Dannan Realty Corp. v. Harris

157 N.E.2d 597 (N.Y. 1959)

Burke, J.

        The plaintiff in its complaint alleges, insofar as its first cause of action is concerned, that it was induced to enter into a contract of sale of a lease of a building held by defendants because of oral representations, falsely made by the defendants, as to the operating expenses of the building and as to the profits to be derived from the investment. Plaintiff, affirming the contract, seeks damages for fraud.

        At Special Term, the Supreme Court sustained a motion to dismiss the complaint. On appeal, the Appellate Division unanimously reversed the order granting the dismissal of the complaint. Thereafter the Appellate Division granted leave to appeal, certifying the following question: "Does the first cause of action in the complaint state facts sufficient to constitute a cause of action?"

The basic problem presented is whether the plaintiff can possibly establish from the facts alleged in the complaint (together with the contract which was annexed to the complaint) reliance upon the misrepresentations (Cohen v. Cohen, 1 A D 2d 586, affd. 3 N Y 2d 813).

        We must, of course, accept as true plaintiff's statements that during the course of negotiations defendants misrepresented the operating expenses and profits. Such misrepresentations are undoubtedly material. However, the provisions of the written contract which directly contradict the allegations of oral representations are of equal importance in our task of reaching a decisive answer to the question posed in these cases.

        The contract, annexed to and made a part of the complaint, contains the following language pertaining to the particular facts of representations: "The Purchaser has examined the premises agreed to be sold and is familiar with the physical condition thereof. The Seller has not made and does not make any representations as to the physical condition, rents, leases, expenses, operation or any other matter or thing affecting or related to the aforesaid premises, except as herein specifically set forth, and the Purchaser hereby expressly acknowledges that no such representations have been made, and the Purchaser further acknowledges that it has inspected the premises and agrees to take the premises 'as is' \* \* \* It is understood and agreed that all understandings and agreements heretofore had between the parties hereto are merged in this contract, which alone fully and completely expresses their agreement, and that the same is entered into after full investigation, neither party relying upon any statement or representation, not embodied in this contract, made by the other. The Purchaser has inspected the buildings standing on said premises and is thoroughly acquainted with their condition."

        Were we dealing solely with a general and vague merger clause, our task would be simple. A reiteration of the fundamental principle that a general merger clause is ineffective to exclude parol evidence to show fraud in inducing the contract would then be dispositive of the issue (Sabo v. Delman, 3 N Y 2d 155). To put it another way, where the complaint states a cause of action for fraud, the parol evidence rule is not a bar to showing the fraud -- either in the inducement or in the execution -- despite an omnibus statement that the written instrument embodies the whole agreement, or that no representations have been made. (Bridger v. Goldsmith, 143 N. Y. 424; Angerosa v. White Co., 248 App. Div. 425, affd. 275 N. Y. 524; Jackson v. State of New York, 210 App. Div. 115, affd. 241 N. Y. 563; 3 Williston, Contracts [Rev. ed.], §811A.)

        Here, however, plaintiff has in the plainest language announced and stipulated that it is not relying on any representations as to the very matter as to which it now claims it was defrauded. Such a specific disclaimer destroys the allegations in plaintiff's complaint that the agreement was executed in reliance upon these contrary oral representations (Cohen v. Cohen, supra). The Sabo case (supra) dealt with the usual merger clause. The present case, as the Cohen case, additionally, includes a disclaimer as to specific representations.

        This specific disclaimer is one of the material distinctions between this case and Bridger v. Goldsmith (supra) and Crowell-Collier Pub. Co. v. Josefowitz (5 N Y 2d 998). In the Bridger case, the court considered the effect of a general disclaimer as to representations in a contract of sale, concluding that the insertion of such a clause at the insistence of the seller cannot be used as a shield to protect him from his fraud. Another material distinction is that nowhere in the contract in the Bridger case is there a denial of reliance on representations, as there is here. Similarly, in Crowell-Collier Pub. Co. v. Josefowitz (supra), decided herewith, only a general merger clause was incorporated into the contract of sale. Moreover, the complaint there additionally alleged that further misrepresentations were made after the agreement had been signed, but while the contract was held in escrow and before it had been finally approved.

        Consequently, this clause, which declares that the parties to the agreement do not rely on specific representations not embodied in the contract, excludes this case from the scope of the Jackson, Angerosa, Bridger and Crowell-Collier cases (supra). (See Foundation Co. v. State of New York, 233 N. Y. 177.)

        The complaint here contains no allegations that the contract was not read by the purchaser. We can fairly conclude that plaintiff's officers read and understood the contract, and that they were aware of the provision by which they aver that plaintiff did not rely on such extra-contractual representations. It is not alleged that this provision was not understood, or that the provision itself was procured by fraud. It would be unrealistic to ascribe to plaintiff's officers such incompetence that they did not understand what they read and signed. (Cf. Ernst Iron Works v. Duralith Corp., 270 N. Y. 165, 171.) Although this court in the Ernst case discounted the merger clause as ineffective to preclude proof of fraud, it gave effect to the specific disclaimer of representation clause, holding that such a clause limited the authority of the agent, and hence, plaintiff had notice of his lack of authority. But the larger implication of the Ernst case is that, where a person has read and understood the disclaimer of representation clause, he is bound by it. The court rejected, as a matter of law, the allegation of plaintiffs "that they relied upon an oral statement made to them in direct contradiction of this provision of the contract." The presence of such a disclaimer clause "is inconsistent with the contention that plaintiff relied upon the misrepresentation and was led thereby to make the contract." (Kreshover v. Berger, 135 App. Div. 27, 28.)

        It is not necessary to distinguish seriatim the cases in other jurisdictions as they are not, in the main, in point or, in a few instances, clash with the rule followed in the State of New York. The marshaling of phrases plucked from various opinions and references to generalizations, with which no one disagrees, cannot subvert the fundamental precept that the asserted reliance must be found to be justifiable under all the circumstances before a complaint can be found to state a cause of action in fraud. We must keep in mind that "opinions must be read in the setting of the particular cases and as the product of preoccupation with their special facts" (Freeman v. Hewit, 329 U.S. 249, 252). When the citations are read in the light of this caveat, we find that they are generally concerned with factual situations wherein the facts represented were matters peculiarly within the defendant's knowledge, as in the cases of Sabo v. Delman (supra) and Jackson v. State of New York (supra).

        The general rule was enunciated by this court over a half a century ago in Schumaker v. Mather (133 N. Y. 590, 596) that "if the facts represented are not matters peculiarly within the party's knowledge, and the other party has the means available to him of knowing, by the exercise of ordinary intelligence, the truth or the real quality of the subject of the representation, he must make use of those means, or he will not be heard to complain that he was induced to enter into the transaction by misrepresentations. (Baily v. Merrell, Bulstrode's Rep. Part III, p. 94; Slaughter v. Gerson, 13 Wall. 383; Chrysler v. Canaday, 90 N. Y. 272.)"

Very recently this rule was approved as settled law by this court in the case of Sylvester v. Bernstein (283 App. Div. 333, affd. 307 N. Y. 778). In this case, of course, the plaintiff made a representation in the contract that it was not relying on specific representations not embodied in the contract, while, it now asserts, it was in fact relying on such oral representations. Plaintiff admits then that it is guilty of deliberately misrepresenting to the seller its true intention. To condone this fraud would place the purchaser in a favored position. (Cf. Riggs v. Palmer, 115 N. Y. 506, 511, 512.) This is particularly so, where, as here, the purchaser confirms the contract, but seeks damages. If the plaintiff has made a bad bargain he cannot avoid it in this manner.
If the language here used is not sufficient to estop a party from claiming that he entered the contract because of fraudulent representations, then no language can accomplish that purpose. To hold otherwise would be to say that it is impossible for two businessmen dealing at arm's length to agree that the buyer is not buying in reliance on any representations of the seller as to a particular fact.

        Accordingly, the order of the Appellate Division should be reversed and that of Special Term reinstated, without costs. The question certified should be answered in the negative.

Fuld, J. (dissenting)

        If a party has actually induced another to enter into a contract by means of fraud -- and so the complaint before us alleges -- I conceive that language may not be devised to shield him from the consequences of such fraud. The law does not temporize with trickery or duplicity, and this court, after having weighed the advantages of certainty in contractual relations against the harm and injustice which result from fraud, long ago unequivocally declared that "a party who has perpetrated a fraud upon his neighbor may \* \* \* contract with him in the very instrument by means of which it was perpetrated, for immunity against its consequences, close his mouth from complaining of it and bind him never to seek redress. Public policy and morality are both ignored if such an agreement can be given effect in a court of justice. The maxim that fraud vitiates every transaction would no longer be the rule but the exception." (Bridger v. Goldsmith, 143 N. Y. 424, 428.) It was a concern for similar considerations of policy which persuaded Massachusetts to repudiate the contrary rule which it had initially espoused. "The same public policy that in general sanctions the avoidance of a promise obtained by deceit", wrote that state's Supreme Judicial Court in Bates v. Southgate (308 Mass. 170, 182), "strikes down all attempts to circumvent that policy by means of contractual devices. In the realm of fact it is entirely possible for a party knowingly to agree that no representations have been made to him, while at the same time believing and relying upon representations which in fact have been made and in fact are false but for which he would not have made the agreement. To deny this possibility is to ignore the frequent instances in everyday experience where parties accept \* \* \* and act upon agreements containing \* \* \* exculpatory clauses in one form or another, but where they do so, nevertheless, in reliance upon the honesty of supposed friends, the plausible and disarming statements of salesmen, or the customary course of business. To refuse relief would result in opening the door to a multitude of frauds and in thwarting the general policy of the law."

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        It was held that even this explicit disavowal of reliance did not bar the plaintiff from recovery. In answering the argument that the provision prevented proof either of misrepresentation by the defendant or reliance on the part of the plaintiff, the Appellate Division, in an opinion approved by this court, wrote: "A party to a contract cannot, by misrepresentation of a material fact, induce the other party to the contract to enter into it to his damage and then protect himself from the legal effect of such misrepresentation by inserting in the contract a clause to the effect that he is not to be held liable for the misrepresentation which induced the other party to enter into the contract. The effect of misrepresentation and fraud cannot be thus easily avoided" (pp. 119-120).

        Although the clause in the contract before us may be differently worded from those in the agreements involved in the other cases decided by this court, it undoubtedly reflects the same thought and meaning, and the reasoning and the principles which the court deemed controlling in those cases are likewise controlling in this one. Their application, it seems plain to me, compels the conclusion that the complaint herein should be sustained and the plaintiff accorded a trial of its allegations.

        It is said, however, that the provision in this contract differs from those heretofore considered in that it embodies a specific and deliberate exclusion of a particular subject. The quick answer is that the clause now before us is not of such a sort. On the contrary, instead of being limited, it is all-embracing, encompassing every representation that a seller could possibly make about the property being sold and, instead of representing a special term of a bargain, is essentially "boiler plate." plaintiff, alleging that the defendant fraudulently misrepresented the value of the property, sought damages. Again, despite the explicit statement that such a representation had not been made and the specific disavowal of reliance thereon, the court upheld the plaintiff's right to bring the action (p. 376).

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        The rule heretofore applied by this court presents no obstacle to honest business dealings, and dishonest transactions ought not to receive judicial protection. The clause in the contract before us may lend support to the defense and render the plaintiff's task of establishing its claim more difficult, but it should not be held to bar institution of an action for fraud. Whether the defendants made the statements attributed to them and, if they did, whether the plaintiff relied upon them, whether, in other words, the defendants were guilty of fraud, are questions of fact not capable of determination on the pleadings alone. The plaintiff is entitled to its day in court.