

Beacon Estates, LLC v Ingrassia

Supreme Court of New York, Appellate Division, Fourth Department

November 8, 2019, Decided ; November 8, 2019, Entered

967 CA 19-00541

Reporter

177 A.D.3d 1305 *; 113 N.Y.S.3d 429 **; 2019 N.Y. App. Div. LEXIS 8131 ***; 2019 NY Slip Op 08042 ****

[****1] Beacon Estates, LLC, et al., Appellants, v
Angelo Ingrassia et al., Respondents.

1612 Ridge Road, LLC, L.A. Fitness International, LLC,
and Agree Rochester NY, LLC, to dismiss plaintiffs'
amended complaint and dismissed the amended
complaint in its entirety.

Core Terms

amended complaint, breach of contract, cause of action,
plaintiffs', easement, motions, inter alia, six years,
defendants', commencement of the action, fraud cause
of action, court properly, sole member, two year,
abandoned, sounding, accrued

Counsel: [***1] MICHAEL STEINBERG,
ROCHESTER, FOR PLAINTIFFS-APPELLANTS.

LECLAIR KORONA COLE LLP, ROCHESTER
(JEREMY M. SHER OF COUNSEL), FOR
DEFENDANTS-RESPONDENTS ANGELO INGRASSIA
AND 1612 RIDGE ROAD, LLC.

CULLEN AND DYKMAN LLP, GARDEN CITY (SCOTT
D. GREENSPAN OF COUNSEL), FOR DEFENDANT-
RESPONDENT L.A. FITNESS INTERNATIONAL, LLC.

GOLDBERG SEGALLA LLP, BUFFALO (MARC W.
BROWN OF COUNSEL), FOR DEFENDANT-
RESPONDENT AGREE ROCHESTER NY, LLC.

HARRIS BEACH PLLC, PITTSFORD (ANNA PATTON
OF COUNSEL), FOR DEFENDANT-RESPONDENT
COUNTY OF MONROE INDUSTRIAL DEVELOPMENT
CORPORATION.

Judges: PRESENT: SMITH, J.P., PERADOTTO,
LINDLEY, DEJOSEPH, AND CURRAN, JJ.

Opinion

[*1305] [**430] Appeal from an order and judgment
(one paper) of the Supreme Court, Monroe County
(Matthew A. Rosenbaum, J.), entered November 7,
2018. The order and judgment, among other things,
granted the motions of defendants Angelo Ingrassia,

It is hereby ordered that the order and judgment so
appealed from is unanimously affirmed without costs.

Memorandum: Plaintiffs commenced this action seeking
damages and declaratory [***2] relief associated with
an agreement entered into in 2007 between decedent
Daniel P. Cappa, Sr., as the sole member of plaintiff
Beacon Estates, LLC (Beacon), and defendant Angelo
Ingrassia, as the sole member of defendant 1612 Ridge
Road, LLC. The instant action was commenced [**431]
in 2017, and the amended complaint asserted causes of
action [*1306] sounding in, inter alia, breach of contract
and fraud. Of particular importance on this appeal, the
fraud causes of action were based on, inter alia, the
execution of a document in 2007 between Cappa and
Ingrassia whereby a permanent easement that allowed
access to Beacon's property by ingress and egress over
property owned by 1612 Ridge Road, LLC was
extinguished and replaced by a temporary easement.
Plaintiffs alleged that Ingrassia misrepresented the
contents of the 2007 document and exploited a personal
relationship with Cappa to induce him into signing the
2007 document. Plaintiffs further alleged that, in
October 2012, one of Cappa's sons accompanied
Cappa to a meeting with Ingrassia, during which
Ingrassia indicated that Cappa's easement was
abandoned. Cappa questioned why the easement was
abandoned, and Ingrassia told Cappa not to do
anything [***3] until Ingrassia completed the sale of the
property owned by 1612 Ridge Road, LLC. In 2013,
1612 Ridge Road, LLC sold its property to defendant
Agree Rochester NY, LLC. Defendant L.A. Fitness
International, LLC is a lessee of that property and
operates a business thereon.

In separate motions, Ingrassia and 1612 Ridge Road,
LLC, L.A. Fitness International, LLC, and Agree
Rochester NY, LLC (collectively, defendants) moved to
dismiss the amended complaint against them

contending, inter alia, that it was time-barred (see [CPLR 3211 \[a\] \[5\]](#)). As limited by their brief, plaintiffs appeal from an order and judgment insofar as it granted defendants' motions with respect to the second, fourth, and fifth causes of action in the amended complaint, sounding in breach of contract and fraud. We affirm.

Contrary to plaintiffs' contention, Supreme Court properly granted defendants' motions with respect to the fraud causes of action. The statute of limitations for fraud is "the greater of six years from the date the cause of action accrued or two years from the time the plaintiff[s] . . . discovered the fraud, or could with reasonable diligence have discovered it" ([CPLR 213 \[8\]](#); see [Boardman v Kennedy](#), 105 AD3d 1375, 1376, 964 NYS2d 337 [4th Dept 2013]; [Rite Aid Corp. v Grass](#), 48 AD3d 363, 364, 854 NYS2d 1 [1st Dept 2008]). Here, defendants established that the action [***4] was commenced more than six years from the dates of the alleged acts of fraud, thus "shifting the burden to plaintiffs to show that the two-year discovery exception applies" ([Brooks v AXA Advisors, LLC \[appeal No. 2\]](#), 104 AD3d 1178, 1180, 961 NYS2d 648 [4th Dept 2013], *lv denied* 21 NY3d 858, 992 NE2d 1093, 970 NYS2d 748 [2013]). We conclude that the court properly determined that plaintiffs "possessed knowledge of facts from which they reasonably could have discovered the alleged fraud soon after it occurred, and in any event more than [*1307] two years prior to the commencement of the action" (*id.*; see [CIFG Assur. N. Am., Inc. v Credit Suisse Sec. \[USA\] LLC](#), 128 AD3d 607, 608, 11 NYS3d 563 [1st Dept 2015], *lv denied* 27 NY3d 906, 36 NYS3d 619, 56 NE3d 899 [2016]; [Boardman](#), 105 AD3d at 1376).

We similarly reject plaintiffs' contention that the court erred in granting defendants' motions with respect to the breach of contract cause of action. That cause of action "accrued upon the alleged breach of contract by defendants, which occurred more than six years prior to the commencement of the action, regardless of whether the damage to plaintiffs was sustained later and plaintiffs were unaware of the breach at the time it occurred" ([Brooks](#), 104 AD3d at 1180; see [CPLR 213 \[2\]](#)).

[**432] In light of our determination, plaintiffs' remaining contentions are academic. Present—Smith, J.P., Peradotto, Lindley, DeJoseph and Curran, JJ.