

Hamza v Alphabet Soup Assoc., LLC

2011 NY Slip Op 30973(U)

April 11, 2011

Supreme Court, New York County

Docket Number: 101398/11

Judge: Donna M. Mills

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

PRESENT : DONNA M. MILLS
Justice

PART 58

MOHAMMAD HAMZA,
Plaintiff,

-v-

ALPHABET SOUP ASSOCIATES, LLC,
Defendants.

INDEX No. 101398/11

MOTION DATE _____

MOTION SEQ. No. 001

MOTION CAL No. _____

The following papers, numbered 1 to _____ were read on this motion for _____.

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits.... 1

Answering Affidavits- Exhibits _____ 2

Replying Affidavits _____

FILED

CROSS-MOTION: _____ YES NO

APR 18 2011

Upon the foregoing papers, it is ordered that this motion is:

NEW YORK
COUNTY CLERK'S OFFICE

DECIDED IN ACCORDANCE WITH ATTACHED MEMORANDUM DECISION.

Dated: 4/11/11

Donna M. Mills
J.S.C.

DONNA M. MILLS, J.S.C.

Check one: FINAL DISPOSITION

_____ NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 58

-----X
MOHAMMED HAMZA,

Plaintiff,

Index No.

-against-

101398/11

ALPHABET SOUP ASSOCIATES, LLC,

Defendant.
-----X

FILED

DONNA MILLS, J. :

APR 18 2011

Plaintiff moves for a preliminary injunction.

NEW YORK
COUNTY CLERK'S OFFICE

This is a landlord-tenant action. Plaintiff operates a grocery/delicatessen pursuant to a commercial lease, dated April 24, 2009. The premises is located at 2922 Frederick Douglas Blvd., New York, New York. The case arises from defendant-landlord's attempt to evict plaintiff from the premises due to alleged lease violations. Plaintiff states that the grocery opened on December 10, 2010, and that plaintiff has been paying his rent through the present time without any objections from defendant. There has been an attempt to correct problems concerning the premises, but plaintiff claims that defendant has tried to compel him to hire an engineer and has overcharged him for the hiring. According to plaintiff, defendant's complaints are baseless and its conduct constitutes harassment.

Plaintiff seeks a preliminary injunction pursuant to CPLR 6301 and/or an injunction pursuant to *First National Stores, Inc. v Yellowstone Shopping Center, Inc.* (21 NY2d 630 [1968]), to avert an eviction. He alleges irreparable harm and requests relief which will preserve the status quo pending a meritorious trial of this case.

Defendant opposes the motion and contends that it has a clearly justified reason for bringing an eviction proceeding against plaintiff. Defendant submits a copy of the lease and

states that plaintiff has breached 10 provisions, which were specified in a notice to cure previously served on plaintiff. Defendant asserts the following: upon signing the lease, plaintiff agreed that he would not do any cooking on the premises until such time that adequate venting and fire suppression equipment had been pre-approved by defendant and properly installed. Plaintiff then proceeded to cook on the premises, in violation of the agreement. Defendant claims that plaintiff not only breached the agreement, but violated certain laws and regulations and created a serious safety hazard. The notice to cure provided plaintiff with sufficient notice of lease violations, including the performance of work without obtaining necessary permits from the city; the performance of work without supplying defendant with copies of necessary plans and specifications; the failure to supply a list of contractors and subcontractors to defendant; the use of materials that did not comport with approved plans and specifications; the failure to provide the necessary certificates of insurance; the failure to provide copies of drawings and approvals upon the completion of work; the denial of allowing defendant access to the premises; and the failure to include defendant as a named insured upon whatever insurance coverage plaintiff obtained.

Defendant argues that the granting of an injunction to plaintiff would allow him to continue to violate the lease and create a dangerous condition. Defendant claims that plaintiff cannot deny his improper conduct and that it is important to promptly initiate eviction proceedings against him.

In reply, plaintiff claims to have resolved the cooking problem by hiring a company, Fire Zone, to handle the ventilation system on the premises. Plaintiff states that he has filed the proper permits and is ready to cure whatever defects exist. Plaintiff generally disputes several of

the violations alleged in the notice of cure. He claims to have done the construction work properly and based upon approved plans.

First of all, plaintiff cannot move for a *Yellowstone* injunction here because, pursuant to Section 72 of the lease, he waived his right to seek such an injunction in the event of a situation like this case. Plaintiff is confined to obtaining a regular preliminary injunction pursuant to CPLR 6301.

To obtain such relief, plaintiff must demonstrate a probability of success on the merits, an irreparable injury in the absence of an injunction, and a balance of equities in his favor. *See Post v Killian*, 73 AD3d 507, 508 (1st Dept 2010).

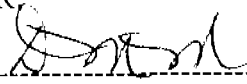
Here, plaintiff has indicated that he has made an effort to cure some of the violations set forth in the notice to cure. The primary dispute concerns the allegedly improper installation and use of certain equipment on the premises and the potential safety problem. The evidence submitted does not resolve the situation as of now, and so, does not establish a probability of success on the merits. The livelihood of plaintiff's business is balanced by the threat of a possible fire hazard. The balance of equities is not strongly in favor of plaintiff.

The court shall deny the motion on the ground of the serious consequences which might arise in the event of a fire due to the alleged violations of the safety code. Plaintiff will have his day in court at Civil Court when defendant brings its eviction procedure there.

Accordingly, it is

ORDERED that plaintiff's motion for a preliminary injunction is denied.

DATED: 4 / 11 / 11

ENTER:  _____

J.S.C.

[Faint handwritten text]

FILED

APR 18 2011

NEW YORK
COUNTY CLERK'S OFFICE