

Yu v Guard Hill Estates, LLC
2018 NY Slip Op 32466(U)
September 28, 2018
Supreme Court, New York County
Docket Number: 656510/2016
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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PATRICK K. YU,

Plaintiff,

Index No.: 656510/2016

- v -

GUARD HILL ESTATES, LLC, RAYMOND YU,
AND CATHERINE YU,

DECISION AND ORDER

Defendants,

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Saliann Scarpulla, J.

In this action, *inter alia*, to recover damages for breach of fiduciary duty, defendants Guard Hill Estates, LLC (“Guard Hill”), Raymond Yu (“Raymond”) and Catherine Yu (“Catherine”) move to dismiss the complaint.

Guard Hill was formed pursuant to an operating agreement executed on November 12, 2002. Plaintiff Patrick K. Yu (“Patrick”), and his siblings Raymond and Catherine each owned a third of Guard Hill, and each was named as managing member. Guard Hill was a holding company, created to provide an easy transition of family property from the Yu parents, May Yu and Bong Yu, to their children. Guard Hill held the remainder interest in the Yu family’s property in Bedford, New York. No change to the LLC operating agreement had allegedly been made for more than ten years.

In 2013, a family dispute, which is now the subject of several lawsuits, arose between Patrick and his parents and siblings.¹ Bong Yu allegedly disapproved of certain

¹ See the decision/order in *Matter of Yu v. Yu*, Index No. 656611/2016 for a complete recitation of the background facts in this case.

of Patrick's life decisions, and demanded that he sell his interests in the family businesses. According to Patrick, Bong offered to purchase Patrick's interests in the family businesses for less than 5% of their fair value, and he refused. His family members then allegedly began to take retaliatory actions against him to coerce him into selling his shares.

As part of the many retaliatory actions alleged by Patrick to have been taken by his family against him, as relevant to this action, he claimed that (1) in July 2015, Raymond and Catherine amended the two LLCs' operating agreements to remove Patrick as managing member of both LLCs, with no notice or explanation; (2) on January 29, 2016, Raymond and Catherine amended the two LLCs' operating agreements to add a provision stating that managers (Raymond and Catherine) could demand capital contributions from all members including Patrick, if they determine that such contributions are required, and if such demand is not met, the members' interest in the LLCs may be foreclosed; and (3) on September 22, 2016, Guard Hill announced a capital call and demanded \$590,887, knowing that Patrick was financially unstable and could not afford to make the payment.

The capital call was purportedly exercised to reimburse Bong and May Yu for renovations made to the Guard Hill property, and to pay off the mortgage on the property. Patrick alleged that no explanation was given as to why that demand was made at that time, when no action had been taken for many years. He believed it was a retaliatory act taken against him for making certain decisions in his life, refusing to give up his shares in

the Yu family entities, and for demanding access to the books and records of Yu family entities.

On October 14, 2016, Patrick was notified by letter that he was in default on the capital call and that his siblings had submitted their portions of the capital call. On December 12, 2016, Patrick was notified by letter that his siblings advanced his portion of the capital call to Guard Hill and executed two promissory notes for the loans given to Patrick. Annexed to the letter were two pledge and security agreements, each pledging half of Patrick's stake in Guard Hill as security for notes. Subsequently, Guard Hill paid off the mortgage owed on the property and reimbursed Bong and May for the cost of the renovations.

Patrick commenced this action (1) seeking a judgment declaring that the capital call was invalid; (2) seeking a judgment declaring that the promissory notes and pledge agreements were void and unenforceable because they were not executed pursuant to a valid power of attorney; (3) alleging a violation of New York Limited Liability Company Law Section 409; and (4) alleging breach of fiduciary duty.

Defendants now move to dismiss the complaint. They argue that the first claim for a declaratory judgment must be dismissed because: (1) the amendments to the agreement were properly made by the majority of the membership interests in the company; (2) the capital calls were authorized pursuant to the amendments to the agreement; and (3) the notice clearly communicated to Patrick that the managers determined, as was their right pursuant to the operating agreement, that a capital call was "required." As to the second claim for a declaratory judgment, they argue that it must be

dismissed because the promissory notes and pledge agreements were validly executed in accordance with the operating agreement and the General Obligations Law.

They next argue that Patrick's claim that they breached their fiduciary duties as managers under the common law and under LLCL Section 409 is without merit. While they admit that they owe Patrick a fiduciary duty, they argue that there is no support for the allegation that the duty was breached because Patrick fails adequately to plead any actionable misconduct on their part or any damages directly caused by any alleged misconduct. Rather, the conduct complained of is consistent with their rights and obligations under the operating agreement and the LLCL.

In opposition, Patrick argues that the declaratory judgment claims cannot be dismissed because he pled a justiciable controversy. In any event, whether the managers determined that a capital call was "required" presents a disputed question of fact, based on Patrick's allegations that they issued the capital call to punish and/or coerce Patrick and enrich themselves at his expense, and Patrick's allegations that capital was not actually required. He further argues that he never consented to granting defendants his power of attorney, rather, defendants exercised their power of attorney on Patrick's behalf to dilute Patrick's interest in Guard Hill for their own benefit, motivated by their personal vendetta against him.

Patrick also contends that his allegations are sufficient to support his declaratory judgment and breach of fiduciary duty causes of action based on the facts stated about defendants' credibility, motive and intent. He pled that defendants' actions were not taken in good faith and in "legitimate furtherance of corporate purposes." After Bong

and May told Patrick that they wanted him out of the family business, he refused to let them buy him out for less than his shares were worth and asked for access to the company's books and records to try and determine the actual worth of his shares. They then commenced a series of actions to try and get him out of the company.

Patrick alleges that the defendants' drafting of the amendment and executing the capital call were in furtherance of this agenda, rather than to benefit the company or fulfilling a need in the company. He claims that defendants drafted the amendment knowing that once a capital call was made, Patrick would not be able to afford the payment, because at that time, the family was also demanding that Patrick repay approximately \$1.3 million in loans that had been in default for many years without any action having previously been taken to enforce them. Patrick contends that defendants made the capital call when they knew that Patrick would be unable to pay, and defendants would be able to then foreclose on his interest in Guard Hill.

Discussion

Pursuant to CPLR Section 3001, the court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether further relief is or could be claimed. However, a claim for declaratory judgment is unnecessary and inappropriate if plaintiff has an adequate, alternative remedy. *See Wells Fargo Bank, N.A. v. GSRE II, Ltd.*, 92 A.D.3d 535 (1st Dept. 2012); *Apple Records, Inc. v. Capitol Records, Inc.*, 137 A.D.2d 50 (1st Dept. 1988). Here, the causes of action seeking declaratory judgment are duplicative of the breach of fiduciary duty causes of action. Patrick seeks a declaration that the

capital call was invalid and a declaration that the promissory notes and pledge agreements were void and unenforceable, both essentially because they were effectuated by defendants' alleged breach of fiduciary duty. *See RAL Capital Ltd. v CheckM8, Inc.*, 2017 N.Y. Slip. Op. 32000(U) (Sup. Ct. N.Y. Co., September 21, 2017). As such, that branch of defendants' motion to dismiss the claims for declaratory judgment is granted.

The elements of a cause of action for breach of fiduciary duty are (1) the existence of a fiduciary relationship, (2) misconduct by the defendant, and (3) damages directly caused by the defendant's misconduct. *Rut v. Young Adult Inst., Inc.*, 74 A.D.3d 776, 777 (2nd Dept. 2010). Conduct is not a breach of fiduciary duty if there is a formal written agreement covering the precise subject matter of the alleged fiduciary duty, and no showing that defendant was seeking to advance its or a third party's interests over plaintiffs. *Valiquette v. BL Partners, LLC*, 2011 N.Y. Slip Op. 33908(U) (Sup. Ct. Aug. 3, 2011) (internal citations omitted). Where one has a right under a contract, that right may not be exercised solely for personal gain in such a way as to deprive the other party of the fruits of the contract. *See Richbell Info. Servs. v. Jupiter Partners, L.P.*, 309 A.D.2d 288 (1st Dept., 2003). A fiduciary may breach his duties by exercising his contractual rights in an unfair or inequitable manner. *See Lacher v. Engel*, 33 A.D.3d 10 (1st Dept., 2006).

Here, affording the complaint liberal construction, accepting the facts alleged therein as true, and according the plaintiff the benefit of every possible favorable inference (*see Leon v. Martinez*, 84 N.Y.2d 83 [1994]), I find that Patrick sufficiently alleged facts to support a cause of action for breach of fiduciary duty. Defendants argue

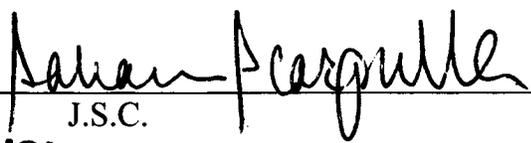
that they properly exercised their contractual rights by initiating the capital call and effecting the promissory notes and pledge agreements. Patrick alleges that defendants' actions were not taken in good faith and in legitimate furtherance of corporate purposes, rather, they were taken as part of a family vendetta to oust him from the family entities. He describes the history and background of the family dispute and describes how the actions taken by his siblings and Guard Hill were in furtherance of the family's agenda, rather than to fulfill a need in the company. Because of the actions taken, he now owes \$590,887 on the promissory notes executed by Raymond and Catherine on his behalf, and his shares in Guard Hill are pledged. While Raymond and Catherine did have certain rights under the Guard Hill operating agreement, whether they exercised those rights in good faith and in an equitable manner is disputed and must be determined through the course of litigation.

In accordance with the foregoing, it is hereby

ORDERED that defendants Guard Hill Estates, LLC, Raymond Yu, and Catherine Yu's motion to dismiss the complaint is granted only to the extent that the causes of action seeking declaratory judgments are dismissed, and the remaining causes of action are severed and shall continue.

This constitutes the decision and order of the court.

Dated: September 28, 2018
New York, NY


J.S.C.
HON. SALIANN SCARPULLA