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OF THE COMMITTEE ON OPINIONS

HEENA TAMAKUWALA, ANUP TAMAKUWALA and LEENA PANWALA, on their own behalf and on behalf of all similarly situated members of the Nominal Defendants,

Plaintiff,

v.

JUGMOHAN SURATWALA, TANSUKH SURATWALA, TRUPTI SURATWALA

Defendants,

v.

OM SIDDHY VINAYAK LLC, OM VITHTHAL LLC, OM VAGZEI LLC, JAI VITHTHAL LLC, JAI AMBE LLC, RANGLAXMI, LAXMI MATADI LLC, JAI VAGZEI LLC, NEWBURGH HOTEL PARTNERS, LLC, SURAT INT'L. CORP., and ABC CORPORATIONS 1-10

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: BERGEN COUNTY
DOCKET No. C-135-17

OPINION

Argued: November 30, 2018
Decided: December 5, 2018

Appearances: Anthony Bocchi, (Cullen and Dykman, LLP, attorneys) for plaintiff

Justin Santagata, (Kaufman Semeraro & Leibman, LLP, attorneys) for defendants

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HON. EDWARD A. JEREJIAN, P.J.Ch.

This matter has been opened to the Court by way of Notice of Motion to Rescind a Settlement Agreement, filed on October 11, 2018 by Cullen and Dykman, LLP, attorneys for Plaintiffs Heena Tamakuwala, Heena Tamakuwala 2006 Family Trust, Anup Tamakuwala and Leena Panwala. Defendants Jugmohan Suratwala, Tansukh Suratwala, and Trupti Suratwala, by and through counsel Kaufman Semeraro & Leibman, LLP, filed opposition on November 1, 2018. The Court heard oral argument in the matter on November 30, 2018.

BACKGROUND

The root of the underlying dispute revolves around the degree of materiality as to specific non-existent appraisals that the parties believed to be in existence at the time the settlement agreement was executed. Specifically, on August 17, 2018, the parties entered into a settlement agreement during mediation with the Hon. Joseph Mecca, J.S.C. (ret.) in which Plaintiff would be bought out of all entities in which he has an interest in that are managed by Defendant.

Plaintiff advised Defendants that he had appraisals prepared approximately five years ago by Liberty Appraisals. See Kaufman Cert. at ¶ 3. In other words, the mistaken belief that these Liberty Appraisals real estate appraisals existed originated with Plaintiff himself. In fact, of the sixteen (16) entities involved in the settlement agreement, Plaintiff did *not* have real estate appraisals from Liberty Appraisals for half of them: Om Viththal LLC, Laxmi Matadi LLC, Jai Viththal LLC, Balaji Management Group Inc., Seven Hills Hospitality Group LLC, Bronx Hospitality Group, SV Management LLC, and Jai Mata Di LLC. Id. at ¶ 9.

In lieu of the non-existent real estate appraisals, Defendant purportedly provided equivalent documentation including recent bank statements and HUD-1 settlement statements. Only two of the eight-abovementioned entities – Bronx Hospitality Group and SV Management LLC – have no calculated value. However, Defendants contend that these are both management companies that do not own any assets.

Plaintiff filed the instant action on October 11, 2018 under the belief that the Liberty Appraisals were a material term to the August 17, 2018 Settlement Agreement, and that the purported mutual mistake as to their existence renders the Agreement voidable *in toto* as a matter of law.

LEGAL STANDARD

A party moving to rescind a settlement based on mutual mistake of fact must prove mutual mistake of fact by "clear, unequivocal, and convincing" evidence. Reinhardt v. Wilbur, 30 N.J. Super. 502, 506 (App. Div. 1954).

Recision of a contract based on mutual mistake of fact requires that "both parties were laboring under the same misapprehension as to [a] particular, essential fact." Bonnco Petrol, Inc. v. Epstein, 115 N.J. 599, 608 (1989).

ANALYSIS

Materiality of the Liberty Appraisals

In the matter before the Court, the primary issue is a discrepancy over whether or not the non-existent Liberty Appraisals described above were in fact material to the settlement agreement.

Plaintiff contests that the materiality of the Liberty Appraisals is rooted in the notion that this was an extremely contested litigation amongst parties whom have no trust for one another, and that the primary purpose of settling on the Liberty Appraisals was that they were already in existence. See Plt. Reply Brief, at pp. 1-2. Plaintiff's position is that if the Liberty Appraisals themselves were not material to the settlement terms, they would not have been specifically referenced as the method for determining the valuation of the entities. More importantly, it is clear to the Court that because the Liberty Appraisals were mistakenly believed to already be in existence, they provided a quick, already paid for method of determining the value of the entities.

Defendants take the position that it was not the Liberty Appraisals themselves that were material to the settlement negotiations, but rather the *fair valuation* of the properties that the non-existent Liberty Appraisals would have purportedly provided.

The Court agrees with Defendant's argument that the materiality of the settlement agreement centered around a fair valuation of the properties, and not the Liberty Appraisals specifically. It is clear to the Court that the only value the Liberty Appraisals provided to the settlement agreement was that they already existed and saved the cost of obtaining new appraisals – not because the parties had any realistic expectation of or reliance on the specific valuations of the non-existent Liberty Appraisals. It is unmerited for Plaintiff to now argue that the settlement should be rescinded because appraisals *he* erroneously believed to be in existence were in fact not. Further, if the appraisals were never in existence, then there was never anything about their methodology or valuation that provided anything material to the settlement that any other fair valuation would similarly provide.

Mutual Mistake

Plaintiff also argues that the settlement agreement should be rescinded because it was based on a mutual mistake of fact. Specifically, Plaintiff points to the fact that the settlement agreement specifically references the Liberty Appraisals as the method for determining the valuation of the entities as prima facie proof that the Defendants also believed them to be in existence.

Under § 152 of the Restatement (Second) of Contracts, the proponent is required to prove three elements by clear and convincing evidence: (1) that all parties made and relied on the same mistake of fact; (2) that the mistake of fact "is one as to a basic assumption on which both parties made the contract;" and (3) "the mistake has a material effect on the agreed exchange of performances" and "the resulting imbalance . . . is so severe that he can not fairly be required to carry it out." Restatement (Second) of Contracts § 152(b)-(c) (1981).

As Defendants argue in their opposition papers, and the Court agrees, Plaintiff fails to meet the standard to rescind a settlement based on mutual mistake of fact.

As an initial matter, the Court simply cannot find in this instance that both parties made and relied on the same mistake of fact, or that "both parties were laboring under the same misapprehension as to [a] particular, essential fact." Id.; see also Bonnco Petrol, Inc., 115 N.J. at 608. Although it is clear that Plaintiff was operating under the belief that the real estate appraisals by Liberty already existed, it was Plaintiff who inadvertently misrepresented this fact to Defendants, who in turn agreed that the parties already had an objective means to fairly evaluate the properties. Therefore, it is arguable whether or not Defendants were not operating under the "same mistake of fact" as Plaintiff because Defendants clearly had no knowledge of either the substance or existence of the Liberty Appraisals, and agreed to their use simply as a way of facilitating the settlement negotiations. Although the Court concedes that it is arguable whether or not the parties *relied* on the same mistake of fact in accordance with the first prong of the analysis, Plaintiff's real demise in the instant matter is the inability to satisfy the second and third prongs of the analysis, as outlined below.

Second, and most importantly, the existence of the Liberty Appraisals was not a "basic assumption on which both parties made the contract," in accordance with § 152(b). It is clear that the purported existence of the Liberty Appraisals was merely a convenience to achieving the ultimate end goal – a fair and objective real estate valuation. Defendants could not have known the amount set forth and the substance contained in the non-existent appraisals at the time of the settlement. In fact, Plaintiff could not have either, since they never existed. Therefore, it cannot follow that the specific material within these Liberty Appraisals would have been a basic assumption and pillar of this particular settlement.

Lastly, the Court does not agree that the purported mutual mistake has a "material effect on the agreed exchange of performances" and that "the resulting imbalance . . . is so severe that he cannot fairly be required to carry it out." Restatement (Second) of Contracts § 152(b)-(c) (1981).

The Court understands the inconvenience that the non-existence of the Liberty Appraisals now presents for both parties pursuant to fulfilling the terms of the settlement agreement. Yet, the need for the parties to now rely on a mutually-agreed upon real estate appraiser or equivalent documentation – something that the parties apparently *already previously agreed to* in discussing Mr. Robert McNerney – does not even come close to anything resembling an "unfair" and "severe" resulting imbalance.

The most logical solution to resolve the instant matter is for the parties to mutually-agree upon a real estate appraiser or equivalent sufficient documentation valuing the properties, or make an application to the Court to appoint one accordingly. Without more, however, the Court does not find that the purported mutual mistake pertaining to the Liberty Appraisals is one that was a basic assumption to the contract, nor was it one that had a material effect on the agreed upon exchange of performances resulting in a severe and unfair imbalance. Therefore, Plaintiff's motion to rescind the settlement agreement based on a mutual mistake of material fact must be denied at this time.

Nevertheless, the parties did stipulate during oral argument as to the proper procedure and timeline to follow in the event that Plaintiff's motion to rescind the settlement is denied. As a result, Defendant submitted a supplemental letter to the Court and to Plaintiff's counsel on December 4, 2018 agreeing to the following protocol:

1. Payment of the $435,000.00 within ten (10) business days of receipt of releases signed by Plaintiffs and the final settlement agreement signed by Plaintiff.
2. The parties will confer on an appraiser for properties for which there is no Liberty appraisal. If the parties cannot agree within fifteen (15) days, the Court will submit the issue to a mediator, who is empowered to serve as the arbitrator on that decision under the settlement. The mediator will then pick the appraiser. Within ten (10) days of receipt of the appraisals, the parties shall submit to the mediator their position on the valuations of each entity, to the extent there is any disagreement. The mediator shall decide the valuation on any disputed entity.
3. The remainder of the settlement should be followed in its entirety, particularly paragraph 3 of the settlement, which governs the procedure on payments after the valuation of an entity.

For the foregoing reasons, Plaintiff's motion is denied, with the abovementioned supplemental matters being incorporated into the enforcement of the settlement agreement. An Order accompanies this decision.