

Webman v Lichter & Lichter, LP
2013 NY Slip Op 30464(U)
March 4, 2013
Supreme Court, New York County
Docket Number: 100910/12
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

DOROTHY WEBMAN,

INDEX No. 100910/12

Plaintiff,

MOTION DATE _____

-v-

MOTION SEQ. NO. 001

LICHTER & LICHTER I.P., et al.,
Defendants.

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, 2

Answering Affidavits- Exhibits 3, 4

Replying Affidavits _____

CROSS-MOTION: YES NO

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

**NEW YORK
COUNTY CLERK'S OFFICE**

DECIDED IN ACCORDANCE WITH ATTACHED ORDER.

Dated: 3/4/13

Donna M. Mills

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

DOROTHY WEBMAN,

INDEX NO.
100910/12

Plaintiff,

- against -

LICHTER & LICHTER, LP, LICHTER REAL
ESTATE NUMBER ONE, LLC AND
ABRAHAM SCHWARTZ,

Defendants.

DECISION/ORDER
FILED

MAR 08 2013

NEW YORK
COUNTY CLERK'S OFFICE

DONNA M. MILLS, J.:

This is an action commenced by plaintiff Dorothy Webman against her former landlord Lichter & Lichter, LP, Lichter Real Estate Number One, LLC ("Lichter") and co-defendant Abraham Schwartz ("Schwartz") a corporate officer of Lichter. Schwartz now seeks an order pursuant to CPLR §§ 3211 and 3212, granting summary judgment on the basis that individual liability does not exist.

This action arises out of the actions of defendants with respect to plaintiff's occupancy of apartment 9D at 175 West 76th Street, New York, New York. The plaintiff asserts causes of action for breach of rental agreement, nuisance, breach of implied warranty of habitability, breach of the covenant of quiet enjoyment, negligence, personal injury, property damage, fraud and toxic tort. The plaintiff also alleges that her landlord charged a rent not permitted under applicable rent laws.

Applicable Law & Discussion

CPLR § 3212(b) requires that for a court to grant summary judgment, the court must determine if the movant's papers justify holding, as a matter of law, "that the cause of action or defense has no merit." It is well settled that the remedy of summary judgment,

although a drastic one, is appropriate where a thorough examination of the merits clearly demonstrates the absence of any triable issues of fact (Vamattam v Thomas, 205 AD2d 615 [2nd Dept 1994]). It is incumbent upon the moving party to make a prima facie showing based on sufficient evidence to warrant the court to find movant's entitlement to judgment as a matter of law (CPLR § 3212 [b]). Once this showing has been made, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (Zuckerman v City of New York, 49 NY2d 557, 562 [1980]). Summary judgment should be denied when, based upon the evidence presented, there is any significant doubt as to the existence of a triable issue of fact (Rotuba Extruders v Ceppos, 46 NY2d 223 [1978]). When there is no genuine issue to be resolved at trial, the case should be summarily decided (Andre v Pomeroy, 35 NY2d 361, 364 [1974]).

In support of his motion for summary judgment, Schwartz submits an affidavit in which he readily admits that he is an officer of Lichter. Additionally, Schwartz argues that in the Plaintiff's nine alleged causes of action, she makes no allegations against him specifically. The only reference to Schwartz in the complaint is found in paragraph four which defines him as an employee of the Corporate Defendants. As such, Schwartz relies on the business judgment rule as grounds to dismiss the action.

It is clear that "persons may not be held personally liable on contracts of their corporations, provided they did not purport to bind themselves individually under such contracts" (Wiernik v Kurth, 59 AD3d 535, 537 [2009]). Furthermore, "[o]fficers, directors or employees of a corporation do not become liable to one who has contracted with the corporation for inducing the corporation to breach its contract merely because they have

made decisions and taken actions that resulted in the corporation's breaching its contract" (Citicorp Retail Servs. v Wellington Mercantile Servs. (90 AD2d 532, 532 [1982])). Applying the aforementioned legal principle, there are no triable issues of fact as it pertains to the causes of action sounding in breach of contract.

In addressing the other causes of action, In Matter of Levandusky v. One Fifth Ave. Apt. Corp., 75 N.Y.2d 530, 554 N.Y.S.2d 807, 553 N.E.2d 1317 [1990], the Court of Appeals held that the "business judgment" rule was the correct standard of judicial review of the actions of the directors of a cooperative corporation. That rule prohibits judicial inquiry into the actions of corporate directors "taken in good faith and in the exercise of honest judgment in the lawful and legitimate furtherance of corporate purposes" (*id.* at 537–538, 554 N.Y.S.2d 807, 553 N.E.2d 1317 [internal quotation marks omitted]). The Court, however, cautioned that "the broad powers of a cooperative board hold potential for abuse through arbitrary and malicious decision making, favoritism, discrimination and the like" (*id.* at 536, 554 N.Y.S.2d 807, 553 N.E.2d 1317). In 40 W. 67th St. v. Pullman, 100 N.Y.2d 147, 157, 760 N.Y.S.2d 745, 790 N.E.2d 1174 [2003], the Court of Appeals "reaffirm[ed] [Levandusky's] admonition and stress[ed] that those types of abuses are incompatible with good faith and the exercise of honest judgment. While deferential, the Levandusky standard should not serve as a rubber stamp for cooperative board actions" (emphasis added). Thus, arbitrary or malicious decision making or decision making tainted by discriminatory considerations is not protected by the business judgment rule.

Nothing in the holding or reasoning of either Levandusky or Pullman suggests that there is a safe harbor from judicial inquiry for directors who are alleged to have engaged in conduct not protected by the business judgment rule. Moreover, there is no principle of

corporate law that director liability arises only where the director commits a tort independent of the tort committed by the corporation itself. On the contrary, it has long been held by the Court that “a corporate officer who participates in the commission of a tort may be held individually liable, ... regardless of whether the corporate veil is pierced” (Peguero v. 601 Realty Corp., 58 A.D.3d 556, 873 N.Y.S.2d 17 [2009] [internal quotation marks omitted], quoting Espinosa v. Rand, 24 A.D.3d 102, 102, 806 N.Y.S.2d 186 [2005], quoting American Exp. Travel Related Services Co., Inc. v. North Atlantic Resources, Inc., 261 A.D.2d 310, 311, 691 N.Y.S.2d 403 [1999]; Savannah T & T Co., Inc. v. Force One Express Inc., 58 A.D.3d 409, 872 N.Y.S.2d 83 [2009]; cf. Polonetsky v. Better Homes Depot, 97 N.Y.2d 46, 55, 735 N.Y.S.2d 479, 760 N.E.2d 1274 [2001] [“In actions for fraud, corporate officers and directors may be held individually liable if they participated in or had knowledge of the fraud, even if they did not stand to gain personally”]; Marine Midland Bank v. Russo Produce Co., 50 N.Y.2d 31, 44, 427 N.Y.S.2d 961, 405 N.E.2d 205 [1980], citing Lippman Packing Corp. v. Rose, 203 Misc. 1041, 1044, 120 N.Y.S.2d 461 [1953], which noted, even then, that “a long list of cases ... ha[d] ... held that the officers, directors and agents of a corporation are jointly and severally liable for torts committed on behalf of a corporation and the fact that they also acted on behalf of the corporation does not relieve them from personal liability”).

In opposition to the motion for summary judgment plaintiff in her affidavit lists specific conduct on the part of Schwartz which caused her personal injury and financial hardship, which raises questions of fact as to the remaining causes of action, not sounding in breach of contract. A motion for summary judgment is to be determined upon the facts appearing in the record, without regard to technical defects or deficiencies in the pleadings, and

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should be denied if plaintiff's submissions provide evidentiary facts making out a cause of action (Javitz v Status, 93 AD2d 830 [2nd Dept 1983]).

Accordingly it is

ORDERED that the individual defendant's motion for summary judgment is granted to the limited extent of granting summary judgment, only as to the causes of action sounding in breach of contract.

Dated: 3/4/13

ENTER:

Donna

J.S.C.

DONNA M. HILL, J.S.C.

FILED

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