Supreme Court, Bronx County, New York

Stuart SALLES, as Committee for Bessie Schneider, an incompetent, Edelman & Edelman, P.C, and David M. Schuller, Esq., Plaintiffs,

v.

The CHASE MANHATTAN BANK, and The Chase Manhattan Bank, N.A, Defendants.

No. 20080/2000.
June 2, 2006.

DIANNE T. RENWICK, J.

Edelman & Edelman, P.C. and David M. Schuller, Esq., the attorneys who successfully represented a pedestrian in a personal injury action against Manhattan and Bronx Surface Transit Operating Authority (hereinafter referred to as "MABSTOA"), commenced this action against Chase Manhattan Bank and the Chase Manhattan Bank, N.A. (hereinafter referred to collectively as "Chase") for allegedly making false misrepresentations regarding its custody of MABSTOA's bank accounts, against which they sought to enforce the pedestrian's judgment. Defendant Chase now moves for summary judgment dismissing the action on the ground that the fraud claim asserted against it is devoid of merit.

Factual and Procedural Background

In a prior action for personal injuries against MABSTOA, the present attorney-plaintiffs, Edelman & Edelman, P.C. (Edelman) and David M. Schuller, successfully represented Stuart Salles in his capacity as court-appointed Committee for Bessie Schneider. The Schneider action was commenced in 1990 and came to a final resolution after protracted litigation, including a retrial, when, in December, 1998, the Court of Appeals denied leave to appeal from the Appellate Division, First Department's affirmance of a judgment finding MABSTOA 100% liable and awarding Salles an annuity providing future annual payments and medical benefits plus an "immediate cash payment" award of approximately $1.5 million, of which $791,614 was to be paid to Salles for the benefit of Schneider and $684,006 was to be paid to Edelman in satisfaction of the contingency fee agreement between Salles and Edelman (hereinafter referred to as "the Schneider Judgment").

The present case, brought by the Salles attorneys as plaintiffs,[FN1] against Chase, arises from what plaintiffs allege were fraudulent misrepresentations by Chase regarding its custody of MABSTOA bank accounts, against which plaintiffs sought to enforce the Schneider Judgment. Plaintiffs contend that Chase's alleged misrepresentations caused plaintiffs to suffer damages in the form of uncompensated attorney and staff time plus additional expenses incurred in the enforcement of the Schneider Judgment.

[FN1.] Although named as a plaintiff in this action, Stuart Salles appears to be a nominal plaintiff since the only parties who claim to have been aggrieved are Edelman and Edelman, P.C. and David M. Schuller, Esq.

According to plaintiffs, when MABSTOA refused to comply with plaintiffs' December 22, 1998 demand that it pay the immediately payable cash portion of the Schneider Judgment within six days, plaintiffs sought to enforce that judgment through presentment to Chase, which plaintiffs believed held MABSTOA accounts. Plaintiffs presented Chase with a restraining notice and two sheriff's levies and executions, which required Chase to pay the cash amounts due to Salles and Edelman under the Schneider Judgment from the MABSTOA accounts. The complaint alleges that, in response to the sheriff's levies and executions and plaintiffs' restraining notices, Chase knowingly, intentionally and falsely represented that it held no MABSTOA accounts or assets, when, in fact, it had at least fifteen accounts in the name and/or for the benefit of MABSTOA, one of which contained nearly $3 million, more than a sufficient amount to satisfy the Schneider Judgment. The complaint details alleged stonewalling efforts and outright refusals to comply with the sheriff's levies and executions by Chase. Plaintiffs allege that Chase, acting on behalf of a valued customer, deliberately made these false representations and refused to comply with the sheriff's levies and executions in order to impede plaintiffs' ability to collect the Schneider Judgment.

The complaint further alleges that plaintiffs reasonably relied on Chase's false representations, and that, as a result, Edelman was compelled to undertake additional unnecessary and uncompensated work, including bringing a CPLR Article 78 mandamus proceeding to compel MABSTOA to pay the amounts due under the Schneider Judgment. According to plaintiffs, although MABSTOA eventually paid the cash portion of the Schneider Judgment, it did so only in response to the Article 78 order to show cause and after Edelman had expended significant attorney and staff time and incurred additional expenses in seeking to enforce the Schneider Judgment, all of which allegedly were necessitated by Chase's misrepresentations and refusals to comply with the sheriff's levies and executions, and none of which were covered by plaintiffs' contingency-fee agreement in the Schneider action.

The complaint asserted causes of action against Chase for, inter alia, common-law fraud, for a scheme to defraud in violation of Penal Law §§ 190.60 and 190.65, and for falsification of records pursuant to Banking Law § 672. Plaintiff attorneys claim compensatory damages of $100,000 in unpaid fees and expenses and seek punitive damages in addition to the claimed compensatory losses. In lieu of an answer, Chase filed a motion to dismiss the complaint for failure to state a claim and for lack of standing pursuant to CPLR § 3211(a)(7). Supreme Court (Justice Louis Benza) granted Chase's motion holding, inter alia, that plaintiffs lacked standing to sue and that they suffered no damages as the Schneider Judgment had been paid in full. The Appellate Division, First Department, affirmed the dismissal of all the claims, except one; it reinstated the attorney-plaintiffs' cause of action for common-law fraud. Specifically, the court found that the complaint alleges the necessary elements of a claim for common-law fraud, namely defendant's knowing misrepresentation of a material fact, made with intent to deceive, plaintiff's reasonable reliance, and damages. After a lengthy period of discovery, defendant Chase now moves for summary judgment dismissing the remaining claim sounding in common law fraud.

Discussion

It is well settled that the proponent of a motion for summary judgment must establish that "there is no defense to the cause of action or that the cause of action or defense has no merit," (C.P.L .R. § 3212[b]), sufficiently to warrant the court as a matter of law to direct judgment in his or her favor. Bush v. St. Claire's Hospital, 82 N.Y.2d 738, 739 (1993); Winegrad v. New York University Medical Center, 64 N.Y.2d 851, 853 (1985). This standard requires that the proponent of the motion "tender[ ] sufficient evidence to eliminate any material issues of fact from the case," id., "by evidentiary proof in admissible form." Zuckerman v. City of New York, 49 N.Y.2d 557, 562 (1980). Thus, the motion must be supported "by affidavit [from a person having knowledge of the facts], by a copy of the pleadings and by other available proof, such as depositions." C.P.L.R. § 3212(b).

Where the proponent of the motion makes a prima facie showing of entitlement to summary judgment, the burden shifts to the party opposing the motion to demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action, or to tender an acceptable excuse for his or her failure to do so. Vermette v. Kenworth Truck Company, 68 N.Y.2d 714, 717 (1986); Zuckerman v. City of New York, supra, 49 N.Y.2d at 560, 562. Like the proponent of the motion, the party opposing the motion must set forth evidentiary proof in admissible form in support of his or her claim that material triable issues of fact exist. Id., at 562.

This Court finds that defendant Chase has met its burden. In support of its motion for summary judgment, defendant relies upon the deposition testimonies of several of its employees, including Marion Grant and Monalisa Bradford, from the Holds and Levies Department, Gloria Dennery, Assistant Treasurer of Chase's New York City Municipal Group and Lynne Federman, Esq., Vice-President and Assistant General Counsel, as well as certain documentary evidence. Such testimonial and documentary evidence establishes that on December 30, 1998, Chase was served with two Sheriff's Levies and Executions for "Manhattan and Bronx Surface Transit Operating Authority." The levies were marked as a priority with yellow tabs, which meant they were selected for immediate processing by the Holds and Levies Department. Ms. Grant of Chase's Holds and Levies Department researched the judgment debtor's name as it appeared on the levies, but found no accounts. Therefore, she stamped the levies with the "no accounts" stamp. She did not research the acronym "MABSTOA" because she neither knew nor had reason to know, based upon the information provided, that the acronym was used on any of the judgment debtor's accounts.

Monalisa Bradford, Ms. Grant's supervisor, reviewed Ms. Grant's searches of the Restraining Notice, Sheriff's Levies and Executions. Ms. Bradford also searched for, and did not find, any accounts in the name of "Manhattan and Bronx Surface Transit Operating Authority." Ms. Bradford entered the name "Manhattan and Bronx Surface Transit Operating Authority" and also entered a shortened version of this name into both the "System One and AMTRUST computer systems" used by researchers in Chase's Holds and Levies Department. Like Ms. Grant, Ms. Bradford did not search for accounts in the name of "MABSTOA" because she neither knew nor had reason to know, based upon the information provided, that the acronym was used on any of the judgment debtor's

accounts. As part of her verification of Ms. Grant's research, Ms. Bradford also contacted several other departments at Chase to determine if there were any accounts in the name of “Manhattan and Bronx Surface Transit Operating Authority.” However, she did not find any accounts.

The following day, on New Year's Eve, December 31, 1998, the attorney-plaintiffs served Chase with an Amended Restraining Notice and Information Subpoena. This time, the amended notice included the judgment debtor's acronym name “MABSTOA.” The very next business day, January 4, 1999 (January 1st was a legal holiday and January 2nd and 3rd fell on the weekend), Ms. Grant faxed the amended restraining notice to Richard Garcia in Chase's New York City Municipal Group. By January 6, 1999, Chase's Holds and Levies Department had placed a hold on six MABSTOA accounts, each hold in the amount of $1.92 million.

On the morning of January 6, 1999, Gloria Dennery, Assistant Treasurer of Chase's New York City Municipal Group, discovered that the MABSTOA accounts were overdrawn due to holds placed by the Holds and Levies Department on six of MABSTOA's accounts. Chase's New York City Municipal Group handles all municipal accounts, including MABSTOA's. Ms. Dennery contacted the Holds and Levies Department to learn more information about the holds. Ms. Dennery learned that Chase restrained the accounts pursuant to the attorney-plaintiffs' Second Restraining Notice and immediately contacted MABSTOA's controller, Pat Agard, to identify an account from which she could hold sufficient funds to cover the judgment. After identifying an account, Ms. Dennery withdrew $2, 883,044.30 of MABSTOA's funds and transferred that amount into an attached account to ensure the availability of funds to pay the judgment.

Later in the day on January 6, 1999, the attorney-plaintiffs served Chase with a Substituted Amended Restraining Notice and Information Subpoena. The substituted notice identified thirteen account numbers and included a tax identification number for the judgment debtor. On January 7, 1999, Ms. Dennery notified Doreene Sullivan, a customer service representative in the Holds and Levies Department, that sufficient funds to cover plaintiffs' judgment had already been debited from a MABSTOA account. Ms. Dennery asked that the holds on the six overdrawn MABSTOA accounts be removed.

Meanwhile, from January 4th through January 6th, the attorney-plaintiffs spoke with Ms. Bradford and Ms. Dennery regarding Chase's restraint of MABSTOA's accounts. The attorney-plaintiffs also spoke with Lynne Federman, Esq., Vice President and Assistant General Counsel within Chase's Legal Department, to make certain that the appropriate restraints on MABSTOA's accounts would be in place. On January 11, 1999, Ms. Dennery notified the attorney-plaintiffs that sufficient funds were transferred from MABSTOA's account and frozen to cover the judgment. That same day, Chase was served by the attorney-plaintiffs with two additional Sheriff's Levies. Upon becoming aware that multiple holds had resulted in overdrawn accounts and that funds had been restrained to cover the judgment, MABSTOA paid plaintiffs directly on January 14, 1999, in full satisfaction of the judgment, including attorneys' fees and interest through the date of payment.

The aforementioned testimonial and documentary evidence establish that plaintiffs' fraud claim, which is based upon allegations that, in response to the sheriff's levies and executions and plaintiffs' restraining notices, Chase knowingly, intentionally and falsely represented that it held no MABSTOA accounts or assets, when, in fact, it had at least 15 accounts in the name and/or for the benefit of MABSTOA, containing more than a sufficient amount to satisfy the judgment in question, is devoid of merits. In an action to recover damages for fraud, the plaintiff must show that (1) the defendant made a material false representation, (2) the defendant intended to defraud the plaintiff thereby, (3) the plaintiff reasonably relied upon the representation, and (4) the plaintiff suffered damage as a result of such reliance. Lama Holding Co. v. Smith Barney Inc., 88 N.Y.2d 413, 421, (1996); P.T. Bank Central Asia v. ABN AMRO Bank N.V., 301 A.D.2d 373, 376 (1st Dep't 2003); see also, Rosario-Suarz v. Wormuth Bros. Foundry, 233 A.D.2d 575, 578.

A review of the aforementioned testimonial and documentary evidence reveals that plaintiff cannot satisfy the element of misrepresentation. As noted above, plaintiff claims that Chase knowingly, intentionally and falsely represented that it held no MABSTOA accounts or assets, when, in fact, it had at least 15 accounts in the name and/or for the benefit of MABSTOA. However, that is not what Chase represented. The judgment debtor identified by the attorney-plaintiffs in the initial restraining notice and levies was “Manhattan and Bronx Surface Transit Operating Authority.” There is no reference to the acronym MABSTOA, as the proper name of the judgment debtor. An examination of the “Questions and Answers in Connection with Information Subpoena” and the Sheriff's Levies show that Chase stamped those documents with the statement: “A search of the records indicates that there is no account in the name of the judgment debtor “Manhattan and Bronx Surface Transit Operating Authority.” As fully described above, Chase's holds and Levies Department did conduct a search for “Manhattan and Bronx Surface Transit Operating Authority” but found none. Therefore, it was entirely accurate for Chase to stamp the Questionnaire and Sheriff's Levies with the statement that a search revealed no account in the name of the “Manhattan and Bronx Surface Transit Operating Authority,” which was the only judgment debtor identified at that time by the attorney-plaintiffs

The aforementioned testimonial and documentary evidence also demonstrates that plaintiffs cannot satisfy the element of intend to defraud. In his pleading, plaintiff avers that Chase's alleged misrepresentation was intended to impede or delay the collection of the Schneider judgment. The claim is belied by the record. The initial Restraining Notice and Information Subpoena, under the name “Manhattan and Bronx Surface Transit Operating Authority,” were served on December 29, 1998. The next day, Chase was served with the Sheriff's Levy and Execution under the name “Manhattan and Bronx Surface Transit Operating Authority.” Immediately, an employee from Chase's Holds and Levies Department conducted a search which revealed no account under that name. Then, a supervisor from Chase's Holds and Levies department also did a search with the same negative result. The Amended Restraining Notice and Information with the correct name was served on December 31, 1998, which was processed the next business day on January 4, 1999. Two days later, Chase Hold and Levies Department placed a hold on six accounts of MABSTOA. The holds were released when Chase transferred sufficient money to one of MABSTOA's accounts to satisfy the Schneider Judgment. A few days later, on

January 11, 1999, plaintiffs were informed that an account has been created to satisfy the Schneider judgment. Such account, however, was never used to satisfy the Schneider Judgment since a few days later, on January 14, 1999, MABSTOA directly paid plaintiff.

Thus, despite the apparent mixup with the name of the judgment debtor, plaintiffs received full payment only ten business days after serving the initial Restraining Notice and Information Subpoena, under the name "Manhattan and Bronx Surface Transit Operating Authority." This period of time cannot be construed in any manner to be an inordinate amount of time in light of the fact that the time period incorporated an extensive holiday period. Significantly, Chase employee Gloria Dennery testified that Chase typically pays monies subject to a Sheriff's Levy within ten to fourteen business days. Under the circumstances, Chase has refuted any claim that it was deleterious in its duties with regard to the restraining notices, subpoenas and levies it received, let alone that it acted in concert with MABSTOA to frustrate and delay the satisfaction of the Schneider Judgment.

The foregoing proof provides defendant Chase with prima facie entitlement to summary judgment by negating any claim of misrepresentation and intent to commit fraud. This Court, therefore, is required to direct judgment in favor of defendant Chase as a matter of law, unless plaintiffs in opposing the motion, set forth sufficient proof to establish, at the very least, an existence of a material issue of fact requiring a trial of the action.

This Court finds that attorney-plaintiffs have failed to meet their burden. For instance, plaintiffs do not attempt to refute the fact that Chase's employees promptly responded to plaintiff's restraining notices, information subpoenas and Sheriff's levies naming "Manhattan and Bronx Surface Transit Operating Authority" as the judgment debtor. Nor can plaintiff deny the fact that once the proper name of the judgment debtor (i.e., "MABSTOA") was provided, Chase employees located the pertinent accounts and placed a hold on several accounts owned by the judgment debtor. Significantly, plaintiffs have never contended that the judgment debtor did not intend to pay the Schneider judgment. Under the circumstances, any claim that Chase misrepresented the unavailability of any account to satisfy the Schneider judgment so as to impede or delay the collection of the Schneider judgment is implausible, conclusory and unsupported.

Conclusion

For the foregoing reasons, it is hereby

ORDERED that the motion by defendant Chase, seeking summary judgment dismissing the action, is granted and the complaint is hereby dismissed, and the Clerk is directed to enter a judgment in favor of said defendant.

This constitutes the Decision and Order of the Court.