

Chamalu Mgt. Inc. v Waterbridge Cap., LLC
2013 NY Slip Op 32951(U)
November 18, 2013
Supreme Court, New York County
Docket Number: 650451/2013
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

HON. EILEEN A. RAKOWER

PRESENT: _____
Justice

PART 15

Index Number : 650451/2013
CHAMALU MANAGEMENT, INC.
vs.
WOODRIDGE CAPITAL, LLC.
SEQUENCE NUMBER : 001
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). 1, 2, 3
Answering Affidavits — Exhibits _____ No(s). 4
Replying Affidavits _____ No(s). 5

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

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER

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

Dated: 11/18/2013

[Signature], J.S.C.

HON. EILEEN A. RAKOWER

- 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 15

-----X

CHAMALU MANAGEMENT INC.,

Index No.
650451/13

Plaintiff,

**DECISION
and ORDER**

- against -

Mot. Seq. 001

WATERBRIDGE CAPITAL, LLC, SPRING
EQUITIES, LLC, and RIVERSIDE ABSTRACT
INC.,

Defendants.

-----X

HON. EILEEN A. RAKOWER, J.S.C.

Plaintiff Chamalu Management Inc. (“Plaintiff”) commenced this action against defendants Waterbridge Capital, LLC (“Waterbridge”), Spring Equities, LLC (“Spring Equities”) (collectively, “Defendants”), and Riverside Abstract Inc for breach of contract, conversion and specific performance relating the premises located at 152 Spring Street, New York, NY (“the Building”). The Complaint alleges that “[o]n information and belief, Spring is an equity, wholly owned and controlled by Woodbridge [sic].”

Defendants thereafter interposed an answer on February 28, 2013 with denied the allegations and set forth various affirmative defenses and a counterclaim for legal fees.

In the Verified Complaint, Plaintiff alleges that it has been the net-lessee of the entire Building pursuant to a Master Lease with B&H Realty, dated July 1, 1999, as renewed and extended on September 26, 2007 and May 7, 2010, which expires on July 1, 2019.

Plaintiff alleges that on or about September 4, 2012, Plaintiff and defendant Spring Equities, LLC (“Spring Equities”) entered into an agreement for the sub-leasing of the store and basement premises located in the Building. A copy of the sub-agreement is annexed to the Complaint as Exhibit A. It is alleged that Spring Equities agreed to pay the sum of \$600,000.00 to Plaintiff for the sub-lease, and that

the sum of \$600,000.00 was paid into escrow by Spring Equities to Riverside Abstract LLC (“Escrow Agent”) at the time of the execution of the sub-lease agreement, subject to the conditions in the contract providing for payment by the Escrow Agent. In addition, rental security in the sum of \$160,000.00 was also deposited into escrow.

The Verified Complaint further alleges that “on or before December 27, 2012, on information and belief, that thereafter, defendant Waterbridge, or one of its entities, purchased the entire building at 152 Spring Street, including the basement and first floor, from its then owners, B&H Realty, Inc.”

Plaintiff alleges that despite demands by Plaintiff for payment of the escrow funds to Plaintiff, Defendants have only paid the sum of \$375,000 to Plaintiff, leaving a balance of \$385,000 in the Escrow Account which Plaintiff has demanded but remains unpaid.

Based on these allegations, the Complaint alleges that three causes of action: breach of the September 4, 2012 sublease agreement between Plaintiff and Spring Equities, breach of implied warranty of good faith and fair dealing, and conversion of the rental security deposit of \$160,000.

Plaintiff now moves for an Order, pursuant to CPLR §3212, for partial summary judgment as against defendant Waterbridge in the sum of \$385,000.

In support, Plaintiff submits the attorney affirmation of Frederic Walker and the affidavit of Cesare Bruni, President of Plaintiff, which annexes a copy of the pleadings. Bruni avers that Waterbridge agreed to make payment of the sums due to Plaintiff, and that subsequently, Waterbridge made payments in the sums of \$250,000 and \$125,000. Bruni avers that the balance of \$220,000 remains owed to Plaintiff, plus the rental security of \$160,000, which to date, Waterbridge has failed to pay.

Defendant Waterbridge opposes. Waterbridge submits the attorney affirmation of Jeffrey H. Roth and the affidavit of Joel Schreiber, a member of Waterbridge.

Waterbridge contends that Plaintiff’s motion is premature as it was made before any discovery. Specifically, Waterbridge contends it should be afforded the opportunity to depose an officer of Plaintiff “relating to, inter alia, (I) the various conversations and documents between the parties regarding the parties regarding Plaintiff’s application of the \$375,000 already paid to the Plaintiff as acknowledged by Plaintiff; and (ii) the terms of and conditions of the purported written agreement referred to by Plaintiff.” Furthermore, Waterbridge contends that Plaintiff has failed

to make a prima facie showing of its entitlement to judgment as a matter of law as Plaintiff fails to provide proof or evidence in admissible form of the alleged agreement with Waterbridge and its entitlement to the requested funds.

The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law. That party must produce sufficient evidence in admissible form to eliminate any material issue of fact from the case. Where the proponent makes such a showing, the burden shifts to the party opposing the motion to demonstrate by admissible evidence that a factual issue remains requiring the trier of fact to determine the issue. The affirmation of counsel alone is not sufficient to satisfy this requirement. (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]). In addition, bald, conclusory allegations, even if believable, are not enough. (*Ehrlich v. American Moninger Greenhouse Mfg. Corp.*, 26 N.Y.2d 255 [1970]). (*Edison Stone Corp. v. 42nd Street Development Corp.*, 145 A.D.2d 249, 251-52 [1st Dept. 1989]).

CPLR §3212(f) provides that, “[s]hould it appear from affidavits submitted in opposition to the motion that facts essential to justify opposition may exist but cannot then be stated, the court may deny the motion or may order a continuance to permit affidavits to be obtained or disclosure to be had and may make such other order as may be just.”

“The elements of a breach of contract claim are formation of a contract between the parties, performance by the plaintiff, the defendant's failure to perform, and resulting damage.” (*Flomenbaum v New York Univ.*, 2009 NY Slip Op 8975, *9 [1st Dept. 2009]).

Here, summary judgment would be premature under CPLR §3212(f) as Waterbridge has not been afforded the opportunity to take discovery as to the terms of the alleged agreement between Plaintiff and Waterbridge which Plaintiff's motion for summary judgment is based upon.

Wherefore, it is hereby

ORDERED that Plaintiff's motion for partial summary judgment as against defendant Waterbridge Capital, Inc. is denied.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

DATED: NOVEMBER 18, 2013



EILEEN A. RAKOWER, J.S.C.

HON. EILEEN A. RAKOWER