

DOCKET NO. HHD CV-16-6066913 S : SUPERIOR COURT
VILLAGE MORTGAGE COMPANY : J. D. OF HARTFORD
VS. : AT HARTFORD
RONALD GARBUS, ET AL : JANUARY 29, 2019

MEMORANDUM OF DECISION

On October 17, 2018, the parties presented evidence at a bench trial in this case concerning stock ownership. At trial, the court heard testimony from witnesses and received numerous exhibits. Pursuant to a briefing schedule, in lieu of oral argument, the parties filed post-trial memoranda of law, dated December 3, 2018.

After consideration, the court issues this memorandum of decision.

I

Background

In its amended complaint (#119) (complaint), dated September 27, 2016, the plaintiff, Village Mortgage Company (Village or plaintiff), a corporation, alleges that the defendants, Georganne and Ronald Garbus, were original shareholders when Village was formed in 1998, for a total investment of \$30,000.00. The plaintiff alleges that, in the same year, the defendants returned the stock and were reimbursed.

Village also alleges that in June 2011, the stock certificate was apparently returned to the defendants in exchange for \$30,000.00, without proper corporate authority, and at substantially less than fair value. Village alleges that the circumstances subsequently came to light as a result of litigation against the co-founder of the company, referring to nonparty James Veneziano, who surreptitiously was involved in the return of stock. See complaint, ¶ 4. The plaintiff contests the defendants' assertion that they are lawfully stockholders with rights to own, possess, and vote

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the stock. Village alleges that in regard to the issue of defendants' ownership, there is no adequate remedy at law and it seeks a judicial determination in the form of a declaratory judgment as to whether or not the defendants are in fact lawfully shareholders of the corporation.

In their November 2016 answer (#121), the defendants deny the salient allegations and assert special defenses. In their special defenses, they allege that the plaintiff's claim for a declaratory judgment is barred by various statutes of limitations and by laches. In their third special defense, they allege that the plaintiff's agent, Veneziano, had the apparent authority to execute a contract on the plaintiff's behalf.

In its reply (#122), Village asserts, by way of avoidance, that the defendants conspired with Veneziano to conceal their purported stock interest in Village. Village alleges that the defendants are equitably estopped from asserting their defenses, alleging that Veneziano concealed the facts surrounding the transfers of the stock, and any such action taken by Veneziano was without corporate authority, apparent or otherwise, and constituted an ultra vires act in violation of civil if not criminal law. Village also asserts that the defendants have unclean hands and are precluded from invoking equitable considerations, such as laches.

The defendants did not appear at the trial. No evidence was presented to the court as to their counsel's assertion that they were not well enough to travel from Florida, where they reside, to attend court in Connecticut.

Additional references to the factual background are discussed below.

II

Discussion

In a case tried to the court, “[t]he . . . judge, as the trier of facts, is the sole arbiter of the credibility of witnesses and the weight to be given to their testimony.” (Internal quotation marks omitted.) *Taylor v. Commissioner of Correction*, 324 Conn. 631, 637, 153 A.3d 1264 (2017).

“[I]t is the exclusive province of the trier of fact to weigh conflicting testimony and make determinations of credibility, crediting some, all or none of any given witness’ testimony.”

(Internal quotation marks omitted.) *State v. Buhl*, 321 Conn. 688, 708, 138 A.3d 868 (2016).

“The purpose of a declaratory judgment action, as authorized by General Statutes § 52-29¹ and Practice Book § [17-55] is to secure an adjudication of rights [when] there is a substantial question in dispute or a substantial uncertainty of legal relations between the parties. . . . Subdivisions (1) and (2) of Practice Book § 17-55 respectively require that the plaintiff in a declaratory judgment action have ‘an interest, legal or equitable, by reason of danger of loss or of uncertainty as to the party’s rights or other jural relations’ and that there be ‘an actual bona fide and substantial question or issue in dispute or substantial uncertainty of legal relations which requires settlement between the parties. . . .’ . . . [O]ur declaratory judgment statute provides a valuable tool by which litigants may resolve uncertainty of legal obligations.

‘[O]ur declaratory judgment statute is unusually liberal [and] is broader in scope than . .

¹Section 52-29 (a) provides, “The Superior Court in any action or proceeding may declare rights and other legal relations on request for such a declaration, whether or not further relief is or could be claimed. The declaration shall have the force of a final judgment.”

the statutes in most, if not all, other jurisdictions . . . and [w]e have consistently construed our statute and the rules under it in a liberal spirit, in the belief that they serve a sound social purpose. . . . [Although] the declaratory judgment procedure may not be utilized merely to secure advice on the law . . . it may be employed in a justiciable controversy where the interests are adverse, where there is an actual bona fide and substantial question or issue in dispute or substantial uncertainty of legal relations which requires settlement, and where all persons having an interest in the subject matter of the complaint are parties to the action or have reasonable notice thereof.” (Citations omitted; internal quotation marks omitted.) *New London Cty. Mut. Ins. Co. v. Nantes*, 303 Conn. 737, 747-48, 36 A.3d 224 (2012). Here, the issue as to whether the defendants are shareholders in Village presents a justiciable controversy where the interests are adverse, where there is an actual bona fide and substantial question or issue in dispute, and is properly the subject of a claim for declaratory judgment. All parties having an interest in the subject matter of the complaint are parties.

A

Stock Ownership

The court finds the following facts and credits the following evidence, except as noted. The court credits the testimony of Donna McGuire, Veneziano’s former wife, who stated that the defendants were friends of Veneziano and that, for many years, she personally had possession of the original stock certificate on which the defendants’ names appear, of which defendants’ Exhibit D is a copy. See trial transcript (Tr.), p. 138. The stock certificate, No. 2, for 300 shares, is dated May 1, 1998, and lists the registered holders as Ronald S. and Georgette Garbus. Although dated in May 1998, it was not issued until 2000. Tr., p.13.

McGuire received the stock certificate from Veneziano, who asked her to put it in her safe deposit box, likely in the early 2000s. She held possession of the stock certificate for a long time, which she stated was “quite a few years.” Tr., p.139. It is evident that Veneziano used his wife’s safe deposit box in order to hide the stock certificate there.

Eventually, McGuire gave the certificate to Veneziano or Justin Giroliman, a Village employee, who later became Village’s chief financial officer and senior vice president. Giroliman credibly testified that he had possession of it from 2010 to 2011 and, pursuant to Veneziano’s direction, kept it in his desk at Village’s office. Tr., p.114.

Besides the evidence showing either that the defendants never possessed or relinquished the stock certificate, the fact that the defendants were not stockholders in Village as of April 1999 is shown also by the fact that Ronald Garbus did not list an ownership interest in Village in Schedule B (Personal Property) on his bankruptcy petition dated April 8, 1999. See plaintiff’s Exhibit 1.

In his deposition testimony, Ronald Garbus’s testimony about being a stockholder was vague; he could not even recall when he filed for bankruptcy. See plaintiff’s Exhibit 22, p.10. The court does not credit his testimony about being a shareholder.

In contrast, Village’s president, Laurel Caliendo, credibly testified that, as of November 2007, the defendants were not Village stockholders. Tr., pp.20-23. See plaintiff’s Exhibit 4 (list of Village stockholders as of November 2007).

Thus, even though the defendants were listed as original shareholders in Village, their ownership interest was relinquished soon thereafter. By having his wife put the stock certificate

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