"). Old Republic moves, pursuant to CPLR § 3212, for an order granting summary judgment dismissing the complaint.

Background

Yano is a citizen of Japan who lives in New York City and works as an artist. She currently resides in an apartment (the "Apartment") consisting of the entire second floor of a building located at 20 St. Marks Place in Manhattan (the "Building"). The Building is owned by non-party St. Marks Bros. Inc. ("St. Marks Bros."), a New York corporation.

According to the complaint, in December 1999, Yano purchased 18 shares of stock of St. Marks Bros. and entered into a fifty-year lease for the Apartment, for a total of $499,000. In that same month, Old Republic conducted a title search for Yano and eventually issued both a Commitment for Title Insurance ("Committment") and a Title Insurance Policy ("Title Policy").

The Title Policy contains an endorsement entitled "Cooperative Endorsement (Owner's Policy)" which provides, in relevant part, that:

> the Company hereby insures against loss or damage by reason of:
>
> (1) the title to the cooperative building(s) and the land of which the apartment/unit described in Schedule A forms a part not being vested in a duly formed Corporation/Partnership, formed for the purpose of the cooperative ownership of the land;
>
> (2) the premises not being a part of a cooperative regime validly created pursuant to the laws of the State of New York, subject however to the terms and provisions of the offering plan, as amended...

Yano alleges that she believed that the stock of St. Marks Bros. and the lease to the second floor were issued to her by a corporation formed for the purpose of cooperative ownership of the Building. However, Yano further alleges that, in fact, the stock of St. Marks Bros. and the lease to the second floor space acquired by Yano were not part of a cooperative building or a cooperative regime. Instead, the Building was registered and

continues to be registered by the City of New York as a Class B multiple dwelling containing 28 units.

The closing date of Yano's purchase was January 24, 2000. As alleged in the complaint, the president of St. Marks Bros. expressed doubt that the transaction was permissible under state law and insisted that Yano hold the corporation harmless in the event that the transaction was determined not to be legitimate. On that same date, St. Marks Bros. drafted an indemnity letter bearing Yano's name holding St. Marks Bros. harmless in connection with the transaction. Yano states that the letter was signed on her behalf by her attorney, non-party Herbert Kramer (Kramer), without her knowledge.[1]

In July, 2006, Yano filed a notice of claim with Old Republic seeking the full value of the Title Policy. According to Old Republic, it was at this point that it discovered that it inadvertently inserted a "Cooperative" endorsement instead of a "Leasehold" endorsement into the final policy which was delivered after the closing.

On September 13, 2006, Old Republic rescinded the Cooperative Endorsement and denied Yano's claim as an "act of the insured" under Exclusion 3 (a) to the Title Policy. Old

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[1] On June 17, 2013, Yano filed an action in this court for breach of fiduciary duty against Kramer and Christopher Vickrey, who acted as an interpreter for Yano in conversations between Yano and Kramer. That action is titled *Yano v. Herbert Kramer, Esq., Herbert Kramer, PLLC, and Chris Vickrey*, Index No. 155646/2013, and is currently stayed before Justice Joan Kenney pending the resolution of this action before me.

Republic determined that Yano expressly acknowledged and agreed to purchase an apartment which was not part of an approved cooperative.

In February 2012, St. Marks Bros. commenced an action for breach of contract against Yano in this court titled *St. Marks Bros. Inc. v. Noriko Yano*, Index No. 101558/12. In the action St. Marks Bros. alleged, among other things, that Yano had failed to pay her pro rata share of the Building's expenses since 2001, as required under her lease.[2]

Yano commenced this action in June 2012. Presently, only the first cause of action is viable.[3] In the first cause of action Yano seeks a declaratory judgment and for breach of contract with respect to Old Republic's denial of her claim under the Title Policy. Specifically, Yano alleges that Old Republic breached the Title Policy by denying Yano's demand for coverage and by refusing to pay for the damages sustained by Yano resulting from the fact that the Building is not a cooperative building and is not vested in a corporation validly formed for the purpose of the cooperative ownership of the land. Yano seeks damages of $499,000 plus interest from January 24, 2000.

Yano alleges that Old Republic knew or should have known that the Building was not part of a cooperative building or cooperative regime, that the purchase was not a legitimate

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[2] *St. Marks Bros. Inc. v. Noriko Yano* was marked "settled" on December 23, 2015.

[3] The second cause of action, for the cost of removing and relocating property, and the third cause of action, for maintenance charges and damages, were dismissed by Justice Barbara Kapnick in an order dated November 6, 2013.

transaction and that the interest purchased by Yano was part of a Class B multiple dwelling. As such, Yano alleges that, because Old Republic issued a title policy with a cooperative endorsement over such defects, it is estopped from asserting that such defects support a denial of her claim under the Title Policy.

Discussion

Old Republic argues that the first cause of action should be dismissed because the Cooperative Endorsement was inserted into the policy by error. It argues that both itself and Yano understood that the Building and the Apartment were not part of a validly formed cooperative and they understood that Yano was, in fact, renting the Apartment and buying shares in St. Marks Bros.

It is well-settled that "[a] written agreement may be reformed for mutual mistake where 'the parties have reached an oral agreement and, unknown to either, the signed writing does not express that agreement.'" *Ebasco Constructors v. Aetna Ins. Co.*, 260 A.D.2d 287, 290 (1st Dept. 1999) (citation omitted). In fact, "'[w]here there is no mistake about the agreement and the only mistake alleged is in the reduction of the agreement to writing, such mistake of the scrivener, or of either party, no matter how it occurred, may be corrected.'" *Id.* (citation omitted). Further, "[w]hen, through innocent mistake, the nature of the ownership of the property to be insured is misdescribed, that constitutes mutual error for

purposes of reformation, even though the insurer is not aware of the error." *Crivella v. Transit Cas. Co.*, 116 A.D.2d 1007, 1008 (4th Dept. 1986).

Here, the documents submitted demonstrate that the parties understood, at the time the policy was issued, that the Apartment was not part of a validly formed cooperative. First, it is undisputed that paragraph 43 of a Rider to the contract of sale provides, in relevant part, that:

> Notwithstanding anything contained in the Contract, Seller hereby represents to Purchaser and Purchaser acknowledges that:
>
> * * *
>
> (b) the Attorney General of the State of New York has not issued a "no action letter" with respect to the Premises nor has the Attorney General accepted for filing an offering plan for the sale of cooperative apartment units at the Premises, and the current owners and holders of the stock of the Corporation and leases for units in the Premises did not purchase their interest pursuant to an offering plan; and
>
> (c) notwithstanding any reference to "cooperative apartments" or "cooperative apartment corporation" contained in this Contract, such terms are merely used to denote an ownership interest in an apartment evidenced by shares of stock in the Corporation and lease for such apartment from the Corporation and the use of the terms "cooperative apartments" or "cooperative apartment corporation" is in no way meant to imply that the Attorney General of the State of New York has reviewed or approved a cooperative apartment regime for the Premises or that the Premises has in any other manner been subjected to a cooperative apartment regime.

This provision plainly shows that Yano was purchasing shares in the corporation and obtaining a lease for the Apartment, which, as set forth above, was for a term of fifty years, rather than purchasing an apartment in a duly formed cooperative.

Further, it is undisputed that the final Title Policy issued to Yano after the closing, to which the Cooperative Endorsement was attached, identifies the interest insured by the policy as a leasehold acquired through a lease agreement with St. Marks Bros. in January 2000.

This undisputed evidence demonstrates the parties' objective understanding at the outset that the Apartment was not part of a validly formed cooperative, contrary to Yano's contention in this action.

Other evidence confirms that the Cooperative Endorsement was inserted into the policy in error. For example, the order for title insurance placed by Kramer in November 1999 indicated that Yano was seeking a title search and commitment in connection with a building that was "acting like a cooperative but not a true cooperative." The application for title insurance, also dated November 1999, stated that the Apartment was part of a "homemade cooperative bldg." and set forth that there were no filings on record with the Attorney General in connection with the Building. Further, the title commitment issued by Old Republic indicated that Yano's insurable interest was pursuant to a lease agreement.

Also, Herbert Kramer, Yano's attorney, states in his affidavit that he conveyed to Yano, and she understood, that she was purchasing shares in a corporation and obtaining a lease to an apartment that was not part of a valid cooperative. He states that he informed her of the risks of such a transaction, including the potential impact on her ability to later sell the Apartment. Kramer states that Yano indicated that she wanted to proceed with the

transaction in any event, because it afforded her an opportunity for favorable pricing as compared to that of a traditional cooperative. Kramer's attestations are supported by an affidavit from Yano's interpreter, Christopher Vickrey, who states that he took part in several conversations between Kramer and Yano in which they discussed the potential risks of purchasing the Apartment, including the fact that the Building was not part of a typical cooperative.

In opposition to Old Republic's motion, Yano argues that she was unaware of the fact that the Apartment and the Building were not part of a cooperative. She states that this information was not conveyed to her by Herbert Kramer and that he executed the transactions at issue without her knowledge. Even if true, Yano's claim is unpersuasive because Kramer was authorized by Yano to act as her agent and to execute the purchase of the shares and the signing of the lease, as well as to procure the title insurance. Indeed, in her affidavit accompanying the Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment, Yano states that she "allowed Mr. Kramer to act as my attorney-in-fact at the closing."

An agent's actions "and the knowledge they acquire while acting within the scope of their authority are presumptively imputed to their principals." *Kirschner v. KPMG LLP*, 15 N.Y.3d 446, 465 (2010). Furthermore, an attorney's knowledge is imputed to its client "even if the attorney 'act[ed] less than admirably [or] exhibit[ed] poor business judgment.'"

Emigrant Mtge. Co., Inc. v. Biggio, 110 A.D.3d 673, 675 (2d Dept. 2013) (citation omitted). Here, the documentary evidence and Herbert Kramer's affidavit demonstrate that he knew and understood that the Apartment and the Building were not part of a validly formed cooperative. Therefore, under New York law, even assuming that Yano did not have direct knowledge of the structure of the deal, the knowledge of Kramer (her attorney) is imputed to her.

In sum, I find that Old Republic has sufficiently demonstrated that the parties knew that the Apartment was not part of a cooperative and that they mutually erred in executing a title policy with an endorsement insuring such an interest. Accordingly, Old Republic has met its burden on the summary judgment motion, and Yano has failed to raise a triable issue of fact in opposition.

In accordance with the foregoing, it is

ORDERED that the motion for summary judgment by defendant Old Republic National Title Insurance Company is granted and the complaint is dismissed; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

DATED:

4/25/16

ENTER:

HON. SALIANN SCARPULLA
J.S.C.