SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEPHEN A. BUCARIA

Justice

TRIAL/IAS, PART 4
NASSAU COUNTY

ZURICH DEPOSITORY CORPORATION,

Plaintiff,

INDEX No. 011503/07

MOTION DATE: Feb. 22, 2008
Motion Sequence # 006

-against-

IRON MOUNTAIN INFORMATION MANAGEMENT, INC. and 1165 NORTHERN, LLC,

Defendants.

The following papers read on this motion:

Notice of Motion..... X
Reply Affirmation X
Memorandum of Law..... X

This motion, by plaintiff, for reargument is **granted**. Upon reargument, the court adheres to its decision to dismiss the third and fourth causes of action in the amended complaint for failure to state a cause of action.

This is an action for a declaratory judgment declaring the rights of the landlord, tenant, and subtenant under a lease of commercial premises. The tenant, defendant Iron Mountain, failed to exercise its option to renew the prime lease. The main issue to be determined by the court is whether Zurich, the subtenant, effectively exercised its own option.

In its order dated January 8, 2008, the court granted Iron Mountain's motion to dismiss the amended complaint for failure to state a cause of action to the extent of dismissing plaintiff's third and fourth causes of action. The third cause of action alleges that Iron Mountain, "in breach of the terms of the lease, sublease, and administration agreement, failed and refused to acknowledge [Zurich's] right and entitlement to remain in quiet enjoyment of the leased premises, and threatened to, and did, cause systems and fixtures...to be removed/destroyed from the leased premises..." The fourth cause of action asserts claims for tortious interference with contract or prospective contract rights under the lease and sublease agreements.

In its prior decision, the court determined that Iron Mountain did not breach the administration agreement by denying Zurich the right to quiet enjoyment of the premises. On the present motion, plaintiff suggests that Iron Mountain may have breached the administration agreement by denying vault and security services to Zurich, even though the breach did not give rise to a constructive eviction. Plaintiff moves for reargument of Iron Mountain's motion to dismiss on the grounds that the court's order overlooked or misapprehended plaintiff's claim for breach of the administration agreement.

Before proceeding to the merits of plaintiff's motion, two procedural issues must be addressed. Plaintiff's motion for reargument was made when the notice of motion was served on January 18, 2008(CPLR § 2211). Subsequent to making its motion for reargument, plaintiff filed a notice of appeal. Where a party seeking reargument has also taken an appeal, the court may, as a matter of discretion, grant reargument if the appeal has not yet been perfected (**Leist v. Goldstein**, 305 AD2d 468, 2nd Dept., 2003). Since Zurich's appeal has not been perfected, the court will discuss the other procedural concern before deciding whether to grant reargument. CPLR 3014 provides that separate causes of action shall be separately stated and numbered in the complaint. Pursuant to this provision, claims for breach of contract should be separately stated and numbered when they arise from separate contracts (**Newmark v. Harris**, 284 A.D. 962,1st Dept., 1954). If multiple breaches stem from a single contract, plaintiff need not number the breaches as separate causes of action, but the complaint should state clearly that multiple breaches of the contract are being alleged (**Payrolls & Tabulating, Inc. v. Sperry Rand Corp.**, 22 AD2d 595, 596, 1st Dept., 1965). The purpose of these pleading rules is to give notice of the transactions on which plaintiff is suing to both the parties and the court (CPLR § 3013; **Eklund v. Pinkey**, 27 AD3d 878, 3d Dept., 2006).

As becomes clear on the present motion, plaintiff's "third cause of action" asserts

claims for breach of three separate contracts and, arguably, two separate claims for breach of the administration agreement. Had Zurich complied with CPLR 3014, or at least stated its breach of contract claims separately, the merits of its precise claim with respect to the administration agreement would have been addressed on the main motion. However, the court notes that Iron Mountain could have made a corrective motion, compelling Zurich to separately state and number its various causes of action (CPLR 3014; **Russo v. Advance Publications, Inc.**, 33 AD2d 1025, 2nd Dept., 1970). While Iron Mountain was, of course, free to accept a duplicitous pleading, the court determines, as a matter of discretion, that reargument should be granted.

The administration agreement required Iron Mountain to provide certain services to Zurich, including "security procedures," which were defined as including "time clock procedures, vault access, and safeguarding, but not maintaining, security and surveillance equipment located throughout the facility." The services were to continue "until such time as the lease, or the sublease, or any replacement or renewal of either thereof expires...."

The parties are in dispute as to whether the administration agreement was to continue even though Iron Mountain failed to exercise its renewal option. Zurich asserts that the obligation to provide services continued as long as Iron Mountain or Zurich exercised its option to renew the lease. Thus, Zurich argues that because it effectively exercised its option, Iron Mountain's obligation to provide services continued, and Iron Mountain breached the agreement by removing equipment in the course of vacating the demised premises. Iron Mountain asserts that the administration agreement was to continue only until Iron Mountain or Zurich failed to exercise its option to renew the lease. Thus, Iron Mountain argues that since it vacated the premises without exercising its option to renew, its obligation to provide services terminated on the date of expiration of the original prime lease.

In interpreting a contract, the court must consider the specific language which the parties used as well as the business purpose of their agreement (**Louis Dreyfus Energy Corp. v. MG Refining & Marketing, Inc.**, 2 NY3d 495, 505, 2004). The court interprets the duration provision as meaning that the administration agreement was to terminate upon the failure of the tenant or the subtenant to renew, regardless of whether the other party exercised its renewal option. This interpretation is consistent with the purpose of the parties in entering into the agreement. The administration agreement was clearly intended to be ancillary to the parties' use and occupancy of the premises. Since

either party could terminate the landlord-tenant relationship by failing to exercise its option to renew, the court concludes that the administration agreement was intended to apply only while the lease and sublease were both in effect. Since there is no dispute that Iron Mountain failed to renew, its obligation to provide services terminated upon the date of expiration of its lease.

Accordingly, reargument of defendant Iron Mountain's motion to dismiss the amended complaint for failure to state a cause of action is **granted**. Upon reargument, the motion to dismiss is **granted** as to the third and fourth causes of action, including plaintiff's claim for breach of the administration agreement.

This shall constitute the decision and order of the court.

Dated MAR 17 2008

Stephen A. Bucaria
J.S.C.