

Longrain Hospitality Group LLC v Lau
2013 NY Slip Op 31690(U)
July 18, 2013
Sup Ct, New York County
Docket Number: 650352/2013
Judge: Melvin L. Schweitzer
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: MELVIN L. SCHWEITZER
Justice

PART 45

LONGRAIN HOSPITALITY GROUP LLC

INDEX NO. 650352/2013

-v-
JULIE LAU et al

MOTION DATE _____

MOTION SEQ. NO. 001

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits	No(s).
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Answering Affidavits — Exhibits _____ **No(s).** _____

Replying Affidavits	No(s).

Upon the foregoing papers, it is ordered that this motion is ~~is~~ by Defendant to dismiss the complaint is DENIED per the attached Decision and Order.

A Preliminary Conference is scheduled
for 9-9-13 at 12PM at 26 Broadway
10th Floor

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE _____ FOR THE FOLLOWING REASON(S):

Dated: July 18, 2013

MELVIN L. SCHWEDIZER

1. CHECK ONE: ☒ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: ☒ GRANTED ☒ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ☐ SETTLE ORDER ☐ SUBMIT ORDER
- ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 45

-----X
LONGRAIN HOSPITALITY GROUP LLC,

Plaintiff,

-against-

JULIE LAU, RONG-SHING, INC., AND BLEECKER
PLAZA REALTY CORP.,

Defendants.
-----X

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: Index No. 650352/2013

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: DECISION AND ORDER

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: Motion Sequence No. 001
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MELVIN L. SCHWEITZER, J.:

Defendants Julie Lau (Ms. Lau), Rong-Shing, Inc. (Rong-Shing), and Bleecker Plaza Realty Corp. (Bleecker Plaza) bring this motion to dismiss the complaint brought by Longrain Hospitality Group (Longrain).

Background

Ms. Lau, Rong-Shing, and Bleecker Plaza (defendants) sold “Suzie’s Restaurant,” located at 163 Bleecker Street in New York, New York, to Longrain. Prior to the sale, Suzie’s Restaurant had been in operation for 37 years. To purchase the restaurant, Longrain executed a note dated October 5, 2012 (Note), and entered a commercial lease made as of July 23, 2012 (Lease). In December 2012, Longrain notified the defendants that it was surrendering the premises to the owner, Bleecker Plaza, stating that the defendants repeatedly breached the Asset Purchase Agreement (APA) and violated applicable laws.

In its complaint, Longrain alleges that the defendants violated several clauses of the APA. Section 1(d) of the APA states that “all Intellectual Property owned by [Rong-Shing] with respect to, or useful in, the conduct of the Business, whether or not registered before any

competent Governmental Authority” should be delivered to Longrain. Longrain alleges that the defendants did not provide Longrain with recipes, books, control of their website, and other records. In Section 7(f), the defendants warranted that they had filed “true complete and correct” tax returns for the Business, and that the financial records fairly presented the Business’ financial condition. Longrain alleges that they were shown incomplete and inaccurate financial records, and that tax returns were not “complete and correct.” Section 10(b) of the agreement stated that the defendants would “use best efforts to preserve intact the [defendants’] current relations and goodwill of the Business with . . . suppliers, employees and others having business relationships with it” and would “not increase or reduce the number of employees without [Longrain’s] prior written consent.” Section 16 outlined the defendants promise not to solicit or induce customers, suppliers, and employees of the restaurant from changing its relationship with the restaurant to the detriment of Longrain. Longrain alleges that the defendants interfered with relationships with customers, suppliers, and employees, and fired key employees who possessed critical intellectual property. In Section 17 the defendants agreed not to “establish, own, operate, manage, control, [or] engage in” any competition with the restaurant within 25 miles of New York City. Longrain alleges that the defendants breached this provision by reopening the restaurant in 2013.

Longrain asserts that, in purchasing the restaurant, it relied on the defendants’ fraudulent representations with respect to the restaurant’s financial information and their intention to comply with the APA. In light of these misrepresentations, Longrain contends that it is entitled to rescind the Note and Lease.

Longrain contends that the defendants have been unjustly enriched under the APA, the Lease, and in the amount that it cost Longrain to renovate the premises that have now been returned to the defendants.

Longrain seeks indemnification from Ms. Lau and Rong-Shing. Section 18 of the APA contains an indemnification provision, in which defendants agreed that both Ms. Lau and Rong-Shing would “indemnify, save and hold harmless . . . from and against . . . any inaccuracy in or any breach of any representation and warranty.”

The defendants contend that each allegation made by Longrain should be dismissed. The defendants seek to dismiss the breach of contract claims on the grounds that they are flatly refuted by documentary evidence. Where they are not disputed, the defendants contend that the claims lack the requisite specificity to be properly pleaded before the court. The defendants seek to dismiss the fraudulent misrepresentation claims on the grounds of insufficient specificity. They contend that the unjust enrichment claims should be dismissed because Longrain failed to show that the defendants received a benefit from the transactions, and they contend that Ms. Lau and Rong-Shing should not have to indemnify Longrain because Longrain itself is at fault.

Discussion

Breach of Contract Claims

A breach of contract claim does not have to be pled with particularity; allegations need only be “sufficiently particular to give the courts and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of the breach of contract cause of action.” *Mee Direct, LLC v Automatic Data Processing, Inc.*, 102 AD3d 569, 569 (1st Dept 2013) (internal quotations omitted). Where extrinsic evidence is used, the standard of review under a CLPR motion is “whether the

proponent of the pleading has a cause of action, not whether he has stated one.” *Biondi v Beekman Hill Housing Apt. Corp.*, 257 AD2d 76, 692 NYS2d 304 (1st Dept 1999), *affd* 94 NY2d 659, 709 NYS2d 861 (2000) (quoting *Guggenheimer v Ginzburg*, 43 NY2d 268 (1977)).

Where documentary evidence and undisputed facts negate or dispose of the claims in the complaint or conclusively establish a defense, dismissal should be granted pursuant to CPLR 3211 (a) (1). *See Biondi*, 257 AD2d at 81 (“The motion should be granted where the essential facts have been negated beyond substantial question by the affidavits and evidentiary mater submitted.”) (citations omitted). Under CPRL 3211 (a) (1), a motion to dismiss based upon documentary evidence “may be appropriately granted only where the documentary evidence utterly refutes plaintiff’s factual allegations, conclusively establishing a defense as a matter of law.” *Goshen v Mutual Life Ins. Co. of New York*, 746 NYS2d 858, 865 (2002) (citing *Leon v Martinez*, 614 NYS2d 972, 974 (1994)).

We reject the defendants’ contention that it has “utterly refute[d Longrain’s] factual allegations.” The defendants argue that Longrain took exclusive possession of the premises as of the lease commencement date, and that Longrain had “full and unfettered” access to the business. They also point out that, at one point, Bleecker Plaza appears to have generously agreed to defer the payment of a security deposit required by the lease. But Longrain’s claims relating to intellectual property, inaccurate records, good faith maintenance of goodwill, and improper interference withstand even a concession of the defendants’ points. Facts that can be reconciled with Longrain’s breach of contract claims certainly do not “utterly refute” those claims.

Longrain’s facts are pleaded with sufficient specificity. Contrary to the defendants’ arguments, allegations of withheld recipes are sufficient without a detailed list of exactly which

recipes were withheld, and allegations that the defendants diminished goodwill and violated the APA by firing key employees are sufficient without specifically identifying the employees in question.

Fraudulent Misrepresentation

The elements of a fraudulent misrepresentation claim are “a material misrepresentation of an existing fact, made with knowledge of its falsity, an intent to induce reliance thereon, justifiable reliance upon the misrepresentation, and damages.” *MBIA Ins. Corp. v Countrywide Home Loans, Inc.*, 87 AD3d 287, 293 (1st Dept 2011) (citation omitted). “What is critical to a fraud claim is that a complaint allege the basic facts to establish the elements of the cause of action.” *Sargiss v Magarelli*, 12 NY3d 527, 530-31 (2009) (internal quotation marks omitted). “[S]ection 3016(b) may be met when the facts are sufficient to permit a reasonable inference of the alleged conduct.” *Id.*

Longrain asserts that the defendants misrepresented the financial and tax status of the business, that Ms. Lau misrepresented the profitability of the business, that Ms. Lau showed Longrain inaccurate payroll records, and that Ms. Lau and Rong-Shing warranted that the tax returns were “true and complete.” We reject the defendants’ unsupported assertion that these claims are insufficient to meet the requirements of CLPR 3016 (b). In light of the defendants’ alleged affirmative representations, we also reject the contention that the claims should be dismissed because Longrain had the opportunity to perform due diligence.

Unjust Enrichment and Constructive Trust

Restitution is appropriate where “it is against equity and good conscience to permit the defendant to retain what is sought to be recovered.” *Paramount Film Distrib. Corp. v State of New York*, 30 NY2d 415 (1972) (citations omitted). Longrain contends that the defendants have

been enriched by the payments they received from Longrain, in light of Longrain's breach of contract claims. The defendants contend that, rather than receiving a benefit, they "suffered the ruin and loss of the goodwill of Suzie's Restaurant," and are left with unpaid bills and a bare kitchen. The merits of these claims should be determined at trial, not on a motion to dismiss.

Indemnification

Ms. Lau and Rong-Shing's responsibilities with respect to indemnification are clearly set forth in Section 18(a) of the APA. The extent to which Ms. Lau and Rong-Shing breached the agreement, and may be liable to Longrain under Section 18(a), is an issue for trial.

Ordered that the defendants' motion to dismiss is denied.

Dated: July 18, 2013

ENTER:


J.S.C.
MELVIN L. SCHWEITZER