

State Farm Fire & Casualty Co. v Yoral, LLC

2007 NY Slip Op 31660(U)

June 13, 2007

Supreme Court, New York County

Docket Number: 0109476/2004

Judge: Edward H. Lehner

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 19

STATE FARM FIRE & CASUALTY COMPANY
a/s/o HELEN MORLEY DESIGNS, LTD.,

Plaintiff,

-against-

YORAL, LLC, NAKASH BROTHERS REALTY,
JORDACHE ENTERPRISES, INC., and
BERNSTEIN REAL ESTATE,

Defendants.

Index No.
109476/04

004

YORAL, LLC,

Third-Party Plaintiff,

-against-

Index No.
590587/06

HELEN MORLEY, HELEN MORLEY DESIGNS,
LTD., HELEN MORLEY LLC, and
ABRAHAM B. KRIEGER,

Third-Party Defendants.

FILED
JUN 18 2007
COUNTY CLERK'S OFFICE
NEW YORK

EDWARD H. LEHNER, J.:

The legal issue raised on the motion by third-party defendants Helen Morley, Helen Morley Designs, Ltd. and Helen Morley LLC (who for the purposes of this motion may be treated as one party and referred to as "Morley," Tr. p. 6) to dismiss, pursuant to CPLR 3211(a) 1, 5 and 7 and 3211(c), the third-party complaint is whether the failure of Morley to advise third-party plaintiff Yoral, LLC ("Yoral") that it had received insurance proceeds for its property damages from plaintiff State Farm

Fire & Casualty Company prior to an exchange of general releases with Yoral should estop Morley from relying on such release.

Facts

Morley was a tenant of the building at 226 West 37th Street in Manhattan under a lease expiring in 2006 (the "Lease"). Defendant Yoral was the net lessee of said building under an agreement with defendant Nakash Brothers Realty ("Nakash"), the fee owner. In January 2003, due to burst water pipes, extensive flooding caused damage to Morley's premises and the inventory contained therein. Without the assistance of counsel, Morley settled a claim for property damage with its insurer, the plaintiff herein, and received approximately \$200,000.

By complaint dated February 28, 2003, Abraham B. Krieger (who is a named third-party defendant, but as of the time of oral argument on May 4, 2007 had not been served) commenced an action on behalf of Morley against Yoral and Nakash seeking i) \$250,000 to compensate for damages to its premises and merchandise inventory, and ii) an abatement of rent and a declaration that Morley was constructively evicted and thus released of all obligations under the Lease. That action was settled by stipulation dated September 22, 2003 (the "Stipulation").

The Stipulation, which did not specifically mention the property damage claim, provided for a surrender of the Lease as of September 15, 2003, with Morley to pay Yoral approximately \$50,000 for prior Lease obligations, and contained mutual

general releases. At oral argument, Krieger acknowledged that he knew that Morley had previously made a claim against plaintiff and "was receiving money from the insurer" (Tr. p. 33), but did not advise Yoral's attorney (Bennett Krasner) of said fact. Attorney Krasner stated he was unaware of such payment and, notwithstanding the fact that Yoral had possession of a copy of Morley's insurance policy (Tr. pp. 25-26) (which contained no waiver of subrogation, Tr. p. 24), he made no inquiry as to whether Morley had received any insurance proceeds for the property damage (Tr. pp. 14, 33-35). Nakash's attorney stated that his firm had sent Krasner a letter in May 2003 (5 months prior to the execution of the Stipulation) stating that plaintiff had made a subrogation claim (Tr. p. 29).

The instant action by plaintiff, as subrogee of Morley, was instituted in June 2004. The third-party action by Yoral against Morley was commenced in June 2006. Therein it is alleged that the failure of Morley to advise Yoral at the time of the execution of the Stipulation of the settlement with plaintiff and the assignment of rights to it constituted a fraud. Asserting the general release contained in the Stipulation, Morley now seeks dismissal of the third-party action prior to answer. Yoral asserts that the failure to disclose the assignment of the claim to plaintiff should estop Morley from employing the release to defeat the third-party claims.

Thus, in deciding this motion the court is presented, on the one hand, with a movant who obtained a release from its landlord (Yoral) without ever advising the

landlord that it had obtained a significant cash payment from its insurer based on the property damage for which it was suing the landlord and, other the other hand, a landlord who, although aware that its tenant had procured insurance, made no inquiry as to whether any monies had been paid pursuant to the property damage coverage of the policy.

However, notwithstanding Yoral's protestation of lack of knowledge of the payment by plaintiff to Morley, co-defendant Nakash has submitted the May 12, 2003 letter, to which its counsel had referred at oral argument, addressed to attorney Krasner which states the following:

"Kindly contact the undersigned so that we may discuss the claims raised with respect to the above referenced matter, as well as claims being submitted by State Farm Insurance Company in subrogation of the plaintiff for property damage caused by Yoral, LLC. The claim by State Farm Insurance Company for subrogation purposes has not been commenced in a lawsuit as of yet."

Regarding this letter, Mr. Krasner states on page 5 of his affirmation dated May 18, 2007 that he spoke to the writer thereof without discussing the issue of subrogation and he "filed the letter without reading it."

Decision

Under the circumstances whereby Yoral had possession of Morley's insurance policy, made no inquiry regarding any subrogation claim by the insurer, and was put on written notice by its co-defendant of the existence of a subrogation claim by

plaintiff five months prior to the execution of the Stipulation containing the mutual releases, the court finds that the evidence demonstrates the lack of merit to Yoral's claims. Under these undisputed facts, there is no viable claim of any justifiable reliance by Yoral that would support a claim that it was defrauded by Morley's failure to inform it of the property damage payment by plaintiff. Further, Morley has shown the lack of merit to all other causes of action set forth in the third-party complaint as no valid basis is set forth by Yoral to deny Morley the right to rely on the general release contained in the Stipulation.

Accordingly, the motion by third-party defendants Helen Morley, Helen Morley Designs, Ltd. and Helen Morley LLC to dismiss the third-party action as against them is granted, and the Clerk shall enter judgment accordingly, severing the main action.

Dated: June 13, 2007



J.S.C.

FILED
JUN 18 2007
Clerk of Court