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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

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RODGER SAFFOLD, II
Plaintiff

BLACK ECONOMIC UNION OF OHIO, ET AL.
Defendant

Case No: CV-17-878065

Judge: JOHN P O'DONNELL

JOURNAL ENTRY

THE CORPORATE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, FILED 4/24/2018, IS GRANTED.

THE ESTATE OF RODGER SAFFOLD'S MOTION FOR SUMMARY JUDGMENT, FILED 04/25/2018, IS GRANTED AND DENIED IN PART. IT IS GRANTED ON EVERY CLAIM IN THE AMENDED COMPLAINT EXCEPT COUNT THREE FOR A DECLARATORY JUDGMENT ON THE RIGHTS AND OBLIGATIONS OF THE PARTIES TO AN ASSIGNMENT REFERRED TO AS A FEE SHARING CONTRACT.

Judge Signature

Date
7/6/2018

07/06/2018

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

RODGER SAFFOLD, II	)	**CASE NO. CV 17 878065**
	)	
Plaintiff,	)	**JUDGE JOHN P. O'DONNELL**
	)	
vs.	)	**JUDGMENT ENTRY GRANTING**
	)	**THE CORPORATE DEFENDANTS'**
BLACK ECONOMIC UNION OF	)	**MOTION FOR SUMMARY**
OHIO, *et al.*	)	**JUDGMENT AND GRANTING AND**
	)	**DENYING IN PART THE ESTATE'S**
Defendants.	)	**MOTION FOR SUMMARY**
	)	**JUDGMENT**

John P. O'Donnell, J.:

This lawsuit arises from an unkept promise that a father allegedly made to his son. The promise was not in writing and, if made, was given by a man who held various positions with several different corporate entities, both nonprofit and for-profit, thus complicating a determination of whether a contract was ever made.

The parties

Rodger Saffold, II is the plaintiff. He is the son of defendant Rodger P. Saffold. They are the two individual parties.[1]

The first named corporate defendant is the Black Economic Union of Ohio, a non-profit corporation. BEU is the developer of affordable apartment housing for the poor. Rodger[2] was the president of BEU, appointed by its board of directors. The BEU undertook the development

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[1] Defendant Rodger P. Saffold died while the lawsuit was pending and has been replaced as a defendant by his estate. Any reference here to him as a defendant thus refers to his estate.

[2] Because this lawsuit involves two parties named Rodger Saffold, for clarity I will refer to the father as Rodger and the son as Rod. No disrespect is intended.

of two apartment complexes, one located at 10401 Superior Avenue in Cleveland and the other at 1821 Noble Road in East Cleveland.

The apartments on Superior are known as the Greater Abyssinian apartments. Defendant Greater Abyssinian Elderly Housing and Services, Inc. is a non-profit corporation. It is the sole shareholder of defendant Greater Abyssinian Apartments, Inc., a for profit corporation. Rodger is the appointed president of the for profit entity. In turn, Greater Abyssinian Apartments, Inc. is the general partner of a limited partnership known as Greater Abyssinian Apartments, L.P. The limited partnership is not a party to this lawsuit although it owns the property at 10401 Superior. The limited partner of that entity is OEF Huntington Fund II, LLC, which is also not a party to this case.

The apartments on Noble are known as the Helen S. Brown apartments. Defendant East Cleveland Elderly Housing and Services, Inc. is a non-profit corporation. It is the sole shareholder of defendant Helen S. Brown Apartments, Inc., a for-profit corporation. Rodger is the appointed president of the for profit entity. In turn, Helen S. Brown Apartments, Inc. is the general partner of a limited partnership known as Helen S. Brown Apartments, L.P. The limited partnership is not a party to this lawsuit although it owns the property at 1821 Noble. The limited partner of that entity is OEF Huntington Fund IV, LLC, which is also not a party to this case.

Because there are three entities with the words "Greater Abyssinian" in their names I will refer in this judgment to the apartment building itself as the Superior apartments and, because there are two entities including "Helen S. Brown" in their names, I will refer to those apartments as the Noble apartments. When referring to any individual or entity I will use its full name.

The amended complaint

The plaintiff has filed an amended complaint including eight separately labeled causes of action. Count one is for breach of contract. It is asserted against defendants BEU, Greater Abyssinian Apartments, Inc. and Helen S. Brown Apartments, Inc. Count two is for unjust enrichment against the same defendants named on count one. Count three is for a declaratory judgment that an assignment by Rodger to Rod of 25% of a developer's fee that BEU owed Rodger is void. Count four alleges that Rodger is personally liable for the breach of contract alleged at count one due to his failure to follow corporate formalities when acting in the name of one or more of the corporate entities. Count five seeks an injunction prohibiting the corporate defendants from continuing to operate and is brought under section 4165.01 *et seq.* of the Ohio Revised Code. Count six is essentially a promissory estoppel claim.

Count seven is for punitive damages and count eight is to appoint a receiver over the apartment complexes. These are remedies and will not be addressed in this judgment as separate causes of action.

Count one – breach of contract

The amended complaint alleges that the two complexes were mismanaged to the point that, in August 2014, the limited partner for each of the limited partnerships sent letters to each of the respective for-profit entity defendants alleging they were in default of management agreements with their respective limited partnerships. The letters gave the for-profit defendants notice that the management agreements would be terminated in 30 days unless the defaults were cured by then. The amended complaint, at paragraphs 29 through 32, describes what Rod alleges happened when Rodger received these notices:

> Rodger I, in his capacity as President of the BEU, GAA, and HSB, approached [the plaintiff] in 2014 and asked [the plaintiff] to assist the Apartment Complexes to cure the defaults. In fact, Rodger I was so desperate for his son's assistance, he broke down crying.
>
> Rodger I proceeded to make [the plaintiff] the owner's representative for the Apartment Complex projects and the primary contact for [the limited partner].
>
> Rodger I, in his capacity as President of the BEU, GAA, and HSB, continued to promise [the plaintiff] that if he assisted with curing the defaults, BEU, GAA and HSB would draft a succession plan whereby [the plaintiff] would be nominated to be voted President of the BEU, GAA, and HSB upon Rodger I's death or incapacitation.
>
> [The plaintiff] justifiably relied on this promise because historically the board of the BEU, GAA, and HSB approved any and all requests made by Rodger I.

The amended complaint goes on to assert that Rod, in reliance upon his father's promises, hired a new management company called Great Lakes Realty and otherwise "made sure the defaults were cured"[3] through his "tireless work."[4] Notably absent from the amended complaint's factual allegations on count one for breach of contract is any claim that Rod was promised anything other than a nomination for the presidency of BEU, Greater Abyssinian Apartments, Inc. and Helen S. Brown Apartments, Inc.

Count two – unjust enrichment

For this count, the plaintiff claims that he conferred a benefit on BEU, Greater Abyssinian Apartments, Inc. and Helen S. Brown Apartments, Inc. "in the form of time and

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[3] Amended complaint, ¶35.
[4] *Id.*, ¶36.

resources he provided to cure the multiple defaults"[5] of the management agreements cited by the limited partner. He seeks unspecified money damages as a remedy.

Count three – declaratory judgment

The plaintiff asserts in the amended complaint that Rodger offered in 2015 to assign to Rod 25% of the developer's fee that Rodger was collecting from BEU. But he then claims that he signed this agreement – which he calls the "fee sharing contract" – in 2014 in the presence of Rodger and Donna Rice Saffold, Rodger's wife. According to the plaintiff, the fee sharing contract was then signed by two people as witnesses to the signatures despite the fact they were not present when he signed it. Moreover, he asserts that the agreement is otherwise void since it purports to assign fees from 2010 even though no such fee existed then. Finally, he claims that his father fraudulently induced him into signing it. For these reasons, he seeks a declaratory judgment that the assignment is unenforceable and he "should be compensated for services performed."[6]

Count four – breach of contract by Rodger personally, count five – injunction, and count six – promissory estoppel

On count four the plaintiff alleges that Rodger should be personally jointly liable with BEU, Greater Abyssinian Apartments, Inc. and Helen S. Brown Apartments, Inc. on count one's breach of contract claim because Rodger never followed corporate formalities and failed to separate his own money from the funds belonging to the corporate entities.

For count five, the plaintiff seeks an injunction against all of the defendants from "continuing to transact business on behalf of"[7] BEU, Greater Abyssinian Apartments, Inc. and

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[5] *Id.*, ¶98.
[6] *Id.*, ¶107.
[7] *Id.*, ¶118.

Helen S. Brown Apartments, Inc. He cites as the factual basis for the injunction the prospect that the defendants' mismanagement of the apartments is likely to terminate contracts for the apartment complexes, thereby resulting in a lack of "funds to compensate him for his work."[8] For the injunction's legal basis, the plaintiff refers to R.C. 4165.03 pertaining to liability for deceptive trade practices despite the fact that the amended complaint is devoid of any factual assertions that any defendant committed a deceptive trade practice.

The plaintiff captions count six as one for a declaratory judgment. The factual allegations, however, are consistent with a promissory estoppel claim. He asserts that BEU, Greater Abyssinian Apartments, Inc. and Helen S. Brown Apartments, Inc. each promised, through Rodger and Donna Rice Saffold, to "compensate [him] for his work in curing the defaults . . . by making him President"[9] of the three entities, that he justifiably relied on the promise and he has incurred damages as a result.

In his May 24, 2018, brief in opposition to the corporate defendants' motion for summary judgment, the plaintiff said he is "hereby withdrawing" counts four through eight of the amended complaint. Because of that, the plaintiff did not address these counts in his opposition brief and I will not spend much time on them in this decision.

The evidence

At the core of the plaintiff's case is his contention that he was assured that if he worked to cure the defaults cited by the limited partners in their August 2014 letters to Greater Abyssinian Apartments, Inc. and Helen S. Brown Apartments, Inc. then he would receive consideration in the form of a nomination to serve as president of those two entities plus BEU.

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[8] *Id.*, ¶117.

[9] *Id.*, ¶120-121.

Accordingly, the record must be scrutinized for evidence of a contract to that effect or, for the equitable claim of unjust enrichment, evidence of an imperfectly executed contract sufficient to invoke equity to avoid an injustice.

Because there was never any agreement in writing, the only evidence comes from Rod's April 10, 2018, deposition testimony. During that deposition he was not directly asked to concisely, but thoroughly, describe in detail the making of the alleged contract for service in exchange for a nomination as president of BEU, Greater Abyssinian Apartments, Inc. and Helen S. Brown Apartments, Inc. It is thus necessary to piece together his version of the contract from disparate sections of his testimony.

At page 25, lines 1 through 13, he describes his father first approaching him for help in straightening out the buildings' problems:

> A. I got -- it was August of '14 or it was July of '14, when my dad came to me in tears and said, "You've got to be at this meeting." I didn't even know what it was about. Ohio Capital[10] was there and dad put me on as the owner's rep and told them that, "My son is going to take care of everything and that the succession plan" -- you know, he said, Rod was going to succeed him.
>
> Q. This was July '14?
>
> A. No. It was August '14. It was July '14, when he asked me to come to the meeting.

He then goes on to describe a conversation a year earlier:

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[10] "Ohio Capital" refers to the two limited partners, OEF Huntington Fund II and OEF Huntington Fund IV.

A. My father in July of '13 at McGregor, I believe is the rehab center he was in, he called me on a Saturday and told me he wanted to see me. Now, I went down there and he told me about, there's money in the buildings and years gone -- he said he wasn't -- he wasn't going to be around long enough and he was going to tell me. I said, "I don't know what -- I didn't even know what it was, and he said that -- I said, "How are you going to do that?" and he said, "I'm going to make you president of BEU, Helen Brown and Abyssinia."[11]

The plaintiff reaffirmed later in the deposition, at pages 142 and 195, that the promise to make him president of the three corporations was made in July 2013, i.e. a year before the default notices.

He expanded on his father's motivation in making him president of the three entities at page 124 where he says Rodger's intention was to make sure that the plaintiff would get a developer's fee that was paid from surplus cash at the properties twice a year.[12] But the plaintiff also acknowledged that, as of 2011, he was aware that Ohio Capital was a 99% owner of the two complexes,[13] and whether he intended to or not, he confirmed that there was never a promise of payment:

Q. Then when you had the conversation with your dad in 2014, about becoming the owner's rep, what was your conversation with him about how you would be paid?

A. He didn't -- we didn't say anything about being paid. Nobody said anything about being paid. He just expected me to do it and I -- my dad told me. I did whatever my

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[11] Deposition of Rodger Saffold, II, page 26, lines 3-15. The plaintiff repeats this assertion at page 95, lines 15-20.
[12] *Id.*, p. 124, l. 1-9; p. 133, l. 8-12.
[13] *Id.*, generally, p. 121 – 123.

dad told me to do, you know, and he was sick and I was going to make sure he wasn't going to lose those buildings.

Q. Did you have an expectation of being paid?

A. I'm sure I did, but –

Q. Well, did you?

A. Yeah, I'm sure, but I wasn't worried about it at that particular time. You know, my dad was sick.

Q. So you had an expectation that you would eventually be paid?

A. I would eventually be paid, yes.

Q. Did you have a discussion with your dad at any point about how much you would be paid?

A. Never.[14]

Moreover, Rod concedes that he was well aware that the authority to make him president of the three corporations was not within Rodger's control, instead it rested with their boards of directors.[15]

Discussion

In order to substantiate a breach of contract claim, a plaintiff must establish four elements: (1) a binding contract or agreement was formed; (2) the plaintiff performed its contractual obligations; (3) the defendant failed to fulfill its contractual obligations without legal excuse; and (4) the plaintiff suffered damages as a result of the breach. *Telecom Acquisition*

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[14] *Id.*, p. 67, line 4, to page 68, line 3.
[15] *Id.*, p. 216-217.

Corp. I v. Lucic Enters., Cuyahoga App. No. 102119, 2016-Ohio-1466, ¶23. The first element – the existence of a contract – is foundational. Without a contract there is nothing to breach.

A contract is generally defined as a promise, or a set of promises, actionable upon breach. *Kostelnik v. Helper*, 96 Ohio St. 3d 1, ¶16 (2002). Essential elements of a contract include an offer, acceptance, contractual capacity, consideration (the bargained for legal benefit and/or detriment), a manifestation of mutual assent and legality of object and of consideration. *Id.* The fact that the contract alleged in this case was oral may hinder the plaintiff's ability to meet his burden at trial of proving that it existed, but oral contracts are not unenforceable just because they are not in writing. Moreover, in the context of a summary judgment motion, the plaintiff's testimony is taken as true. With that in mind, Rod's testimony still falls short of establishing the existence of a contract.

Initially, the existence of an offer has hardly been demonstrated. The plaintiff's claim is that he was offered a nomination for the presidency of each of the three corporations. But his sworn testimony on the point is vague: he says that Rodger told him in July 2013 that Rodger intended to make him president of the three entities to keep the developer's fee coming to him, but there is no evidence that nominating Rod as president would do anything to assure such an outcome since the plaintiff concedes that the organizations' boards had the final say on selecting a president. Additionally, the plaintiff describes the situation as if there was nothing for him to accept or reject; his father would make him president *and* the developer's fees would flow to him while nothing was asked in return, at least as of July 2013 when the promise was first made. On top of that, the plaintiff's testimony about the "offer" in 2014 is simply that he attended a meeting where his father told the limited partner that Rod would "succeed him." Such a representation to a third party hardly constitutes an offer to the plaintiff.

Next, I will address the elements of contractual capacity and mutual assent together. The plaintiff claims to have a contract to become president of three separate corporations based on hazy promises from his father in 2013 and 2014. The evidence shows that Rodger held an executive position with each of the three companies – not to mention the two other non-profit defendants – but there is no evidence that Rodger had the authority to orally bind the companies to his promise. The opposite is true: the evidence shows that the boards have each nominated and approved a different successor to Rodger as president, suggesting that Rodger's selection of Rod as his successor was either never made or was rejected by the respective boards of the companies. The casual manner that the "offer" is said by Rod to have been made and accepted negates the possibility that the three organizations each mutually assented to it. On top of that, there is nothing in the scanty details of the alleged contract that can support a finding that Rodger was speaking for all three of the defendant entities and their individual interests when he made the promise to his son.

The plaintiff also claims that his father gave him the position of "owner's rep."[16] But he offers no evidence that Rodger had the capacity to bind the owners of the properties – namely the two limited partnerships – to his choice of Rod as their "rep." Indeed, the evidence shows that the general partners of the partnerships for the two properties are forbidden by contract from hiring or retaining any person to manage the project property,[17] so any oral promise Rodger made to appoint Rod as an "owner's rep" not only cannot be binding on the two limited partnerships – which may explain why the two limited partnerships are not named as party defendants – but is ineffective to obligate the two general partners who are defendants here.

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[16] *Id.*, p. 25, l. 6.

[17] See exhibits 3 and 4 to the deposition of Michael Swemba, the two limited partnership agreements, at section 5.2(w).

In the end, the only evidence the plaintiff has of Rodger's contractual capacity to obligate BEU, Greater Abyssinian Apartments, Inc. and Helen S. Brown Apartments, Inc. is the simple fact that he was an executive officer of all three corporations. But that alone is not sufficient to create a genuine issue of material fact about whether he had the authority to enter into the alleged contract or that, having the authority, he intended to obligate all three entities. The plaintiff must produce at least a modicum of evidence showing that Rodger spoke equally as an executive of the three entities when he made the promise.

Finally, the plaintiff cannot show the existence of consideration. He claims that he was supposed to become president of the companies in exchange for curing the deficiencies outlined in the August 2014 default letters to Greater Abyssinian Apartments, Inc. and Helen S. Brown Apartments, Inc. The first problem with this claim is Rod's testimony that he was promised the three presidencies in July 2013, a year before the default notices. But even overlooking that glaring discrepancy between the claim and the evidence in the context of a motion for summary judgment under Rule 56 of the Ohio Rules of Civil Procedure and assuming the truth of the claim that the appointments were in exchange for rectifying the defaults of the general partners under the management agreements, then there was still no consideration to BEU for making him its president.

Beyond that, the consequence to Greater Abyssinian Apartments, Inc. and Helen S. Brown Apartments, Inc. of not curing the deficiencies described in the notices was clear: their management agreements would be terminated.

That is exactly what happened.

And, if Rod is to be believed, the agreements were terminated *at his suggestion* and Great Lakes Realty was retained to replace them. In short, Rod defeated the possibility of proving consideration by bringing about the very result he claims his efforts were designed to prevent.

For these reasons, and for the other reasons argued by BEU, Greater Abyssinian Apartments, Inc. and Helen S. Brown Apartments, Inc. in their motion for summary judgment, the motion is granted on plaintiff Rodger Saffold, II's breach of contract claim in favor of the five corporate defendants.

Unjust enrichment

Since the plaintiff's dealings with the defendants were not covered by a contract, the claim for unjust enrichments must be considered. Unjust enrichment is an equitable claim that exists to prevent an injustice, particularly in situations where one or another party assumed their relationship was governed by a contract but it was not. The elements of unjust enrichment are (1) a benefit conferred by a plaintiff upon a defendant; (2) knowledge by the defendant of the benefit; and (3) retention of the benefit by the defendant under circumstances where it would be unjust to do so without payment. *Filo v. Liberato*, 7th Dist. No. 11 MA 18, 2013-Ohio-1014, ¶35.

The plaintiff identifies the benefit he conferred on the corporate defendants as his "efforts to cure the defaults."[18] Putting aside the significant factual question of whether his work to avoid default on the management agreements even provided a benefit, given that his solution was effectively to terminate the agreements, the plaintiff has not sued the ultimate beneficiary of any of his work to make the properties profitable, namely the limited partnerships who owned the

[18] Plaintiff's brief in opposition to summary judgment, p. 20.

apartment buildings. As such, he has not demonstrated a genuine issue of material fact on the first element of unjust enrichment, and the corporate defendants' motion for summary judgment on the unjust enrichment claim is granted.

Declaratory judgment

The plaintiff's third claim is for a declaratory judgment that an assignment agreement between him and Rodger is void and unenforceable. The assignment, also known as the fee sharing contract, is part of the record as Exhibit U to the corporate defendants' motion for summary judgment. It is captioned "ASSIGNMENT" and designates Rodger as the assignor and Rod as the assignee. The gist of the contract is to assign to Rod 25% of Rodger's project development coordinator compensation in consideration of services Rod has been performing for Rodger at the two apartment complexes. Rodger's entitlement to those fees apparently arose from two nearly identical agreements with BEU, one for each of the buildings, employing him as a project development coordinator from October 1, 2010, through December 31, 2014. Under the agreements – part of the record as Exhibits S and T to the corporate defendants' motion for summary judgment – Rodger is entitled to $210,000 for services in connection with the Superior apartments and $195,000 for the Noble apartments.

According to the amended complaint, the assignment should be declared void because Rodger assigned rights that did not exist and that the agreement is improperly dated, includes signatures of witnesses who were not present when it was signed and that it is "defective on its face."[19] These are questions of fact that cannot be resolved by a summary judgment on the record evidence here, and the motion for summary judgment of Rodger's estate on this claim is

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[19] Am. complaint, p. 15, ¶104.

denied. But the only two parties to the assignment are Rodger and Rod, accordingly the corporate defendants' motion for summary judgment on this claim is granted.

Conclusion

Summary judgment is granted in favor of every defendant on counts one and two of the amended complaint. Summary judgment is granted in favor of the five corporate defendants on count three of the amended complaint. Summary judgment is granted in favor of every defendant on counts four through eight of the amended complaint.

Count three for a declaratory judgment of the rights and obligations of the plaintiff and Rodger P. Saffold under the assignment agreement remains pending and scheduled for trial on July 30, 2018.

IT IS SO ORDERED:

Judge John P. O'Donnell

7/6/2018
Date