

World City Found., Inc. v Sacchetti

2008 NY Slip Op 32800(U)

October 3, 2008

Supreme Court, New York County

Docket Number: 114829/03

Judge: Joan A. Madden

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

PRESENT: HON. JOAN A. MADDEN
Justice

PART 11

World City Foundation, Inc. et al.

Plaintiff,

- v -

Vito Sacchetti, et al

Defendant.

INDEX NO.: 114829103

MOTION DATE: 8-21-08

MOTION SEQ. NO.: 017

MOTION CAL. NO.:

The following papers, numbered 1 to _____ were read on this motion to ~~file~~ ^{trans-motion to} renew.

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

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
OCT 09 2008
COUNTY CLERK'S OFFICE
NEW YORK

Dated: October 3, 2008

J.S.C.

Check one: [] FINAL DISPOSITION NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

-----X
WORLD CITY FOUNDATION, INC. and
CHARLES D. BROWN, as personal representative
of the Estate of John S. Rogers, Decedent,

Plaintiffs,

INDEX NO. 114829/03

-against-

VITO SACCHETTI and TMS. MANAGEMENT CO.,

Defendants

FILED
OCT 09 2008
COUNTY CLERK'S OFFICE
NEW YORK

-----X
JOAN A. MADDEN, J.:

Defendants move, by order to show cause, for an order granting leave to renew their motion to strike plaintiffs' jury demand which the court denied by decision and order dated June 7, 2005, and, upon renewal, striking the jury demand. Plaintiffs oppose the motion and cross move to renew their opposition to the motion to dismiss their malicious prosecution claim which was granted by the court's decision and order dated April 12, 2004. For the reasons set forth below, the motion and cross motion are each denied.

Background

Defendant Vito Sacchetti ("Sacchetti") is the owner of the building located at 330 East 43rd Street, New York, NY ("the building"), and defendant TMS Management Co. is the building's managing agent (together "Sacchetti"). Plaintiff World City Foundation ("World City") is a not-for-profit organization that is a tenant of certain apartments in the building. Decedent John Rogers ("Rogers") was the Chief Executive Officer of World City. Rogers, who was an attorney practicing maritime law, founded World City and related entities for the purpose

of promoting the creation of a American cruise ship industry, and these efforts came to be known as the American Flagship Project.

In May 1987, a Master Lease was executed by Sacchetti's predecessor-in-interest and plaintiffs for certain apartments at the building for a one-year term. Paragraph 12 of the "Supplemental Rider #2," to the Master Lease, the renewal option, provided for future renewals upon the expiration of the Master Lease term, "at a renewal rate to be agreed upon but in no case shall the rent increase more than 5% per annum." Another provision of the lease provided for options for additional apartments in the building as they became available. By letter agreement dated October 20, 1987, Rogers and Sacchetti's predecessor-in-interest agreed that the landlord would have the right to terminate the leases subject to the Master Lease, upon giving the tenant one-year's advance written notice, and paying the tenant the liquidated amount of \$150,000 for the costs of the tenant's improvements to the leased apartments and common areas of the building.

In or about July 1993, the building was purchased by Sacchetti. At the time of July 1993 purchase, plaintiffs possessed Apartments 102, 204, 205 and 105 pursuant to the express terms of the Master Lease, as well as Apartments 206 and 201 for which there are separate lease agreements dated March 1, 1991 and September 1, 1991, respectively. Plaintiffs came to occupy Apartment 203 sometime in 1993, although there apparently is no specific lease agreement for this apartment. Plaintiffs also came to occupy Apartments 101 and 202 for which there are separate lease agreements with Sacchetti dated November 1, 1997, and May 1, 1998. With the exception of Apartment 201, which was used as Roger's personal residence, the Apartments were leased for the purpose of serving as offices for World City. Although mostly used for non-

residential purposes, the majority of the apartments have been found to be subject to the rent stabilization laws. Plaintiffs assert that they invested approximately \$125,000 in making initial improvements to the apartments, and subsequently invested further funds to making substantial improvements to the building itself to upgrade public areas.

Following Sacchetti's purchase of the building, various disputes arose between the parties. In this action, plaintiffs seek to recover damages in connection with Sacchetti's alleged campaign of harassment aimed at depriving plaintiffs of their rights under the Master Lease. Specifically, plaintiffs maintain that between 1996 and 2001, Sacchetti appeared at the building to request that plaintiffs pay additional rents in excess of the rental rates provided for in the lease and in the renewals. In November 2, 1999, Rogers suffered a major stroke and underwent an extended hospitalization and rehabilitation, and plaintiffs assert that despite Rogers' illness, Sacchetti continued to make demands for additional rent in 2000 and 2001 and for return of space. Plaintiffs maintain that under pressure from Sacchetti, plaintiffs agreed to vacate one unit, even though they invested over \$25,000 in improvements. Nonetheless, plaintiffs claim that Sacchetti continued to demand additional rent equivalent to a 49% increase for all units occupied by plaintiffs.

The complaint alleges that "[i]n retaliation for Plaintiffs' refusal to submit to his wrongful demand for rent increases, Sacchetti embarked on a brutal, oppressive and continuous campaign of harassment with the clear intention to inflict economic damage and injury on Plaintiffs without excuse or justification." These efforts purportedly included serving 245 Notices of Termination and Intention to Evict upon plaintiffs, the wrongful refusal to renew the leases on six units in accordance with the Master Lease, and commencing 23 purportedly baseless legal proceedings.

In October 2002, Rogers was diagnosed with multiple myeloma, and plaintiffs alleged that Sacchetti's outrageous conduct caused severe psychological stress and the exacerbation of this disease which resulted in Roger's death.¹

The complaint initially included causes of action for (i) breach of contract, (ii) money had and received in connection with Sacchetti's retention of a security deposit for Apartment 102, (iii) willful and malicious interference with plaintiffs' business, (iv) intentional infliction of emotional distress and harm, (v) malicious prosecution, and (vi) slander. By decision and order dated April 12, 2004, the court granted Sacchetti's motion to dismiss to the extent of dismissing plaintiffs' claims for willful and malicious interference with plaintiffs' business, malicious prosecution and slander.

The court, however, found that the breach of contract claim, which alleged, inter alia, that Sacchetti repeatedly demanded rent above the amount in the Master Lease and wrongfully refused to renew the leases on certain units, was sufficient to state a cause of action for breach of the contract. The court further found that the cause of action for money had and received, seeking the return of plaintiffs' security deposit for Apartment 102, was not precluded based on the parties' stipulation in connection with a summary proceeding in Housing Court under which plaintiffs agreed to waive their right to the deposit, since plaintiffs alleged that Sacchetti breached the stipulation. The court also rejected Sacchetti's position that his alleged conduct was not so outrageous as to state a claim for intentional infliction of emotional distress.

By decision and order dated November 17, 2004, this court granted reargument of the

¹Following a Fryc hearing, by decision and order dated January 28, 2008, this court granted Sacchetti's motion to exclude evidence that stress exacerbated Rogers' multiple myeloma.

April 12, 2004 decision and order, and upon reargument, adhered to its original determination.

Sacchetti then moved to strike plaintiffs' jury demand based on the jury waiver provision in the Master Lease. By decision and order dated June 7, 2005 (hereinafter "the original decision"), this court denied the motion, holding that the intentional infliction of emotional distress claim constituted a cause of action for personal injuries and was thus excluded from the jury waiver provision under Real Property Law § 259-c.² The court also held that Sacchetti was estopped from relying on the jury waiver provision in the Master Lease with respect to all three remaining claims since he successfully argued in connection with seven non-payment proceedings that the Master Lease did not govern the parties' landlord-tenant relationship, and obtained a judgment in the amount of \$234,221.57.

Sacchetti subsequently moved for order granting him leave to amend his answer to add the defenses of res judicata and collateral estoppel and for summary judgment dismissing the remaining claims for the intentional infliction of emotional distress, breach of contract and money had and received. In its decision and order dated July 12, 2006, the court granted Sacchetti leave to amend his answer to include the defenses of collateral estoppel and res judicata, but found that these doctrines only barred plaintiffs from litigating the breach of contract claim with respect to Apartment 202 and allegations concerning the breach of the covenant of quiet enjoyment, since these issues had been previously determined against plaintiffs in connection with the summary proceedings in the Housing Court. The court also dismissed the claim for money had and received and that aspect of breach of contract claim seeking lost profits

²Real Property Law § 259-c provides that "[a]ny provision in a lease...that a trial by jury is waived in any action, proceeding or counterclaim brought by either of the parties thereto against the other in any action for personal injury or property damage, is null and void."

arising out of losses allegedly incurred in connection with the American Flagship project. The court denied that aspect of the motion seeking to dismiss the claim for the intentional infliction of emotional distress.

Sacchetti appealed and by decision dated February 5, 2008, the Appellate Division, First Department, modified the court's decision to the extent of dismissing the plaintiff's claim for the intentional infliction of emotional distress. See World City Foundation, Inc. v. Sacchetti, 48 AD3d 213 (1st Dept 2008)(hereafter "the Appellate Division decision"). In affirming the remaining aspects of the court's decision the Appellate Division wrote that:

The motion court correctly found that the doctrine of collateral estoppel precludes tenant's breach of contract claim with respect to apartment 202, based on the Housing Court's prior determination, in a proceeding specific to that apartment, that it was not subject to the master lease. However, no such finding was made with respect to any of the other proceedings, and, although issues relating to the master lease were alluded to in the tenant's affirmative defenses, they were never clearly raised and decided against the tenant....Issues relating to the master lease, such as whether landlord failed to offer lease renewals in accordance with its terms, or charged rent above the 5% increase per year permitted thereunder have not yet been addressed. Nor was there ever a need to address such issues where it was never proven that the apartments, with the exception of 202, are subject to the master lease and not rent stabilization.

Id., at 214 (citation omitted).

Sacchetti now moves to renew his motion striking plaintiffs' jury demand based on the Appellate Division decision dismissing the intentional infliction of emotional distress claim. With respect to that aspect of the decision finding that Sacchetti is barred by the doctrine of judicial estoppel from relying of the jury waiver provision in the Master Lease, Sacchetti argues that the Appellate Division decision "must be read as saying that the determination of rents is not

a determination with respect to anything involving the master lease.” Sacchetti also argues that the doctrine of estoppel can no longer be applied based on the change in “factual landscape” indicating that certain of the apartments possessed by the plaintiff were not leased pursuant to the Master Lease but under separate lease agreements containing their own jury waiver provisions.

Plaintiffs counter that the breach of contract claim is based on the alleged breach of the Master Lease and not other lease agreements relied on by Sacchetti, that the Appellate Division decision did not contradict the original decision’s finding that Sacchetti was estopped from asserting the jury waiver provision in the Master Lease, and that there has been no resolution regarding which apartments are governed by the Master Lease.

Plaintiffs also cross move for renewal of its opposition to the motion to dismiss the malicious prosecution claim based on subsequent developments in connection with this and related actions, and assert that upon its reinstatement the malicious prosecution claim would be cognizable as a personal injury claim, and would entitle plaintiffs to a jury trial under Real Property Law § 259-c.

In reply, Sacchetti argues that the malicious prosecution claim should not be reinstated, noting that since its dismissal, the proceedings which plaintiffs alleged were commenced without probable cause have been found to be meritorious.

Discussion

“A motion for leave to renew: (1) shall be identified specifically as such; (2) shall be based upon new facts not offered on the prior motion that would change the prior determination; and (3) shall contain a reasonable justification for the failure to present such facts on the prior motion.” See CPLR 2221(e).

“A motion for leave to renew is intended to bring to the court’s attention new facts or additional evidence which, although in existence at the time the original motion was made, were unknown to the movant and were, therefore not brought to the court’s attention.” Tishman Constr. Corp. of New York v. City of New York, 280 AD2d 374, 376 (1st Dept 2001)(citations omitted). At the same time, however, a court, in its discretion, may grant renewal “in the interest of justice,” even when the facts on which the renewal motion is based were known to the party at the time of the original motion. Id.

In its original decision the court denied Sacchetti’s motion to strike plaintiffs’ jury demand finding (1) that the intentional infliction of emotional distress claim constitutes a claim for personal injury and thus was excluded from the jury waiver provision under Real Property Law § 259-c, and (2) that the doctrine of judicial estoppel barred Sacchetti from relying on the jury waiver provision in the Master Lease. Although the Appellate Division’s dismissal of the intentional infliction of emotional distress claim eliminates the first ground for the original decision and provides a basis for granting renewal, upon renewal, the court adheres to its original decision to the extent it held that the doctrine of judicial estoppel precludes Sacchetti from relying on the jury waiver provision in the Master Lease.

In general, judicial estoppel or estoppel against inconsistent positions applies when a party takes inconsistent positions in the same action or proceeding. See Nestor v. Britt, 270 AD2d 192 (1st Dept 2000). However, courts have applied estoppel based on an inconsistent position taken in another action or proceeding when it can be shown that the party taking the inconsistent position benefitted from the position in the other action or proceeding. Bianchi v. New York City Housing and Community Renewal, 5 AD3d 303 (1st Dept), lv denied, 3 NY2d

601 (2004).

As noted in the original decision, Sacchetti benefitted from his position that the Master Lease did not govern the parties' relationship in seven non-payment proceedings brought against World City and Rogers in Housing Court. In his decision and order dated April 5, 2005, Judge Ernest J. Cavallo held that Sacchetti was estopped from seeking attorneys' fees in the seven proceedings based on a provision in the Master Lease since he had maintained throughout the proceedings that the Master Lease should be null and void. Additionally, Judge Cavallo found that Sacchetti had benefitted from this position, noting that the Housing Court Judge who tried the non-payment proceedings found that the Master Lease did not govern the amount of rent due and owing and, instead, used the rent amount in other expired leases to determine the legal rent. Judge Cavallo wrote that "[Sacchetti] benefitted from this to the extent he was awarded seven judgments totaling \$234,221.57."

Thus, as defendants have taken the position that the Master Lease is null and void and, as a result of this position, have obtained a favorable outcome in seven non-payment proceedings, they are estopped from taking the inconsistent position in this action that plaintiffs have right to a jury trial based on the waiver provision in the Master Lease. See Evans v. Schneider, 2 Misc2d 139A (1st Dept 2004)(tenant who successfully opposed landlord's attempt to invoke jury waiver provision could not seek attorneys fees based on the same lease previously rejected by the court).

Furthermore, the Appellate Division decision is not to the contrary. In affirming that part of this court's decision which denied, with certain exceptions, Sacchetti's motion for summary judgment on collateral estoppel grounds, the First Department found that the issues underlying plaintiffs' claim for breach of the Master Lease had not been determined in the Housing Court

proceedings, including whether Sacchetti failed to offer lease renewals in accordance with the terms of the Master Lease, or charged rent above the maximum 5% increase per year permitted. The Appellate Division also noted that the Housing Court had not been required to address “such issues where it was never proven that the apartments... are subject to the master lease and not rent stabilization.” World City Foundation, Inc. v. Sacchetti, 48 AD3d at 214. Sacchetti argues that this aspect of the Appellate Division decision “must be read as saying that the determination of rents is not a determination with respect to anything involving the master lease.”

However, the Appellate Division’s holding that it had “never been proven” that the apartments were subject to the Master Lease³ is not inconsistent with the fact that Sacchetti benefitted by obtaining a larger judgment by successfully arguing that the amount of rent due and owing in seven non-payment proceedings was not governed by the Master Lease.

Next, renewal is not properly granted based on the jury waiver provisions contained in separate lease agreements for certain apartments since Sacchetti was a party to those lease agreements and thus knew or should have known about them at the time of his initial motion to strike the jury demand. Having failed to raise this issue in its original motion, Sacchetti is precluded from raising it on a renewal motion. Accordingly, upon renewal, Sacchetti’s motion to strike plaintiffs’ jury demand is denied.

Plaintiffs’ cross motion to renew their opposition to the motion to dismiss their malicious prosecution claim is also denied. To state a cause of action for malicious civil prosecution, the

³As noted in this court’s decision and order dated July 12, 2006, the affirmative defenses asserted in the non-payment proceedings which related World City’s purported rights under the Master Lease were dismissed on the ground that such defenses were not available in non-payment proceedings.

plaintiff must prove the initiation of a judicial proceeding, a termination in its favor, lack of probable cause, malice and special injury. See Engel v. CBS, Inc., 93 NY2d 195, 204 (1999).

Plaintiffs' malicious prosecution claims are based on allegations that defendants commenced three baseless actions in this court ("the Supreme Court actions"), and 23 baseless special proceedings in the Housing Part of Civil Court of the City of New York ("the Housing Court proceedings"). Notably, two of the three Supreme Court actions relied on by plaintiff were dismissed prior to the issuance of the court's decisions dated April 12, 2004, and November 17, 2004, and therefore do not provide new facts. Specifically, by decision and order dated July 2, 2002, Justice Jane Solomon dismissed the action filed by defendants under Index No.601036/03, and by decision and order December 18, 2003, Justice Harold Beeler dismissed the action filed by defendants under Index No. 106883/03. Furthermore, while this court dismissed a third Supreme Court action on June 14, 2005, such dismissal, which occurred more than three years ago, does not provide a ground for renewal.

As for the Housing Court proceedings, in connection with the dismissal of the claim for the intentional infliction of emotional distress, the Appellate Division wrote with respect to these proceedings that "the landlord certainly was entitled to bring nonpayment proceedings upon tenant's admitted failure to pay rent." World City Foundation, Inc. v. Sacchetti, 48 AD3d at 214 (citations omitted). As the Appellate Division decision is the law of the case, it cannot be said the Housing Court proceedings terminated in plaintiffs' favor or were brought without probable cause such as would be necessary to state a claim for malicious prosecution.

Finally, in its decision relating to the dismissal of the malicious prosecution claim, in addition to finding that plaintiffs had not shown that the actions or proceedings on which the claim was based were terminated in their favor, the court found that plaintiffs had not satisfied the special injury requirement. The special injury requirement has been held to include arrest of

a person, attachment of property, or any other substantial interference with person or property. Engel v. CBS, Inc., 93 NY2d at 205. Moreover, to the extent plaintiffs argue that this requirement has been met, such an argument would be a basis for a motion for reargument and not renewal and would be untimely.⁴ See CPLR 2221(d)(3) (a motion to reargue must be made “within thirty days after service of a copy of the order determining the prior motion and written notice of its entry”).

Accordingly, plaintiffs’ motion for renewal of its opposition to the motion to dismiss its malicious prosecution claim is denied.

Conclusion

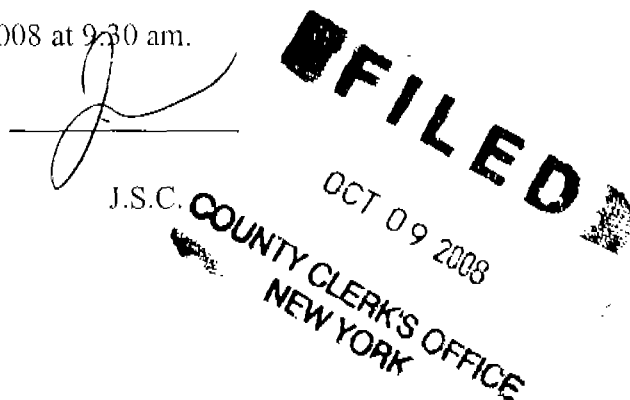
In view of the above, it is

ORDERED that Sacchetti’s motion for renewal of its motion to strike plaintiffs’ jury demand is granted and, upon renewal, the court adheres to its original decision denying Sacchetti’s motion; and it is further

ORDERED that plaintiffs’ motion to renew its opposition to the motion to dismiss their malicious prosecution claim is denied; and it is further

ORDERED that a pre-trial conference shall be held in Part 11, room 351, 60 Centre Street, New York, NY, on November 17, 2008 at 9:30 am.

DATED: October 3, 2008



⁴In this case, the record shows that the 30-day period was triggered on April 21, 2004, when plaintiffs served a copy of the April 12, 2004 order with notice of entry on Sacchetti. See Sacchetti’s Motion, Exhibit E.