

Supreme Court of the State of New York.
County of Bronx

Elizabeth Torrez and Yvette Rodriguez Plaintiffs,
v.
Island Home Designs, Corp., Michael Angelinas,
Urban Rehab Funding Inc., Theo Phanous, Louis
Lentiou and Chevy Chase Bank, Defendants.

No. 21187 / 98

July 19, 2001.

Bruce A. Claugus, Claugus & Mitchell, New York,
New York, for Defendant, Chevy Chase Bank.

MEMORANDUM AND ORDER

Hon. Jerry L. Crispino

Separate motions by defendants Chevy Chase Bank and Island Homes Designs and plaintiff=s cross-motion are consolidated for the purposes of judicial economy and are decided as follows:

Defendants, Chevy Chase Bank (ACCB@) seeks to dismiss plaintiff=s amended complaint, CPLR 3211(a)[7]. Co-defendant, Island Home Designs Corp., (AIHD@) also seeks dismissal, CPLR 3211 (a) [1] & [7]. The Court notes that ACCB@ in their moving papers has failed to attach a copy of the amended complaint. However, as co-defendant has included same in its moving papers, the Court will decide same on the merits.

The underlying history for the purposes of the within motions is as follows:

On or about July 22, 1997, plaintiff=s entered into an agreement with defendant AIHD@ for home improvement with the intent to construct a basement apartment at their residence, 957 Van Nest Avenue, Bronx, NY. The cost of the construction was to be \$30,000.00. Plaintiffs claim that this agreement was a result of a solicitation by Michael Angelious, a representative of AIHD@. Mr. Angelious gave an estimate to complete the work and informed plaintiffs that he knew a Mr. Louis Lentiou who could assist them in obtaining bank financing. As a result, plaintiffs accepted AIHD=>s bid to do the construction work.

Work began on July 25, 1997. However, after about

one week, workers would not show up at the house leaving the basement in a devastated condition. Eventually plaintiffs got in contact with Mr. Angelious who told them that his boss, the owner of AIHD@, left for Greece on vacation and that the company was dissolving. He informed them however, that his boss= partner, Theo Phanous was starting a new company called Urban Rehab and that they would finish the job.

Thereafter, Mr. Angelious appeared at plaintiff=s house with an architect who proposed a new plan for the basement which would increase the cost of the construction \$5,000, for a total of \$35,000. At that time, Mr. Louis Lentiou was introduced to plaintiffs by Mr, Angelious. Plaintiffs claim that Mr. Lentiou showed identification that he was a representative of Chevy Chase Bank. Mr. Lentiou told plaintiffs that he could provide financing for them based upon the equity in their home, notwithstanding their income or other debts. Defendant ACCB@ states that based upon a house hold income of \$78,000/yearly, their credit history and the equity on the house, a loan for \$35,560.25 was approved. Said loan was secured by a second mortgage on their house and bearing interest at 10.5% per annum.

In early September, the workers again stopped coming as the loan money had not yet arrived. As a result, a job that was to have been completed in three weeks was still incomplete two months later. In late October, Mr. Lentiou and Mr. Phanous, the owner of Urban Rehab visited the plaintiff with the \$35,000 check from ACCB@. Said draft was made payable to the plaintiffs and Urban Rehab jointly. At said meeting, the plaintiffs were asked to endorse the draft and were told that the bank would hold the money and release it as the work progressed. Plaintiff claim that they trusted Mr. Lentiou and were not suspicious.

Within a week, Urban Rehab abandoned the job and plaintiffs could not locate Mr. Phanous or Mr. Lentiou. Thereafter, plaintiff contacted ACCB@ who investigated this situation. ACCB@ informed plaintiff that Me. Lentiou never was employed by them. Due to the incomplete job, plaintiffs hired workers and incurred additional expenses of over \$10,000. As a result, plaintiff commenced the within action. Now defendants ACBC@ and AIHD@ seek dismissal of the underlying complaint.

The complaint in question lists 15 causes of action. The initial cause of action seeks a claim grounded in breach of contract. As cited by defendant ACCB@, to sustain a claim for breach of contract, a plaintiff must allege a) the terms of the agreement, b) consideration c) performance by plaintiff and d) the alleged breach, *Furia v. Furia*, 116 Ad2d 694. Here there is no evidence of a breach. ACCB@ was to give \$35,560.24 for home improvement which it did. Further, as the agreement between plaintiff=s and AIHD@ was not completed, such claim is not applicable. Throughout their complaint and affidavits submitted in support thereto, plaintiffs allege that representatives of Urban Rehab cheated them under a home improvement contract in the sum of \$35,000. Neither of which involves defendant AIHD@.

Plaintiffs 2nd, 3rd, and 4th causes of action alleging Fraud, Emotional Distress and Breach of Warranty have been claimed. To support an allegation of Fraud a plaintiff must specify the false or fraudulent communication by defendant. Claims of fraud without any allegation of the details constituting the wrong are insufficient *Commerce & Industry Inc. Co. v. Global Office Supply Co.*, 266 A2d 165, and *Levine v. Yokell*, 258 Ad2d 296.

Emotional distress claim requires a) extreme and outrageous conduct b) intent to cause severe emotional distress c) causal connection between conduct and the injury and d) severe emotional distress, *Howell v. New York Post Company*, 81 NY2d 115. Further, allegation as to breach of warranty fails to apprise the defendants of the element of said claim, *Gary v. Rochester Gas & Electric Corp.*, 97 Ad2d 975. Here, there is no claim that an agreement between plaintiffs and ACCB@ that would give rise that a warranty exists. Additionally, the second, third, and forth causes of action asserted herein do not relate to any action as to AIHD@.

The sixth, seventh, eighth, and ninth, causes of action allege claim for attorney fees, Racketeer Influenced and Corrupt Organization Act (ARICO@) violation, Commercial Bribery and Unjust Enrichment.

Movant has failed to show an independent basis for a claim of attorney fees. A RICO allegation must plead a) conduct b) of an enterprise, c) through a pattern d) of racketeering activity, 18 U.S.C. Section 1962 (a). The facts herein fail to establish a prima facie showing of same. Movant has not set forth compliance with the four party test to plead such a claim as against ACCB@ or AIHD@.

Commercial bribery is criminal in nature and does

not create a private right of action, *Philip Morris, Inc. v. Grinnell Lithographic Co., Inc.* 67 F. Supp 2d 126. Claim for unjust enrichment also must fail. To support such claim, plaintiff must state that it conferred a benefit upon the defendant and that the defendant will obtain such a benefit without adequately compensating plaintiff therefore, *Tarrytown House Commissions v. Hainse*, 161 Ad2d 310. Plaintiff=s have failed to meet the minimal requirement to effectively plead such cause of action.

The tenth, eleventh, twelfth, and thirteenth claim allege violations of the Fair Housing Act (AFHA@), Equal Credit Opportunities Act (AECOA@), Real Estate Settlement Procedures Act (ARESPA@) and the Truth in Lending Act (ATILA@).

The AFHA@ was enacted to afford protection from discrimination by people or entities involved in the business of real estate transactions. AECOA@ was designed to insure that lending institutions did not make decisions based on race, color, sex, age, marital status, religion or other such basis.

Clearly, no claim as to discrimination has been made against ACCB@ and/or AIHD@ rendering such claim without merit. Furthermore, the within complaint fails to support claims as to ARESPA@ and/or ATILA@ violations. Therein, the fourteenth and fifteenth causes of actions based on deceptive practices and negligence have not been properly pleaded.

The Courts have liberally construed pleadings in the favor of plaintiff, *Cohn v. Lionel Corp.*, 21 NY2d 559. However, a pleading which fairly construed alleges no fact constituting wrong, but only general conclusion, is insufficient and may be dismissed on such grounds, *WFB Telecommunications, Inc. v. NYNEY*, 188 Ad2d 257 and *Betsome-So Co. v. Mogul* 254 Ad2d 240.

Accordingly defendants AIHD@ and ACCB@=s motion for dismissal of the within action, CPLR 3211a[7] is granted. Upon service of a copy of this order upon plaintiff=s counsel and the Clerk, said action shall be dismissed as against them.

Plaintiff=s cross-motion seeking leave to serve and amended complaint is granted only to the extent that notwithstanding the aforementioned dismissal, CPLR 3211 (a)[7], said dismissal is not on the merits. Moreover, plaintiff if they be so advised, may serve an amended complaint provided same is not similar in nature and complies with the requirements set forth in the CPLR.

Branch of cross-motion seeking a default judgement as against defendants Angelinas, Lentiou, Theophanous, and Urban Rehab is denied with leave to renew upon submission of an affidavit by a person with requisite knowledge to establish a cause of action against said defendants and an affidavit of service of the summons and complaint upon each defendant.

This constitutes the order of this Court.¹

JSC.

¹This document has been re-typed at Claugus & Mitchell because the original memorandum and order is not particularly legible. If you would like an original please to not hesitate to contact Claugus & Mitchell.