

SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY

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BELLMORE PARTNERS INC.

Plaintiff,

COMPLAINT

-against-

Index No.: 62128/2019

SAMUEL A. MOGILNER

Defendant

_____X

Plaintiff, by its attorney, Jeff Feigelson, Esq., as and for its Complaint alleges upon information and belief as follows:

Preliminary Statement

This is a civil action seeking damages against the Defendant. The Defendant engaged in a pattern of illegal and fraudulent conduct which caused significant damages to the Plaintiff and other mortgage lenders. This illegal and fraudulent conduct typically involved a number of steps. First, the Defendant's good college friend, David Paniccia ("David"), through various companies, would obtain a mortgage loan from unsuspecting third party lenders. Second, David would then default under the mortgage loan. Third, David's father or David's uncle would then fraudulently claim that they had a large mechanics lien encumbering the mortgaged property. The mechanics lien, which was totally made up, would state that the construction work relating to the mechanics lien was commenced prior to the recordation of the third party

mortgage. Since the construction work allegedly commenced prior to the recordation of the third party mortgage, David's father or David's uncle would then claim that under local state law the mechanics lien had lien priority over the third party mortgage. Fourth, David would have the borrowing entity file for bankruptcy and attempt to cram down a bankruptcy plan on the third party lender. However, under the applicable bankruptcy code, David could not cram down a bankruptcy plan unless one creditor who was not an "insider" voted in favor of the plan. Since the fraudulent mechanics lien was held by David's father or David's uncle, they were considered "insiders" so they were not eligible to vote in favor of the bankruptcy plan. In order to get around this problem, David arranged for the Defendant to allegedly "purchase" the mechanics lien. This way David could now claim that the Defendant could vote in favor of the bankruptcy plan because the Defendant was not an "insider". However, as set forth in a bankruptcy court decision by Bankruptcy Judge Alan Shiff (a copy of which is set forth on EXHIBIT A attached hereto) in one of the bankruptcy cases, the purchase of the mechanics lien "was a sham intended to facilitate the confirmation" of David's bankruptcy plan. The Defendant knew that these mechanics liens were fraudulent. Further, the Defendant never paid any money for the mechanics liens, never did any due diligence with respect to the mechanics liens and the Defendant's entity that purchased the mechanics liens was set up, and paid for, by David's uncle. In short, the Defendant's purchase of the mechanics liens was a complete sham that was intended to damage the mortgage lenders, including the Plaintiff, by delaying the foreclosure proceedings and giving David someone to vote in favor of the applicable bankruptcy plan. Fortunately, the Defendant's illegal and fraudulent conduct was discovered before any of David's bankruptcy plans received bankruptcy court approval, but the

Defendant's fraudulent and illegal conduct nevertheless caused significant damages to the Plaintiff.

Parties

1. The Plaintiff, Bellmore Partners Inc., is a corporation organized in the State of New York.
2. The Defendant, Samuel A. Mogilner, is an individual residing in Westchester County, New York.

Facts of First Illegal and Fraudulent Conduct

3. Derby Development Corporation ("DDC") owned a building (the "First Property") containing 15 residential rental units in Derby, CT.
4. David at all times was the president of DDC.
5. The First Property was encumbered by a mortgage (the "First Mortgage") held by a third party lender, Community Preservation Corporation.
6. DDC defaulted under the First Mortgage and a foreclosure action was commenced by Community Preservation Corporation.
7. On or about February 5, 2010, DDC filed for a Chapter 11 bankruptcy case in the State of Connecticut.
8. In the DDC bankruptcy case, David's uncle, Mario Paniccia, claimed he held a mechanics lien (the "First Mechanics Lien") in the amount of \$410,000 encumbering the First Property, which First Mechanics Lien was valued in DDC's bankruptcy petition at \$160,000.

9. The First Mechanics Lien was a sham and was completely or partially made up by Mario Paniccia in consultation with David and the Defendant.
10. The Defendant knew that the First Mechanics Lien was completely or partially made up and was a sham.
11. On or about May, 2011, an entity called Viking Acquisitions, LLC (“Viking”) purchased the First Mechanics Lien from Mario Paniccia for a purchase price (the “First Purchaser Price”) of \$300,000, which purchase price was \$140,00 more than the value of the mechanic’s lien as set forth in the DDC bankruptcy schedules.
12. Viking is a single-member limited liability company owned by the Defendant.
13. The Defendant is a close college friend of David Paniccia.
14. The Defendant had no role in the creation of Viking and the Defendant did not pay any fees relating to the creation of Viking.
15. Mario Paniccia prepared and filed all the necessary legal documents to create Viking and Mario Paniccia obtained the federal tax identification number for Viking.
16. The Defendant’s residential address on Viking’s organizational documents listed the business address of Mario Paniccia.
17. The First Purchase Price was evidenced by a structured note and no portion of the First Purchase Price was ever paid by Viking to Mario Paniccia.
18. Mario Paniccia did not perform any due diligence as to the Defendant’s financial ability to fund the Viking purchase of the First Mechanics Lien.
19. The Defendant did not perform any due diligence as to the value of the First Mechanics Lien.

20. Viking voted in favor of the bankruptcy plan proposed by DDC.
21. On or about June 27, 2012, Bankruptcy Judge Adam Schiff held that the purchase of the First Mechanics Lien by Viking was a “sham” which was improperly intended to facilitate the confirmation of DDC’s bankruptcy plan. A copy of Judge Schiff’s decision is attached hereto as EXHIBIT A.

Facts of Second Illegal and Fraudulent Conduct

22. Genesis Limited Partnership (“GLP”) owns a building (the “Second Property”) containing 6 residential rental units on Minerva Street in Derby, Connecticut.
23. David at all times was the president of the sole general partner of GLP.
24. The Second Property is encumbered by a first and second mortgage (collectively, the “Second Mortgage”) held by the Plaintiff.
25. GLP defaulted under the Second Mortgage and a foreclosure action was commenced.
26. On or about July 19, 2010, GLP filed for a Chapter 11 bankruptcy case in the State of Connecticut.
27. In the GLP bankruptcy case, Professional Services Group, Inc. (“PSG”) claimed it was the holder of a mechanics lien (the “Second Mechanics Lien”) in the amount of \$293,800 encumbering the Second Property.
28. The owner of PSG is Dominic Paniccia, the father of David.
29. PSG claims that the Second Mechanics Lien has lien priority over the Second Mortgage because the work relating to the Second Mechanics Lien was allegedly commenced prior to the recordation of the Second Mortgage.

30. The Second Mechanics Lien is a sham and was completely or partially made up by Dominic Paniccia in consultation with David and the Defendant.
31. The Defendant knew that the Second Mechanics Lien was completely or partially made up and was a sham.
32. On or about August 11, 2011, Viking purchased the Second Mechanics Lien from PSG for a purchase price (the "Second Purchase Price") which had, assuming the Second Mechanics Lien was valid, no relation to the fair market value of the Second Mechanics Lien.
33. The Second Purchase Price was evidenced by a structured note and no portion of the Second Purchase Price was ever paid by Viking to PSG.
34. Dominic Paniccia did not perform any due diligence as to the Defendant's financial ability to fund the Viking purchase of the Second Mechanics Lien.
35. The Defendant did not perform any due diligence as to the value of the Second Mechanics Lien and the Defendant never visited or inspected the Second Property.
36. Viking eventually assigned the Second Mechanics Lien back to PSG on or about June 30, 2014.
37. The Plaintiff spent over one year litigating whether PSG or Viking had standing to foreclose on the Second Mechanics Lien. The costs litigating this claim, together with the over one year delay in the foreclosure, caused damages to the Plaintiff.
38. But for the transfer of the Second Mechanics Lien to Viking, the Plaintiff would have been able to save litigation expenses and the foreclosure action could have been finalized sooner.

Facts of Third Illegal and Fraudulent Conduct

39. Genesis Holdings, LLC (“GHLLC”) owns a building (the “Third Property”) containing 6 residential rental units on Anson Street in Derby, Connecticut.
40. David at all times held all or a majority of the beneficial interest in GHLLC.
41. The Third Property is encumbered by a first mortgage (the “Third Mortgage”) held by the Plaintiff.
42. GHLLC defaulted under the Third Mortgage and a foreclosure action was commenced.
43. On or about July 19, 2010, GHLLC filed for a Chapter 11 bankruptcy case in the State of Connecticut.
44. In the GHLLC bankruptcy case, PSG claimed it was the holder of a mechanics lien (the “Third Mechanics Lien”) in the amount of \$290,760 encumbering the Third Property.
45. PSG claims that the Third Mechanics Lien has lien priority over the Third Mortgage because the work relating to the Third Mechanics Lien was allegedly commenced prior to the recordation of the Third Mortgage.
46. The Third Mechanics Lien is a sham and was completely or partially made up by Dominic Paniccia in consultation with David and the Defendant.
47. The Defendant knew that the Third Mechanics Lien was completely or partially made up and was a sham.
48. Subsequent to GHLLC filing for bankruptcy, Viking purchased the Third Mechanics Lien from PSG for a purchase price (the “Third Purchase Price”) which had, assuming

- the Third Mechanics Lien was valid, no relation to the fair market value of the Third Mechanics Lien.
49. The Third Purchase Price was evidenced by a structured note and no portion of the Third Purchase Price was ever paid by Viking to PSG.
 50. Dominic Paniccia did not perform any due diligence as to the Defendant's financial ability to fund the Viking purchase of the Third Mechanics Lien.
 51. The Defendant did not perform any due diligence as to the value of the Third Mechanics Lien and the Defendant never visited or inspected the Third Property.
 52. Viking eventually assigned the Second Mechanics Lien back to PSG on or about June 30, 2014.
 53. The assignments of the Third Mechanics Liens caused delay in the Plaintiff's foreclosure proceeding and caused delay in GHLLC's bankruptcy, both of which caused damage to the Plaintiff.

Additional Facts

54. The Defendant met in New York from time to time with David, Mario and/or Dominic to plan the illegal actions set forth in this Complaint.
55. The Defendant was in New York when the Defendant spoke on the telephone with David, Mario Paniccia and/or Dominic Paniccia about the illegal actions set forth in this Complaint.
56. The Defendant used the mail to further his illegal acts by mailing various assignment documents to David, Mario Paniccia and/or Dominic Paniccia on or about August 13, 2011, June 30, 2014 and on other occasions.

57. The Plaintiff discovered the Defendant's illegal actions set forth in this Complain on or about April 2018 and the Plaintiff was not able to discover the Defendant's illegal acts prior to such time.

COUNT ONE
(Fraud)

58. Plaintiff repeats and re-alleges the allegations in paragraphs 1 through 57 as if fully set forth herein.

59. Defendant stated to the Plaintiff (the "Statements") and the applicable courts that it had validly purchased the Second Mechanics Lien and the Third Mechanics Lien in good faith.

60. Defendant knew that the Statements were false in that the foregoing purchases were complete shams.

61. The Defendant had the intent to deceive the Plaintiff and others by claiming that the Statements were true.

62. Plaintiff relied on the Statements and incurred damages in relying on the Statements.

63. Plaintiff has incurred an injury as a result of the Statements relating to the Second Mechanics Lien and the Third Mechanics Lien.

COUNT TWO
(§349 of General Business Law - Deceptive Acts and Practices)

64. Plaintiff repeats and re-alleges the allegations in paragraphs 1 through 57 as if fully set forth herein.

65. The Defendant's purchase of the Second Mechanics Lien and the Third Mechanics Lien is a deceptive act and practice and violates §349 of General Business Law of the State of New York.
66. The Defendant's sale of the Second Mechanics Lien and the Third Mechanics Lien back to PSG is a deceptive act and practice and violates §349 of General Business Law of the State of New York.
67. The foregoing deceptive acts have caused damages to the Plaintiff.

COUNT THREE
(RICO 1962(c))

68. Plaintiff repeats and re-alleges the allegations in paragraphs 1 through 57 hhhj as if fully set forth herein.
69. An enterprise (the "Enterprise") was set up between the Defendant, David, Mario Paniccia, Mario Pannicia and the notary of the various Viking assignment documents.
70. The members of the Enterprise agreed to and did conduct and participate in the conduct of the Enterprise's affairs through a pattern of racketeering activity and for the unlawful purpose of intentionally defrauding Plaintiff. Specifically, the Enterprise's actions set forth in this Complaint constituted an offense involving fraud in connection with the above mentioned bankruptcy cases. Additionally, the Enterprise's actions of using the mail to send various assignment documents to each other constitutes mail fraud.

71. Pursuant to and in furtherance of their fraudulent schemes, the Enterprise committee multiple related acts of bankruptcy fraud and mail fraud by illegally and fraudulently pretending that various mechanics liens outlined in this Complaint were sold to Viking.
72. The acts set forth above constitute a pattern of racketeering activity pursuant to 18 U.S.C. § 1961(5).
73. The Defendant and the other members of the Enterprise have directly and indirectly conducted and participated in the conduct of the Enterprise's affairs through the pattern of racketeering and activity described above, in violation of 18 U.S.C. § 1962(c).
74. As a direct and proximate result of the Enterprise's racketeering activities and violations of 18 U.S.C. § 1962(c), Plaintiff has been injured in their business and property in that they have incurred attorney's fees that they would not have otherwise incurred and the Plaintiff has been injured by the delay in the applicable foreclosure and bankruptcy cases caused by the illegal and fraudulent transfers of various mechanics liens referred to above.

WHEREFORE, Plaintiff requests a judgment:

- B. Awarding Plaintiff compensatory damages in the amount of \$100,000.
- C. Awarding Plaintiff reasonable attorney's fees.
- D. Awarding Plaintiff punitive damages in the amount of \$1,000,000.
- E. Awarding Plaintiff such other and further relief as this Court deems just and proper.

Dated: August 12, 2019
Millbrook, NY

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EXHIBIT A