

Eretz Intl., LLC v Columbus Park Owners, Inc.

2011 NY Slip Op 31940(U)

June 30, 2011

Sup Ct, NY County

Docket Number: 106498/11

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

ERETZ INTERNATIONAL, LLC,
Plaintiff,
-v-
COLUMBUS PARK OWNERS, INC.,
Defendant.

INDEX No. 106498/11
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.... | <u>1</u> |
| Answering Affidavits- Exhibits _____ | <u>2+3</u> |
| Replying Affidavits _____ | <u>4</u> |

CROSS-MOTION: _____ YES NO

FILED

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

JUL 05 2011

DECIDED IN ACCORDANCE WITH ATTACHED MEMORANDUM DECISION
NEW YORK COUNTY CLERK'S OFFICE

Dated: 6/30/11

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: PART 58

ERETZ INTERNATIONAL, LLC,

Plaintiff,

- against -

COLUMBUS PARK OWNERS, INC.,

Defendant.

INDEX NO.
106498/11

DECISION/ORDER **FILED**

JUL 05 2011

DONNA M. MILLS, J:

NEW YORK
COUNTY CLERK'S OFFICE

This is an action for a declaratory judgment with respect to Eretz International, LLC, ("Plaintiff") use and enjoyment of the subject commercial premises located at 100 West 94th Street, located within the building owned, by defendant Columbus Park Owners, Inc. ("Defendant"). The parties entered into a written lease with an initial term effective March 1, 2004 through February 28, 2011. It is undisputed that the lease granted Plaintiff the irrevocable option to extend the term of the subject lease for one consecutive extended term of five years, provided (a) tenant is not in default at the time of the exercise of the respective option; (b) tenant gives notice of its exercise of the respective option at least 90 days prior to the expiration of the original term.

Defendant refused to renew the lease based on the aforementioned lease clause which conditioned the lease renewal on Plaintiffs not being delinquent in the payment of rent, and timely giving notice of renewal.

Presently before the court is Plaintiff's motion for a preliminary injunction, staying Defendant from prosecuting a holdover proceeding against Plaintiff in the housing part of the Civil Court of the City of New York (Columbus Park Owners v Eretz International, LLC, Index No.: 058143/11) ("holdover proceeding"). The holdover proceeding was commenced in March 2011 and Defendant has a motion for summary judgment pending. Additionally,

Plaintiff seeks an order directing the removal of the holdover proceeding from housing court and its consolidation with this action (CPLR §§ 326 and 602 [b]). Defendant opposes the motion in its entirety.

As of this writing, a temporary restraining order, granted in an order signed by this Court on June 7, 2011, is in place pending the decision of this motion.

The purpose of a preliminary injunction is to protect the movant through preservation of the status quo until there is a determination on the merits of the litigation. (13 Weinstein-Korn-Miller, N.Y. Civ. Prac. ¶ 6301.02[3]). Such relief is granted “where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done an act in violation of the plaintiff’s rights respecting the subject of the action, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff.” CPLR 6301. The party seeking such relief must establish a likelihood of success on the merits, irreparable injury, and a balancing of the equities in the movant’s favor. Doe v Axelrod, 73 NY2d 748, 750 (1988).

Generally, the injunction will be issued only upon a showing that the “defendant’s wrongful acts are occurring or are threatened and reasonably likely to occur.” Siegel, N.Y. Prac. § 328, at 499 (3d ed).

[An] injunction should be granted if the activity complained of will cause irreparable injury to the party seeking such relief before a trial can be held to resolve the underlying controversy. In this context, irreparable injury means a continuing harm resulting in substantial prejudice caused by the acts sought to be restrained if permitted to continue pendente lite. Chrysler Corp. v Fedders Corp., 63 AD2d 567, 569 (1st Dept 1978).

Gemma Datuin, as President of plaintiff submits an affidavit in support of the

preliminary injunction, arguing that she and her family will suffer irreparable harm and damages if Defendant does not extend the lease on the premises as promised pursuant to the lease.

Applying the aforementioned principles, the court holds that Plaintiff has not shown, that it is likely to succeed on the merits of the case. The claims asserted by the plaintiff in this action are essentially founded upon the assertion that the Defendant wrongly refused to renew its lease because it timely notified Defendant of its intent to renew, and was not in default at the time of exercising its option. These contentions may be interposed as defenses in the context of the holdover proceeding, and therefore Civil Court is the preferred forum for this dispute (see Spain v 325 West 83rd Owners Corp., 302 AD2d 587 [2nd Dept 2003]).

Absent a clear showing that the relief sought is unavailable in the summary proceeding, a preliminary injunction should not be granted. The Housing Part of the Civil Court was designed for resolution of the type of disputes involved in this litigation and is the preferable forum.

Additionally, plaintiff's motion to consolidate this action should be denied in light of the fact that the instant action is still in its initial stages, and Civil Court is better suited to resolve the matter quickly and efficiently. "Even where there are common questions of law or fact, consolidation is properly denied if the actions are at markedly different procedural stages and consolidation would result in undue delay in the resolution of either matter" (Abrams v Port Auth. Trans-Hudson Corp., 1 AD3d 118, 119 [1st Dept 2003]).


Accordingly, it is

ORDERED that the Plaintiff's motion for a preliminary injunction is DENIED, and the temporary restraining order is VACATED; and it is further

ORDERED that the Defendant is directed to answer or move within 20 days

pursuant to the CPLR, upon service of this Order with notice of entry; and it is further
ORDERED that all parties shall appear at a preliminary conference to ascertain the
status of this action on October 7, 2011, at 10:00 A.M., in Part 58, Room 574, 111 Centre
Street, New York, New York 10013.

Dated: 6/30/11

ENTER:


J.S.C.

DONNA M. MILLS, J.S.C.

FILED

JUL 05 2011

NEW YORK
COUNTY CLERK'S OFFICE