

**Pappas v Schatz**

2014 NY Slip Op 30946(U)

April 9, 2014

Sup Ct, New York County

Docket Number: 650157/13

Judge: Melvin L. Schweitzer

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : PART 45

-----X  
STEVE PAPPAS,

Plaintiff,

-against-

LARRY H. SCHATZ and GRUBMAN, INDURSKY,  
SHIRE & MEISELAS, P.C.,

Defendants.  
-----X

Index No. 650157/13

DECISION AND ORDER

Motion Sequence No. 002

**MELVIN L. SCHWEITZER, J.:**

Plaintiff, Steve Pappas (Mr. Pappas) brings causes of action for breach of fiduciary duty, fraud, and negligent misrepresentation. Defendants seek to dismiss the complaint in its entirety pursuant CPLR 3211 (a) (5) on the grounds that the current proceeding is barred by the doctrine of *res judicata*.

**Background**

The facts are taken from plaintiff's complaint.

Larry Schatz (Mr. Schatz), and Grubman, Indursky, Shire & Meiselas, P.C. (Grubman) are an attorney and law firm practicing in the State of New York. Mr. Schatz is employed by, or an owner or shareholder in Grubman. Mr. Schatz and Grubman are collectively referred to as Grubman.

In 2005, Mr. Pappas, Constantine Ifantopoulos (Mr. Ifantopoulos), and Steve Tzolis (Mr. Tzolis) formed Vrahos LLC (Vrahos), a Delaware limited liability company, for the purpose of entering into a long-term lease for a building in lower Manhattan at 68-74 Charlton Street. Mr. Pappas and Mr. Tzolis each contributed \$50,000 and Mr. Ifantopoulos contributed \$25,000 in exchange for proportionate shares in Vrahos. Pursuant to a January 2006 Operating Agreement

(Operating Agreement), Mr. Tzolis agreed to post and maintain a security deposit of \$1,192,500 and to sublet the property from Vrahos. The Operating Agreement provided that any of the three members of Vrahos could “engage in business ventures and investments of any nature whatsoever, whether or not in competition with the LLC, without obligation of any kind to the LLC or to the other Members.”

In June 2006, the property was subleased by Vrahos to a company owned by Tzolis for \$20,000 per month in addition to rent payable by Vrahos under the lease. Mr. Pappas and Mr. Ifantopoulos reluctantly agreed to this arrangement because Mr. Tzolis was obstructing their efforts to lease the building to a third party. Mr. Tzolis would not cooperate in listing the property for sale or lease with any New York City real estate brokers.

In the Fall of 2006, Mr. Tzolis met with Extell Development Company (Extell) to negotiate the assignment of the lease by Vrahos to Extell. Grubman participated in these negotiations. Mr. Pappas was not informed of this initiative. Extell told Mr. Tzolis it wanted Mr. Pappas and Mr. Ifantopoulos out of Vrahos before it would enter into a transaction. It also insisted on a 50-year extension of the lease by the owner of the building. In the Fall of 2006, Mr. Tzolis and Grubman approached the landlord and solicited a 50-year lease extension. Again, Mr. Pappas was not informed of the proposed extension.

On January 18, 2007, Mr. Tzolis took assignments of Mr. Pappas and Mr. Ifantopoulos' membership interests in Vrahos for \$1,000,000 and \$500,000, respectively. In connection with the assignment of Mr. Pappas' interests, Grubman solicited Mr. Pappas and told him that Mr. Tzolis wanted to purchase the interests in order to fulfill his life long dream of creating the best catering hall in New York City, to be named “Talk of the Town.” Grubman did so while aware of the proposed Extell transaction. The misrepresentations were made in November and

December 2006, and January 2007. In making such misrepresentations Grubman held itself out as counsel for Vrahos. In August 2007, Vrahos, owned entirely by Mr. Tzolis, assigned the lease to a subsidiary of Extell for \$17,500,000.

#### Prior Litigation

In April 2009, Mr. Pappas and Mr. Ifantopoulos brought an action against Mr. Tzolis claiming that, by failing to disclose the negotiations with Extell, Mr. Tzolis breached his fiduciary duty to them. The Supreme Court dismissed the complaint in its entirety citing the Operating Agreement and a Certificate delivered at closing of the assignments of the Vrahos interests in which Mr. Pappas and Mr. Ifantopoulos represented that, as sellers, they had “performed their own due diligence in connection with [the] assignments . . . engaged [their] own legal counsel and [were] not relying on any representation by Steven Tzolis [.] or any of its agents or representatives, except as set forth in the assignments & other documents delivered to the undersigned Sellers today” and that “Steve Tzolis has no fiduciary duty to the undersigned Sellers in connection with [the] assignments.” The Appellate Division modified the Supreme Court’s order allowing four of plaintiff’s claims to proceed. The Court of Appeals reversed, holding that where “a principal and fiduciary are sophisticated entities and the relationship is not one of trust, the principal can not reasonably rely on the fiduciary without making additional inquiry.” *Centro Empresarial Cenpresa S.A. v America Movil, S.A.B. de C.V.*, 17 NY3d 269 (2011).

It is significant here that in an affidavit of Mr. Pappas submitted in the prior litigation he swore that Mr. Schatz acted as the attorney for Mr. Tzolis at the time of the assignments of the Vrahos interests and, in fact, that Mr. Schatz insisted that Mr. Pappas and Mr. Ifantopoulos sign the Certificate referred to above.

### Discussion

Defendants contend that the doctrine of *res judicata* bars the plaintiff's complaint, saying a party may not re-litigate against an agent the issues the parties already litigated and lost against the principal. *Israel v Wood Dolson Co.*, 1 NY2d 116,118 (1956). This is the clear law in the State of New York.

The doctrine of *res judicata*, stated generally, is that "an existing final judgment rendered upon the merits by a court of competent jurisdiction, is binding upon the parties and *their privies* in all other actions or suits on points and matters litigated and adjudicated in the first suit or which might have been litigated therein." *Israel v Wood Dolson Co.*, 1 NY2d 116, 118 (emphasis added). Additionally, the Court of Appeals stated, "in cases involving the relationship of principal and agent . . . the liability of more than one party turns on, or is dependent upon, identical issues. In such situations when the complaining party has been given a full opportunity to litigate those issues against one of the parties, and has been defeated on grounds other than a personal defense, he is not permitted to relitigate the same issue in a new action against the other." *Id at 119*.

Mr. Pappas is unquestionably barred from bringing claims against Grubman acting as Mr. Tzolis' agent. His attempts to avoid this prohibition by alleging that Grubman was acting as counsel for Vrahos is contradicted by the characterization of Grubman as counsel for Mr. Tzolis in his own affidavit referred to above.

There is no doubt that Mr. Pappas was seriously at odds with Mr. Tzolis at the time he sold his interests to Mr. Tzolis. There is also no doubt that Mr. Pappas believed at the time of the sale that Mr. Tzolis was represented by Grubman. Knowing that this is fatal to his case here, he seems to be alleging that when Grubman told him of Mr. Tzolis' future intent, Grubman was

also representing Vrahos. Consequently, he argues his claim is based on a separate relationship and is not barred by *res judicata*.

This simply does not pass muster. When Grubman told Mr. Pappas of Mr. Tzolis' intent with respect to the use of the lease, Mr. Pappas certainly knew that Grubman was sharing Mr. Tzolis' state of mind, which he had learned as counsel to Mr. Tzolis. It is inconceivable that when Grubman shared his knowledge of Mr. Tzolis' state of mind, Mr. Pappas thought that he was acting on behalf of any party other than Mr. Tzolis. It is pure fantasy that Mr. Pappas thought Grubman was speaking on behalf of Vrahos when he knew Grubman was Mr. Tzolis' attorney. His assertion that he thought Grubman was speaking for Vrahos is nothing but a transparent attempt to dodge the full impact of the decision of the Court of Appeals.

Mr. Pappas' claims are without merit.

In the prior litigation, the Court of Appeals dismissed Mr. Pappas claims of breach of fiduciary duty, fraud, and misrepresentation against Mr. Tzolis. Therefore, Mr. Pappas has had a full opportunity to litigate the issues here, and the doctrine of *res judicata* bars him from bringing identical claims against Grubman, as agents for Mr. Tzolis in the buy-out transaction.

Ordered that defendants' motion to dismiss the complaint is granted.

Dated: April 9, 2014.

ENTER:

J.S.C.

MELVIN L. SCHWEITZER