

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Buccellato v. High View Estates Owners, Corp.

131 A.D.3d 912 (N.Y. App. Div. 2015) · No. 2014-02391 · Decided September 2, 2015

SUMMARY

The Appellate Division, Second Department, reversed an order denying summary judgment to a residential cooperative corporation, its board, and individual board members. The court held that the business judgment rule protected the decision not to approve the plaintiff's proposed sale of cooperative shares, and that the plaintiff failed to raise a triable issue concerning fiduciary-duty and fraud claims. It also dismissed the declaratory-judgment claim as seeking an advisory opinion and dismissed the punitive-damages demand because no substantive claims remained.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	William F. Mastro, J.P.; Ruth C. Balkin, J.; Cheryl E. Chambers, J.; Joseph J. Maltese, J.
JURISDICTION	New York
DECIDED	September 2, 2015
DOCKET	2014-02391
DISPOSITION	reversed
PROCEDURAL POSTURE	Defendants appealed from the portion of an order denying their motion for summary judgment dismissing the complaint in an action alleging breach of fiduciary duty and fraud and seeking declaratory and punitive relief.
STANDARD OF REVIEW	Summary judgment is appropriate where the movant establishes entitlement to judgment as a matter of law and the opposing party fails to raise a triable issue of fact.
PRECEDENTIAL VALUE	Published New York Appellate Division decision
PARTIES	High View Estates Owners, Corp., High View Estates Owners, Corp. Board of Directors, Individual Board members v. Paul A. Buccellato

TOPICS

breach of fiduciary duty

business judgment rule

summary judgment

declaratory judgment

corporate governance

PRACTICE AREAS

corporate law

real estate

civil procedure

remedies

QUESTIONS PRESENTED

1. Whether the cooperative defendants were entitled to summary judgment on the breach-of-fiduciary-duty claim under the business judgment rule.
2. Whether the defendants were entitled to summary judgment dismissing the fraud claims.
3. Whether a declaratory judgment was available when the plaintiff had not identified or secured a qualifying prospective purchaser.
4. Whether the demand for punitive damages could survive dismissal of all substantive causes of action.

HOLDINGS

1. The defendants were entitled to summary judgment dismissing the breach-of-fiduciary-duty claim because the business judgment rule protected the board's determination not to approve the proposed sale of the cooperative shares.
2. The defendants were entitled to summary judgment dismissing the fraud claims because they made a prima facie showing of entitlement to judgment as a matter of law and the plaintiff failed to raise a triable issue of fact.
3. The declaratory-judgment claim was properly dismissed because no justiciable controversy existed where the plaintiff had not identified or secured a fiscally responsible purchaser offering \$42,500.
4. The punitive-damages demand was subject to dismissal because New York does not recognize an independent cause of action for punitive damages, and all substantive causes of action were dismissed.

KEY QUOTATIONS

“New York does not recognize an independent cause of action for punitive damages. Instead, [a] demand or request for punitive damages is parasitic and possesses no viability absent its attachment to a substantive cause of action” (131 A.D.3d at 913)

FACTUAL BACKGROUND

Paul A. Buccellato was a shareholder tenant of High View Estates Owners, Corp., a residential cooperative corporation. The cooperative's board declined to approve a sale of the shares referable to Buccellato's apartment in the manner he proposed. Buccellato alleged breach of fiduciary duty and fraud, sought damages and punitive damages, and requested a declaration requiring the board to approve any fiscally responsible purchaser offering at least \$42,500.

PROCEDURAL HISTORY

The plaintiff, a shareholder tenant in a residential cooperative, sued the cooperative, its board, and individual board members after the board declined to approve a proposed sale of the shares allocated to his apartment. The Supreme Court, Dutchess County, denied defendants' motion for summary judgment. The Appellate Division reversed insofar as appealed from and granted summary judgment dismissing the complaint.

DISPOSITION

reversed

CASES CITED

- Jacobs v. Grant, 127 A.D.3d 924, 925
- Pink v. Half Moon Coop. Apts., S., Inc., 68 A.D.3d 739, 740
- Oakwood On the Sound, Inc. v. David, 63 A.D.3d 893, 894
- Island Sports Physical Therapy v. Kane, 84 A.D.3d 879, 881
- Village of Mount Kisco Police Benevolent Assn. v. Village of Mount Kisco, 280 A.D.2d 469
- Fragoso v. Romano, 268 A.D.2d 457
- Randi A. J. v. Long Is. Surgi-Ctr., 46 A.D.3d 74, 80
- Rocanova v. Equitable Life Assurance Society of the United States, 83 N.Y.2d 603, 616

OPINION

PER CURIAM.

Buccellato v High View Estates Owners, Corp. (2015 NY Slip Op 06703) Buccellato v High View Estates Owners, Corp. 2015 NY Slip Op 06703 Decided on September 2, 2015 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on September 2, 2015 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department WILLIAM F. MASTRO, J.P. RUTH C. BALKIN CHERYL E. CHAMBERS JOSEPH J. MALTESE, JJ. 2014-02391 (Index No. 1713/12) [*1]Paul A. Buccellato, respondent, vHigh View Estates Owners, Corp., et al, appellants.

The LaGumina Law Firm, PLLC, Purchase, N.Y. (Sharon A. Reich of counsel), for appellants. Cappillino & Rothschild LLP, Pawling, N.Y. (Donald Cappillino and Shane J. Egan of counsel), for respondent. DECISION & ORDER In an action, inter alia, to recover damages for breach of fiduciary duty, the defendants appeal, as limited by their brief, from so much of an order of the Supreme Court, Dutchess County (Brands, J.), dated January 8, 2014, as denied their motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and the defendants' motion for summary judgment dismissing the complaint is granted. The plaintiff, a shareholder tenant of High View Estates Owners, Corp., a residential cooperative corporation (hereinafter High View), commenced this action against High View, High View's Board of Directors (hereinafter the Board), and a number of individuals who were members of the Board.

The plaintiff alleged, inter alia, that the defendants breached a fiduciary duty and committed fraud in connection with the determination not to approve a sale of the shares referable to his apartment unit in the manner that he proposed.

The plaintiff sought to recover damages, including punitive damages, and sought a judgment declaring that the Board "be required to approve any fiscally responsible purchaser ready, willing and able to purchase his co-op unit for the sum of at least \$42,500."

The defendants moved for summary judgment dismissing the complaint. In an order dated January 8, 2014, the Supreme Court, inter alia, denied the defendants' motion. The defendants appeal from that portion of the order, and we reverse the order insofar as appealed from.

The Supreme Court should have granted the defendants' motion for summary judgment dismissing the complaint. The defendants established their prima facie entitlement to judgment as a matter of law dismissing the first cause of action, which alleged breach of fiduciary duty, by demonstrating that the business judgment rule protected the determination not to approve a sale of the shares referable to the plaintiff's apartment unit in the manner proposed by the plaintiff (see *Jacobs v Grant*, 127 AD3d 924, 925; *Pink v Half Moon Coop.*

Apts., S., Inc., 68 AD3d 739, 740; *Oakwood On The Sound, Inc. v David*, 63 AD3d 893, 894). In opposition, the plaintiff failed to raise a triable issue of fact (see *Jacobs v Grant*, 127 AD3d at 925; *Pink v Half Moon Coop. Apts., S., Inc.*, [*2]68 AD3d at 740; *Oakwood On The Sound, Inc. v David*, 63 AD3d at 894). Further, the defendants made a prima facie showing of their entitlement to judgment as a matter of law dismissing the second, third, and fourth causes of action, which alleged fraud, and the plaintiff failed to raise a triable issue of fact in opposition to that showing (see *Island Sports Physical Therapy v Kane*, 84 AD3d 879, 881).

Additionally, since the plaintiff has not identified or secured a potential buyer who is fiscally responsible and has offered the sum of \$42,500 to purchase the shares referable to the subject apartment unit, no justiciable controversy exists that would permit a declaration of the rights and obligations of the parties. Rather, any declaration in this regard would constitute an impermissible advisory opinion.

Accordingly, the Supreme Court should have granted that branch of the defendants' motion which was for summary judgment dismissing the fifth cause of action, which sought a declaratory

judgment (see *Village of Mount Kisco Police Benevolent Assn. v Village of Mount Kisco*, 280 AD2d 469; *Fragoso v Romano*, 268 AD2d 457).

Finally, "New York does not recognize an independent cause of action for punitive damages. Instead, [a] demand or request for punitive damages is parasitic and possesses no viability absent its attachment to a substantive cause of action" (*Randi A. J. v Long Is. Surgi-Ctr.*, 46 AD3d 74, 80, quoting *Rocanova v Equitable Life Assur. Socy. of U.S.*, 83 NY2d 603, 616).

Since the Supreme Court should have directed the summary dismissal of the causes of action asserted in the complaint, it should also have directed the dismissal of the demand for punitive damages. MASTRO, J.P., BALKIN, CHAMBERS and MALTESE, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court