UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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YISROEL WEINGOT and SURI WEINBERGER a/k/a SURI WEINGOT,

Plaintiffs,

-against-

UNISON AGREEMENT CORP., REAL ESTATE EQUITY EXCHANGE INC., and ODIN NEW HORIZON REAL ESTATE FUND, LP,

Defendants.
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ORDER AND REPORT AND RECOMMENDATION
CV 21-4542 (JS)(AYS)

ANNE Y. SHIELDS, United States Magistrate Judge:

Before the Court, on referral from the Honorable Joanna Seybert, is Defendants' motion for summary judgment, pursuant to Federal Rule of Civil Procedure 56. Plaintiffs oppose the motion. For the following reasons, this Court respectfully recommends that Defendants' motion be granted in part and denied in part.

BACKGROUND

The relevant facts, as set forth below, are taken from those portions of the parties' Local Civil Rule 56.1 statements upon which they agree, as well as the documents offered by the parties in support of and in opposition to the within motions.

In or around 2017, Plaintiff Yisroel Weingot ("Yisroel") discovered Defendant Unison Agreement Corp's ("Unison") website after exploring ways to utilize the equity in the property he owns with his wife, Suri Weinberger, also known as Suri Weingot ("Suri") (collectively, "Plaintiffs"), located at 973 Benton Street in Woodmere, New York (the "Property"). (Def. Local Civ. R. 56.1 Statement ("Def. 56.1") ¶ 10; Pl. Local Civ. R. 56.1 Statement ("Pl. 56.1") ¶ 10.) On or about October 31, 2017, Yisroel and Unison engaged in discussions about Unison's

HomeOwner program. (Def. 56.1 ¶ 11; Pl. 56.1 ¶ 11.) Under Unison's HomeOwner program, the homeowner grants Unison an option to purchase an agreed-upon percentage interest in the homeowner's real property, in the future, at an agreed-upon price based upon an independent third-party appraisal. (Def. 56.1 ¶ 2; Pl. 56.1 ¶ 2.) At option signing, the homeowner receives the immediate benefit of a cash investment payment from Unison. (Def. 56.1 ¶ 3; Pl. 56.1 ¶ 3.) Other than closing fees, the homeowner owes no payments to Unison until a defined exercise event occurs and Unison elects to exercise the option after such event. (Def. 56.1 ¶ 4; Pl. 56.1 ¶ 4.)

On or about November 6, 2017, Unison sent Plaintiffs an Application Package enclosing educational materials explaining Unison's HomeOwner product. (Def. 56.1 ¶ 13; Pl. 56.1 ¶ 13.) That same day, Unison received a signed application for the HomeOwner product from Plaintiffs. (Def. 56.1 ¶ 14; Pl. 56.1 ¶ 14.) On December 21, 2017, Unison sent Plaintiffs Unison's HomeOwner Program Guide, which explains the HomeOwner product. (Def. 56.1 ¶ 15; Pl. 56.1 ¶ 15.) Suri neither spoke to Unison nor reviewed its website or any of Unison's educational documents prior to entering into the parties' agreements. (Def. 56.1 ¶ 16; Pl. 56.1 ¶ 16.)

On December 28, 2017, ServiceLink Valuation Solutions, LLC, an independent third-party unaffiliated with Unison, appraised the value of the Property at $668,000.00 as of that date. (Def. 56.1 ¶ 17; Pl. 56.1 ¶ 17.) Unison did not receive any request for reconsideration of the appraisal from Plaintiffs. (Def. 56.1 ¶ 18; Pl. 56.1 ¶ 18.)

On January 2, 2018, Unison sent Plaintiffs choices for the cash investment payment of up to 17.5% of the Property's appraised value, along with the investor percentage shares in the future change in value of the Property based on the $668,000.00 value of the Property. (Def. 56.1 ¶ 19; Pl. 56.1 ¶ 19.) In or around January 2018, Yisroel completed Unison's comprehensive

consumer education program, known as the "PKR," explaining Unison's HomeOwner product. (Def. 56.1 ¶ 20; Pl. 56.1 ¶ 20.) Yisroel does not recall completing the PKR. (Pl. 56.1 ¶ 20.)

On or about January 10, 2018, Unison issued a written offer to Plaintiffs, which they signed. (Def. 56.1 ¶ 21; Pl. 56.1 ¶ 21.) Plaintiffs entered into an agreement with Unison by executing four key agreements, effective January 15, 2018: the Option, Covenant, Memorandum, and Mortgage (collectively, the "Agreements"). (Def. 56.1 ¶ 22; Pl. 56.1 ¶ 22.) While Plaintiffs had questions about the Agreements, the person who brought them from Unison was unable to answer such questions. (Pl. 56.1 ¶ 22.)

Unison paid Plaintiffs $115,000.00 as the cash investment payment ("Investment Payment"), minus a transaction fee and closing costs, which resulted in Plaintiffs receiving $107,715.00. (Def. 56.1 ¶ 26; Pl. 56.1 ¶ 26.) The Investment Payment equals 17.2% of the Property's appraised value of $668,000.00. (Def. 56.1¶ 27; Pl. 56.1 ¶ 27.)

In exchange for the Investment Payment, Plaintiffs granted Unison an option "to purchase, in the future, an undivided 68.86% interest" in the Property upon Unison paying an additional purchase price of $344,985.00 at option exercise or settlement. (Def. 56.1 ¶ 28; Pl. 56.1 ¶ 28.) Unison can only exercise the Option after: (1) the expiration of the Option's 30-year term; (2) an arms' length sale of the Property; (3) death of the last surviving homeowner; or (4) an owner default (an "Exercise Event"). (Def. 56.1 ¶ 30; Pl. 56.1 ¶ 30.)

Upon an Exercise Event, Unison has the right, but is not obligated to, exercise the Option. (Def. 56.1 ¶ 31; Pl. 56.1 ¶ 31.) If Unison elects to exercise the Option after an Exercise Event, Plaintiffs may settle the Option by disbursing the sale proceeds as follows: (1) Unison receives the sale price multiplied by the percentage interest it can purchase (here, 68.86%) minus the second payment Unison must make in exercising the Option ($344,985.00); and (2) Plaintiffs

receive the sale price multiplied by their percentage in the Property (here, 31.14%) plus the second payment from Unison ($344,985.00). (Def. 56.1 ¶ 33; Pl. 56.1 ¶ 33.) If Plaintiffs settle the Option, settlement is based upon the Property's fair market value. (Def. 56.1 ¶ 36; Pl. 56.1 ¶ 36.) To date, Unison has not exercised the Option. (Def. 56.1 ¶ 37; Pl. 56.1 ¶ 37.)

On or about February 9, 2021, at Plaintiffs' request, Unison provided Plaintiffs with information regarding the process to terminate the Agreements, which required Plaintiffs to complete an application, obtain a current appraisal of the Property, and pay the special termination price, as outlined in the Agreements. (Def. 56.1 ¶ 38; Pl. 56.1 ¶ 38.) Plaintiffs did not move forward with the process to terminate the Agreements. (Def. 56.1 ¶ 39; Pl. 56.1 ¶ 39.)

Since receiving the Investment Payment, Plaintiffs have made no payments to Unison, nor are they obligated to. (Def. 56.1 ¶ 40; Pl. 56.1 ¶ 40.) Since entering into the Agreements in 2018, Unison has sent Plaintiffs periodic Quarterly Statements, which identify the $668,000.00 value of the Property, the Investment Payment, Unison's share of the change in value to the Property, along with an estimate of the Property's current value and the resulting estimated share of the change in property value for Plaintiffs and Unison. (Def. 56.1 ¶ 41; Pl. 56.1 ¶ 41.)

Plaintiffs commenced this action in State Court on May 28, 2021, and Defendants thereafter removed the action to this Court on August 12, 2021. (Docket Entry ("DE") [1].) Plaintiffs amended their Complaint on August 22, 2021. (DE [30].) On October 7, 2022, Defendants moved to dismiss Plaintiff's Amended Complaint. (DE [32].) That motion was referred to the undersigned, who issued a Report and Recommendation on July 20, 2023, recommending that Defendants' motion to dismiss be granted in part and denied in part. (DE [47].) By Order dated March 20, 2024, the District Court adopted the Report and Recommendation, as modified, such that all fraud claims and Plaintiffs' recission claim were

dismissed against Defendants Real Estate Equity Exchange Inc. ("REX") and Odin New Horizon Real Estate Fund LP ("Odin"), and the claims brought pursuant to the Truth in Lending Act, the New York Banking Law, the New York General Business Law, for unjust enrichment, unconscionable contract, slander of title and for declaratory and injunctive relief were dismissed against all Defendants. (DE [54.]) Accordingly, the remaining claims are as follows: (1) the First, Second and Third Causes of Action sounding in fraud, as alleged against Unison; (2) the Fourth and Thirteenth Causes of Action to quiet title – the Fourth, as alleged against Unison and the Thirteenth, as alleged against all Defendants; and, (3) the Eleventh Cause of Action for recission, as alleged against Unison.

On January 13, 2025, Defendants moved for summary judgment. (DE [63].) Thereafter, non-party National Consumer Law Center filed a motion seeking leave to file an amicus curiae brief. (DE [70.]) By Order dated April 4, 2025, Judge Seybert referred both motions to the undersigned – the summary judgment motion for Report and Recommendation and the request to file an amicus brief for decision. (Order of Seybert, J., dated Apr. 4, 2025.) The Court now turns to the merits of the pending motions.

DISCUSSION

I. The Motion for Leave to File an Amicus Brief

The National Consumer Law Center ("NCLC") seeks leave to file an amicus curiae brief in support of Plaintiffs herein. Defendants oppose the application. In support of its motion, NCLC asserts that it can offer a "broader perspective" on the kinds of products at issue in this action, drawing on its "extensive experience with mortgages, predatory financial products, and consumer protection." (Mot. of NCLC for Leave to File Amicus Brief 2.) NCLC further asserts

that the issues in this case are of significant public interest, making its participation with nationwide expertise "particularly appropriate." (Id. at 3.)

"There is no governing standard, rule or statute 'prescrib[ing] the procedure for obtaining leave to file an amicus brief in the district court.'" Lehman XS Trust, Series 2006-GP2 v. Greenpoint Mortg. Funding, Inc., No. 12 Civ. 7935, 2014 WL 265784, at *1 (S.D.N.Y. Jan. 23, 2014) (quoting Onandaga Indian Nation v. State of N.Y., No. 97-CV-445, 1997 WL 369389, at *2 (N.D.N.Y. June 25, 1997)); Automobile Club of N.Y., Inc. v. Port Auth. of N.Y. and N.J., No. 11 Civ. 6746, 2011 WL 5865296, at *1 (S.D.N.Y. Nov. 22, 2011). Accordingly, the decision whether to grant leave to file an amicus brief is committed to the sound discretion of the court. See Lehman, 2014 WL 265784, at *1; Automobile Club, 2011 WL 5865296, at *1.

"The usual rationale for amicus curiae submissions is that they are of aid to the court and offer insights not available from the parties." Lehman, 2014 WL 265784, at *2 (citing Automobile Club, 2011 WL 5865296, at *1). The Seventh Circuit has enunciated a useful standard for determining when an amicus brief should be permitted, referred to by several courts within this Circuit:

> An amicus brief should normally be allowed when a party is not represented competently or is not represented at all, when the amicus has an interest in some other case that may be affected by the decision in the present case . . . or when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide. Otherwise, leave to file an amicus curiae brief should be denied.

Ryan v. Commodity Futures Trading Comm'n, 125 F.3d 1062, 1063 (7th Cir. 1997).

Here, none of the foregoing factors are present. First, Plaintiffs' interests are adequately represented by competent and skilled legal counsel. Second, a review of NCLC's proposed brief largely repeats the same legal arguments already advanced by Plaintiffs' counsel – and largely rejected by the Court – in connection with Defendants' motion to dismiss. Finally, NCLC's

proposed brief expounds on consumer protection laws and whether such laws should apply to the home equity investment industry – issues that are not within the scope of the instant litigation. Accordingly, the Court finds that the proposed amicus brief does not "offer insights not available from the parties," Automobile Club, 2011 WL 5865296, at *1, and, as such, the motion by NCLC to file an amicus brief is denied.

II. Legal Standard for Summary Judgment

Summary judgment is appropriate where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The burden is on the moving party to establish the lack of any factual issues. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). The very language of this standard dictates that an otherwise properly supported motion for summary judgment will not be defeated because of the mere existence of some alleged factual dispute between the parties. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986). Rather, the requirement is that there be no "genuine issue of material fact." Id. at 248.

The inferences to be drawn from the underlying facts are to be viewed in the light most favorable to the non-moving party. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 588 (1986). When the moving party has carried its burden, the party opposing summary judgment must do more than simply show that "there is some metaphysical doubt as to the material facts." Id. at 586. In addition, the party opposing the motion "may not rest upon the mere allegations or denials of his pleadings, but . . . must set forth specific facts showing there is a genuine issue for trial." Anderson, 477 U.S. at 248.

III. Plaintiffs' Fraud Claims

The Amended Complaint contains three causes of action sounding in fraud: the First Cause of Action for common law fraud, alleging that Unison made false and misleading misrepresentations and omissions to Plaintiffs to induce them into entering into the Agreements; the Second Cause of Action, also for common law fraud, alleging that Unison presented Plaintiffs with a below market and inadequate appraisal of the Property; and the Third Cause of Action for fraudulent misrepresentation, alleging that Unison misrepresented material information to Plaintiffs about the HomeOwner program. Defendants seek summary judgment with respect to all three claims.

As a threshold matter, Defendants seek summary judgment with respect to all fraud claims asserted by Plaintiff Suri, on the ground that she cannot establish any of her claims since she has no personal knowledge as to the alleged misrepresentations. Indeed, it is undisputed that Suri neither spoke to Unison nor reviewed its website or any of Unison's educational documents prior to entering into the Agreements. (Def. 56.1 ¶ 16; Pl. 56.1 ¶ 16.) Nor did she have any understanding of the Agreements at the time she signed them because she did not read them. (Def. 56.1 ¶ 24; Pl. 56.1 ¶ 24.) Tellingly, Plaintiffs fail to oppose this argument or even address it in any way in their memorandum of law in opposition to the within motion. Accordingly, the fraud claims asserted by Plaintiff Suri should be deemed abandoned and Defendants should be granted summary judgment with respect to the those claims. See Maher v. Alliance Mortgage Banking Corp. ,650 F. Supp. 2d 249, 267 (E.D.N.Y. 2009) (quotation omitted) ("Federal courts may deem a claim abandoned when a party moves for summary judgment on one ground and the party opposing summary judgment fails to address the argument in any way."); Ostroski v. Town of Southold ,443 F. Supp. 2d 325, 340 (E.D.N.Y. 2006) ("Because plaintiff's opposition papers

did not address defendants' motion for summary judgment on this claim, the claim is deemed abandoned . . . . ").

With respect to the fraud claims asserted by Plaintiff Yisroel, this Court finds that there are issues of fact precluding summary judgment with respect to two of the claims. To prevail on his fraud claims, Yisroel must prove: "(1) a material misrepresentation of a presently existing or past fact; (2) an intent to deceive; (3) reasonable reliance on the misrepresentation by the plaintiff; and (4) resulting damages." Rockaway Beverage, Inc. v. Wells Fargo & Co., 378 F. Supp. 3d 150, 166 (E.D.N.Y. 2019) (citing Ipcon Collections LLC v. Costco Wholesale Corp., 698 F.3d 58, 62 (2d Cir. 2012)). While Defendants argue that Yisroel cannot prove the foregoing elements, the evidence before the Court – namely, Yisroel's deposition testimony – demonstrates that Yisroel did not understand the terms of the Agreements prior to signing them and that no one from Unison could answer his questions. Yisroel also testifed that he relied on Unison's website, as well as the representative they sent to meet with Plaintiffs about the HomeOwner product, in entering into the Agreements. The record before the Court is replete with issues of material fact with respect to the First and Third Causes of Action for fraud. As such, this Court respectfully recomends that summary judgment is inappropriate and that Defendants' motion for summary judgment be denied as to those claims.

The Court reaches a different result, however, with respect to the Second Cause of Action, which alleges that Unison committed fraud by providing Plaintiffs with an inadequate and below market appraisal of the Property. As Defendants correctly point out in their motion papers – and Plaintiffs again fail to oppose – valuations are non-actionable opinions that cannot provide a basis for fraud. See, e.g., Newby v. Bank of Am., No. 12-CV-614, 2013 WL 940943, at *4 (E.D.N.Y. Mar. 8, 2013) ("The long-established rule in New York is that statements

concerning the value of real property are generally not actionable under a theory of fraud or fraudulent inducement . . . . ") (collecting cases); Newman v. Wells Fargo Bank, N.A., 924 N.Y.S.2d 264, 265 (1st Dep't 2011) ("Appraisals are not actionable because they are matters of opinion.") (citing cases). Moreover, it is undisputed that ServiceLink, a third-party unaffiliated with Unison, performed the appraisal. (Def. 56.1 ¶ 17; Pl. 56.1 ¶ 17.) Finally, as with Suri's fraud claims, Plaintiffs have wholly failed to oppose this ground of Defendants' motion, thereby deeming the claim abandoned. For all these reasons, this Court respectfully recommends that Defendants' motion for summary judgment be granted with respect to the Second Cause of Action for fraud.

IV. Rescission

Plaintiffs' Eleventh Cause of Action seeks to rescind the Agreements entered into by the parties on the ground that Plaintiffs were fraudulently induced into signing them. To prevail on a claim for rescission based on fraud, Plaintiffs must demonstrate "misrepresentation, concealment or nondisclosure of a material fact; an intent to deceive; and an injury resulting from justifiable reliance by the aggrieved party." St. Francis Holdings, LLP v. MMP Capital, Inc., No. 20-CV-4636, 2022 WL 991980, at *15 (E.D.N.Y. Mar. 31, 2022) (quoting Allen v. WestPoint-Pepperell, Inc., 945 F. 2d 40, 44 (2d Cir. 1991)) (additional citations omitted); see also Robinson v. Sanctuary Rec. Grps., Ltd., 826 F. Supp. 2d 570, 575 (S.D.N.Y. 2011) ("Rescission is used as a remedy in limited circumstances [including] fraud in the inducement of the contract . . . ."). As Plaintiffs' claim for rescission is inextricably intertwined with their fraud claims – and there are material issues of fact precluding summary judgment with respect to the fraud claims – it follows that there are also issues of fact precluding summary judgment as to the rescission claim.

Accordingly, this Court respectfully recommends that Defendants' motion for summary judgment be denied with respect to the rescission claim.

V. Quiet Title

The Fourth and Thirteenth Causes of Action contained in the Amended Complaint both seek to quiet the title to the Property – the former, pled solely against Unison and the latter pled against all Defendants. Defendants seek summary judgment as to both claims.

"To obtain summary judgment in an action to quiet title pursuant to [Real Property Actions and Proceedings Law ("RPAPL")] article 15, the movant must establish, prima facie, that it holds title, or that the nonmovant's title claim is without merit." Carbone v. Martin, No. 18-CV-3509, 2023 WL 2477682, at *4 (E.D.N.Y. Mar. 13, 2023) (quoting 1259 Lincoln Place Corp. v. Bank of New York, 74 N.Y.S.3d 575, 577 (2d Dep't 2018)) (additional citation and internal quotation marks omitted). Defendants argue that while Unison and Odin, as the assignee of the mortgage, hold an unexercised contractual option right to the Property, they do not hold title. Plaintiffs assert that a mortgage was filed and recorded by Unison on the property, thereby impairing their title to the Property. Based on the evidence before the Court, it appears a genuine issue of fact exists with respect to Plaintiffs' quiet title claims.

With respect to the Thirteenth Cause of Action, however, it is undisputed that REX is not a party to the Agreements, nor does it hold any interest in the Agreements. (Def. 56.1 ¶ 23; Pl. 56.1 ¶ 23.) Accordingly, there can be no quiet title claim against REX and Defendants should be granted summary judgment with respect to that portion of the Thirteenth Cause of Action that is pleaded against REX. In all other respects, this Court recommends that Defendants' motion for summary judgment be denied as to Plaintiffs' quiet title claims.

RECOMMENDATION

For the foregoing reasons, this Court respectfully recommends that Defendants' motion for summary judgment be granted in part and denied in part. Specifically, the Court recommends that Defendants be granted summary judgment with respect to all fraud claims asserted by Plaintiff Suri Weingot and as to the Second Cause of Action sounding in fraud in its entirety.The Court further recommends that Defendants be granted summary judgment with respect to the Thirteenth Cause of Action for quiet title as pleaded against Defendant REX. In all other respects, this Court recommends that Defendants' motion for summary judgment be denied.

OBJECTIONS

A copy of this Report and Recommendation is being provided to all counsel via ECF. Any written objections to this Report and Recommendation must be filed with the Clerk of the Court within fourteen (14) days of filing of this report. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 72(b). Any requests for an extension of time for filing objections must be directed to the District Judge assigned to this action prior to the expiration of the fourteen (14) day period for filing objections. Failure to file objections within fourteen (14) days will preclude further review of this report and recommendation either by the District Court or Court of Appeals. Thomas v. Arn, 474 U.S. 140, 145 (1985) ("[A] party shall file objections with the district court or else waive right to appeal."); Caidor v. Onondaga Cnty., 517 F.3d 601, 604 (2d Cir. 2008) ("[F]ailure to object timely to a magistrate's report operates as a waiver of any further judicial review of the magistrate's decision").

SO ORDERED:

Dated: Central Islip, New York
July 29, 2025

/s/ Anne. Y. Shields
ANNE Y. SHIELDS
United States Magistrate Judge