APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST DEPARTMENT

Eighteen Holding Corp. v. Drizin

268 A.D.2d 371, 701 N.Y.S.2d 427 (1st Dep't 2000) · Decided January 25, 2000

SUMMARY

The court affirmed a summary judgment awarding a partner $264,473.92 as its share of proceeds from the disposition of mortgages. It held that defendants failed to raise a triable issue of fact and that prejudgment interest was properly awarded under CPLR 5001 because the action involved a specified share of funds wrongfully withheld.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Sullivan, J.P.; Tom, J.; Mazzarelli, J.; Wallach, J.; Rubin, J.
JURISDICTION	New York
DECIDED	January 25, 2000
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment awarding plaintiff $264,473.92, plus costs, disbursements, and prejudgment interest, after Supreme Court granted plaintiff summary judgment on claims for money had and received, unjust enrichment, and conversion.
STANDARD OF REVIEW	Summary judgment is proper where the opposing party fails to submit evidentiary proof sufficient to raise a triable issue of fact.
PRECEDENTIAL VALUE	Published Appellate Division decision and binding precedent within the First Department, subject to higher-court authority.
PARTIES	Drizin and defendants v. Eighteen Holding Corp.

TOPICS

contracts · commercial litigation · summary judgment · unjust enrichment · prejudgment interest

PRACTICE AREAS

contract law · partnership law · commercial litigation · civil procedure · remedies

QUESTIONS PRESENTED

1. Whether defendants submitted sufficient evidentiary proof to raise a triable issue of fact and defeat plaintiff's motion for summary judgment.
2. Whether the partnership agreement entitled plaintiff to a proportionate share of the mortgage-disposition proceeds rather than merely reimbursement of its contribution.
3. Whether plaintiff's action required an accounting of the partnership before recovery could be awarded.
4. Whether prejudgment interest at the statutory rate of nine percent was properly awarded under CPLR 5001.

HOLDINGS

1. Defendants' unsubstantiated allegations and submissions lacking sufficient evidentiary proof did not raise an issue of fact; summary judgment for plaintiff was properly granted.
2. Under the partnership agreement, plaintiff was entitled to a share of the proceeds from disposition of the mortgages proportionate to its partnership interest, not merely reimbursement of its contribution.
3. An accounting was not required because the action was at law, the proceeds arose from a discrete transaction, the funds were held in one account, and plaintiff's specific share was ascertainable.
4. The award of prejudgment interest at the statutory rate of nine percent was proper under CPLR 5001.

FACTUAL BACKGROUND

The parties formed a partnership to acquire certain mortgages. Their partnership agreement provided that each partner would receive a proportionate share of the proceeds from disposition of the mortgages. The proceeds of a discrete transaction were held in one account, and defendants withheld the share owed to plaintiff, arguing that plaintiff was entitled only to reimbursement of its contribution.

PROCEDURAL HISTORY

Supreme Court, New York County, granted plaintiff's motion for summary judgment and entered judgment on May 4, 1999. The Appellate Division unanimously affirmed the judgment, with costs.

DISPOSITION

affirmed

CASES CITED

- Zuckerman v. City of New York, 49 N.Y.2d 557
- Non-Linear Trading Co. v. Braddis Assocs., 243 A.D.2d 107, 115
- Kriegsman v. Kraus, Ostreicher & Co., 126 A.D.2d 489, 490
- Aurnou v. Greenspan, 161 A.D.2d 438, 439-440, amended on other grounds, 164 A.D.2d 794

OPINION

PER CURIAM.

—Judgment, Supreme Court, New York County (Barry Cozier, J.), entered May 4, 1999, which, upon a prior order of the same court and Justice, granting plaintiff's motion for summary judgment with respect to its causes for money had and received, unjust enrichment and conversion, awarded plaintiff the sum of $264,473.92, plus costs and disbursements and interest at the statutory rate of nine percent, unanimously affirmed, with costs.

The parties formed a partnership for the purpose of acquiring certain mortgages and, by the terms of their partnership agreement, each partner was to receive a share of the proceeds from the disposition of the mortgages proportionate to the partner's interest in the partnership. Defendants, in opposing plaintiffs motion for summary judgment, failed to adduce proof in evidentiary form sufficient to raise an issue of fact with re*372spect to their contention, plainly at odds with the terms of the partnership agreement, that plaintiff, a partner, was entitled only to reimbursement of its contribution to the purchase of the mortgages.

Defendants' submissions amounted to no more than unsubstantiated allegations and, as such, failed to warrant denial of plaintiffs summary judgment motion (see, Zuckerman v City of New York, 49 NY2d 557). The award of pre-judgment interest pursuant to CPLR 5001 at the statutory rate of nine percent was proper. This was an action at law, not one in which an accounting of the partnership was required; the proceeds of a discrete transaction were held in one account and a specified share of the funds was owed plaintiff (see, Non-Linear Trading Co. v Braddis Assocs., 243 AD2d 107, 115, quoting Kriegsman v Kraus, Ostreicher & Co., 126 AD2d 489, 490).

Moreover, even if plaintiff's action had been equitable, the IAS Court's award of prejudgment interest would nonetheless have been proper in light of the circumstance that defendants wrongly withheld plaintiff's money (see, Aurnou v Greenspan, 161 AD2d 438, 439-440, amended on other grounds 164 AD2d 794). Concur—Sullivan, J. P., Tom, Mazzarelli, Wallach and Rubin, JJ.