

Voorhies Terrace Owners Corp. v State Realty LLC

2024 NY Slip Op 32277(U)

July 2, 2024

Supreme Court, Kings County

Docket Number: Index No. 515154/2018

Judge: Leon Ruchelsman

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

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VOORHIES TERRACE OWNERS CORP.,

Plaintiff,

Decision and order

- against -

Index No. 515154/2018

STATE REALTY LLC,

Defendant,

July 2, 2024

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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #4

The plaintiff has moved pursuant to CPLR §2221 seeking to reargue a decision an order dated April 4, 2024 dismissing the action on the grounds the statute of limitations barred the action. The defendant has opposed the motion. Papers have been submitted by the parties and after reviewing all the arguments this court now makes the following determination.

As recorded in the prior order the plaintiff, Voorhies, is the owner and manager of a cooperative housing corporation with one hundred and five apartments located at 2330 Voorhies Avenue in Kings County. The defendant is the owner of seventeen apartments and 2,210 shares since 2000. In January 2001 the plaintiff and defendant entered into an agreement which stated that "the Corporation recognizes SR as a holder of unsold shares described in the Corporation's cooperative offering plan and proprietary lease with regard to the shares of stock allocated to the Apartments, subject to the additional obligations and agreements set forth herein" (see, Agreement, ¶13 [NYSCEF Doc. No. 69]). The plaintiff instituted this action alleging,

essentially, that the defendant is not the owner of any unsold shares. The court granted summary judgment dismissing the lawsuit on the grounds the action was time barred. The plaintiff has now moved seeking to reargue that determination. The plaintiff asserts the court erred when it determined the agreement from January 2001 was the trigger concerning the unsold shares and that there are questions of fact in this regard. As noted the defendant opposes the motion.

A motion to reargue must be based upon the fact the court overlooked or misapprehended fact or law or for some other reason mistakenly arrived at in its earlier decision (Deutsche Bank National Trust Co., v. Russo, 170 AD3d 952, 96 NYS3d 617 [2d Dept., 2019]).

As noted, the complaint alleges five causes of action, a declaratory judgment the defendant is not the owner of unsold shares, a permanent injunction prohibiting the defendant from exercising any rights pursuant to the unsold shares, a breach of contract concerning unpaid sublet fees, a declaratory judgment the defendant is not the holder of unsold shares regarding two apartment units and a claim for attorney's fees. All the causes of action are based upon the fact the defendant should not be the holder of unsold shares. Thus, as already noted, the parties entered into an agreement wherein the defendant recognized the plaintiff as the holder of unsold shares. In this

reargument motion the plaintiff has abandoned the argument asserted in prior motions that the plaintiff had no authority to enter into that agreement. That argument is likewise barred by the statute of limitations. Rather, the plaintiff asserts the date of that document does not trigger any claims since it was the date "when a wrong was committed, the date of accrual of a claim, which triggers the statute of limitation running period" (see, Affirmation in Support, ¶26 [NYSCEF Doc. No. 154]).

However, the wrongs alleged all flow from the agreement. The mere fact the parties never had any disputes until many years after that agreement was executed does not mean the claims upon which this lawsuit rests were held in abeyance until an actual disagreement arose. The "claim" in this case is the ownership of the unsold shares. The accrual of that claim began when the defendants were declared the owner of such unsold shares. The plaintiff insists the accrual began on May 20, 2014 when the defendant failed to present satisfactory evidence to the plaintiff of ownership of the unsold shares. However, that date is merely the date the plaintiff decided to take action asserting its claims regarding the unsold shares. That date could not possibly be the date when the statute of limitations begins. Indeed, that date is wholly arbitrary, not connected to any contract at all. According to the plaintiff another ten years could have theoretically passed before any action would be

commenced and that such action would be within the statute of limitations, an untenable position. The breach in this case is the allegation the defendant even owned the unsold shares and that such ownership was not sanctioned. That ownership occurred in January 2001 making that date the accrual date for purposes of the statute of limitations. Any action undertaken by the defendant after that date did not extend the statute of limitations thereby. Therefore, the motion seeking to reargue the dismissal of all the causes of action is denied.

So ordered.

ENTER:

DATED: July 2, 2024
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC