

Guerrero v West 23rd Street Realty LLC

2007 NY Slip Op 34384(U)

January 18, 2007

Supreme Court, New York County

Docket Number: 601648/06

Judge: Jane S. Solomon

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: JANE S. SOLOMON
Justice

PART 55

Index Number : 601648/2006

— GUERRERO, WILLIAM

vs
WEST 23RD STREET REALTY LLC.

Sequence Number : 001

DISMISS ACTION

INDEX NO. _____

NOTION DATE 10/23/06

NOTION SEQ. NO. _____

NOTION CAL. NO. _____

NOTION to/for _____

The following papers, numbered _____

PAPERS NUMBERED

1-4

5-7

8

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion *is* decided in accordance with the annexed memorandum decision and order.

FILED
JAN 24 2007
NEW YORK
COUNTY CLERK'S OFFICE

JANE S. SOLOMON

Dated: 1-18-07



J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

FOR THE FOLLOWING REASON(S):

RECEIVED TO BE DELIVERED TO JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 55

-----X
WILLIAM GUERRERO, CITY PROPERTY
MANAGEMENT & DEVELOPMENT, INC.,

Plaintiffs,

INDEX NO. 601648/06

-against-

DECISION and ORDER

WEST 23RD STREET REALTY, LLC,
WEST 36TH STREET REALTY, LLC, and
MACPIN REALTY, CORP.,

Defendants

JANE S. SOLOMON, J.

FILED
JAN 24 2007
NEW YORK
COUNTY CLERK'S OFFICE

In this breach of contract action, defendants West 23rd Street Realty, LLC ("West 23rd LLC"), West 36th Street Realty, LLC ("West 36th LLC"), and Macpin Realty, Corp. ("Macpin") move to dismiss the Amended Complaint. For the reasons described herein, the motion is granted.

Defendants each own a parcel of developed commercial real estate. Their shareholders are residents of the Republic of South Africa. Plaintiffs are City Property Management & Development, Inc. ("City Management"), a real estate management company, and William Guerrero ("Guerrero"), its sole shareholder.

On or about November 1, 1992, City Management entered into a written contract with the shareholders individually to be the managing agent of their Manhattan properties located at 100 West 23rd Street ("West 23rd Street Premises") and 128 West 36th

Street ("West 36th Street Premises"), and entered into a separate contract with defendant Macpin, already in existence, to be the managing agent of its Queens property located at 94-26 Roosevelt Avenue ("Macpin Premises"). In 1995, ownership of the West 23rd Street Premises and the West 36th Street Premises was transferred by the individuals to the defendants West 23rd LLC and West 36th LLC, respectively, and by agreements dated on or about November 1, 1995, each of them entered into new written management agreements with City Management.

The texts of the 1992 and 1995 agreements (collectively, the "Agreements") are identical, except as to the parties and premises. Each provides that City Management will appoint William Guerrero as the individual manager for the relevant property. Each Agreement contains the following provision:

5. Term of Agreement:

This Agreement shall commence on the [__ day of _____]¹ and end on the last day of the month twelve (12) calendar months thereafter. This Agreement, if not previously renewed in writing for an additional fixed period, may be cancelled effective at the end of the term by either party giving written notice not less than sixty (60) days prior to the expiration of the term. If not so cancelled, the term shall be extended for an additional twelve (12) calendar months subject to cancellation in accordance with the provisions outlined above.

Paragraph 5 in the Macpin Premises agreement states that the commencement month is "November 1992." The month is not set forth

¹ They differ only in respect of this space.

in the 1995 agreements. No party contests that the term in the 1995 contracts was to commence on November 1, 1995, the date of the document, just as the term of the 1992 agreement starts on the first day of the month they were made. As indicated below, the disagreement is over the renewal term.

Plaintiffs allege that they had a cordial relationship with the South African shareholders until October 2003, when Guerrero questioned certain of their activities unrelated to the buildings and refused to confirm to South African authorities facts related to their tax amnesty application. Plaintiffs further allege the shareholders earlier had made Guerrero an offer to give him a favorable lease for an office in the West 23rd Street Premises, and also had asked him to locate additional properties for them to acquire. Finally, Plaintiffs allege that because he questioned their activities, on February 12, 2004, one of the shareholders orally informed Guerrero that City Management would be terminated as managing agent. On March 15, 2004, a new agent was appointed.

Based on the foregoing, Plaintiffs brought this action for breach of contract damages and for equitable estoppel on the ground that the agreements never were terminated in writing. Plaintiffs also seek \$50 million in punitive damages. Defendants move to dismiss all claims on the grounds that the Amended

Complaint fails to state a cause of action; the alleged breach of contract claim is not permitted as a matter of law; and any cause of action brought by the corporate plaintiff City Management cannot also be brought by its shareholder. In particular, they claim the 1992 agreements ended on October 31, 1994, and the 1995 agreements ended on October 31, 1997, and that Plaintiffs' later engagement was at will.

City Management's Breach of Contract Claims

Defendants' argument that the Agreements all expired before 2004 and that the parties' subsequent arrangement was oral and at will is correct. See Vermont Teddy Bear Co. v. Madison Realty Co., 1 N.Y.3d 470 (2004); 150 Broadway v. Bodner, 14 A.D.3d 1 (1st Dep't 2004); Lobosco v. N.Y. Tel. Co., 96 N.Y.2d 183 (1989).

Paragraph 5 of each of the agreements first sets forth an initial term of twelve calendar months, which if not renewed for "an additional fixed period" or cancelled effective at the end of the term by a minimum of sixty days written notice, will be renewed for an additional twelve month term. The last sentence of Paragraph 5, on which Plaintiffs rely for their argument that absent a writing the Agreements automatically renew at yearly intervals, does not support their claim. That sentence provides only for "an additional" twelve month term. Once this one year term ended, the extraneous clause "subject to cancellation in

accordance with the provisions outlined above" does not constitute a basis to claim further yearly renewals under the written agreement.

In support of their interpretation, Defendants argue that the 1995 agreements were executed in order to continue Plaintiffs' retention in writing upon the expiration of the 1992 agreements. This is unpersuasive because the 1995 agreements covered only the properties where ownership changed that year.

However, the automatic renewal in perpetuity argued by Plaintiffs is outside the specific language of the Agreements and is not in accordance with New York law. See Protection Indus. Corp. v. DDB Needham Worldwide, Inc., 306 A.D.2d 175 (1st Dep't 2003). Given that their relationship was at will, Defendants were free to terminate the Agreements at any time, with or without cause, without notice and without liability. See Ingle v. Glamore Motor Sales, 73 N.Y.2d 183 (1989). Accordingly, Defendants' February 12, 2004 termination notice to Guerrero was proper and their motion seeking dismissal of the First, Second and Third Causes of Action is granted.

Because this Court has found that the breach of contract claims do not survive, there is no need to address Defendants'

additional contention that the pleadings are fatally defective because they fail to set forth a specific amount of damages.

Guerrero's Breach of Contract Claim

The Fourth Cause of Action for breach of contract brought by Guerrero must be dismissed as a matter of law, because as a shareholder he has no individual cause of action for an alleged wrong against a corporation. See Abrams v. Donati, 66 N.Y.2d 951 (1985). That the Agreements provide that City Management will appoint Guerrero as manager does not make him a third party beneficiary of City Management's contracts with Defendants.

Equitable Estoppel

The Fifth Cause of Action alleging equitable estoppel is dismissed because it is duplicative of the first three Causes of Action. Plaintiffs' mere expectation that they would continue to manage Defendants' properties does not constitute a viable separate claim. See Atkins & O'Brien v. ISS Int'l Service System, Inc., 252 A.D.2d 446 (1st Dep't 1998).

Punitive Damages

In any event, Plaintiffs' claim for \$50 million in punitive damages is dismissed because punitive damages are not recoverable in ordinary breach of contract disputes. Such damages are not to remedy private wrongs but to vindicate public rights.

See Mulder v. Donaldson, Lufkin & Jenrette, 208 AD2d 301 (1st Dep't 1995). Plaintiffs are correct that "where the breach of contract ... involves a fraud evincing a 'high degree of moral turpitude,' and demonstrating 'such wanton dishonesty as to imply a criminal indifference to civil obligations,' punitive damages are recoverable if the conduct was 'aimed at the public generally.'" Id., quoting Walker v. Sheldon, 10 N.Y.2d 401, 404-05 (1961).


The Amended Complaint alleges that Defendants terminated the Agreements in order to conduct "their business without having the legality of their business dealings questioned ... and [their termination] was the product of a deliberate plan to enable the defendants to engage in acts which were improper and unlawful to the injury of the public," (Amended Complaint, ¶ 66). However, this is a dispute between private parties. Because compensatory damages are adequate to make City Management whole, even had the claims survived this motion, punitive damages could not be sought.

Accordingly, it hereby is

ORDERED that Defendants' motion to dismiss the complaint is granted, and the Clerk is directed to enter judgment accordingly with costs and disbursements as taxed.

Dated: January 18, 2007

FILED
 JAN 24 2007
 NEW YORK
 COUNTY CLERK'S OFFICE

ENTER: 

 J.S.C.
JANE S. SOLOMON