SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1020

CA 24-01316

PRESENT: LINDLEY, J.P., CURRAN, OGDEN, NOWAK, AND HANNAH, JJ.

DENNIS M. ANKROM, PLAINTIFF-APPELLANT,

V MEMORANDUM AND ORDER

WILLIAMSON FLYING CLUB, INC., DEFENDANT-RESPONDENT.

DREW & CARR P.C., BUFFALO (DEAN M. DREW OF COUNSEL), FOR PLAINTIFF-APPELLANT.

LIONEL HECTOR, PAISLEY, FLORIDA, FOR DEFENDANT-RESPONDENT.

Appeal from an order of the Supreme Court, Wayne County (Richard M. Healy, A.J.), entered July 25, 2024, in breach of contract actions. The order, insofar as appealed from, granted the motions of defendant for summary judgment and dismissed the complaints.

It is hereby ORDERED that the order insofar as appealed from is unanimously reversed on the law without costs, defendant's motions for summary judgment dismissing the first complaint and second complaint are denied, and the complaints are reinstated.

Memorandum: Plaintiff commenced a breach of contract action alleging, inter alia, that defendant breached two 2017 airport access agreements (2017 Agreements) by improperly increasing the access fees. As relevant on this appeal, the 2017 Agreements prevented defendant from raising such fees beyond what defendant charged to its tenants using hangars on the airport property. Plaintiff subsequently commenced another breach of contract action alleging, inter alia, that defendant had improperly terminated the 2017 Agreements and seeking, inter alia, lost income. Defendant separately moved for summary judgment dismissing the complaint in each action, contending, inter alia, that defendant did not breach the 2017 Agreements inasmuch as it did not charge plaintiff improper access fees and that plaintiff was not entitled to lost income when defendant prohibited plaintiff's use of its facilities because plaintiff had terminated the 2017 Agreements. Plaintiff appeals, as limited by his brief, from an order to the extent that it granted defendant's motions and dismissed both complaints. We reverse the order insofar as appealed from, deny the motions, and reinstate the complaints.

On a motion for summary judgment, the movant "must make a prima facie showing of entitlement to judgment as a matter of law . . . demonstrat[ing] the absence of any material issues of fact" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). When evaluating the motion,

the court "must view the evidence in the light most favorable to the party opposing the motion" and "giv[e] that party the benefit of every reasonable inference" (*Esposito v Wright*, 28 AD3d 1142, 1143 [4th Dept 2006]). If the movant does not make a prima facie showing of entitlement to judgment as a matter of law, the motion must be denied, regardless of the sufficiency of the opposing papers (*see Alvarez*, 68 NY2d at 324). Conversely, if the movant makes that prima facie showing, the burden shifts to the opponent to establish that a triable issue of fact remains (*see Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

With respect to the first action, defendant failed to meet its initial burden on the motion inasmuch as it failed to establish that any of its on-airport tenants or operators were charged or paid the increased rates that defendant charged to plaintiff and, consequently, we do not consider the sufficiency of plaintiff's opposing papers (*see generally Alvarez*, 68 NY2d at 324). We conclude that Supreme Court should have denied defendant's motion in the first action.

With respect to the second action, we conclude that defendant failed to meet its initial burden on its motion of establishing that plaintiff terminated the 2017 Agreements when he filed a complaint in the first action. In any event, even assuming, arguendo, that defendant met its initial burden, we conclude that plaintiff raised a triable issue of fact (*see generally Zuckerman*, 49 NY2d at 562). The complaint sought alternative forms of relief, including damages for breach of contract, and thus did not restrict the requested relief to a declaration that the 2017 Agreements are null and void. Plaintiff also stated in his affirmation that at all times he intended to, and acted in every way he believed necessary to, continue the 2017 Agreements in effect. We thus conclude that a triable issue of fact exists whether plaintiff terminated the 2017 Agreements (*see Goldin Real Estate, LLC v Shukla*, 227 AD3d 674, 677 [2d Dept 2024]) and that the court should have denied defendant's motion in the second action.

Entered: March 27, 2026

Ann Dillon Flynn
Clerk of the Court