

Chaitman v Moezina

2014 NY Slip Op 30770(U)

March 26, 2014

Sup Ct, New York County

Docket Number: 653037/2012

Judge: Eileen A. Rakower

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

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JENNIFER CHAITMAN AND VETERINARY
INTERNAL MEDICINE & ALLERGY
SPECIALISTS, LLC,

Index No.

653037/2012

Plaintiffs,

**DECISION
and ORDER**

- v -

Mot. Seq. 04

FRANCIS MOEZINA, DAVID MOUSSAZADEH,
SAMY MAHFAR, FSM HOLDINGS II, LLC,
DMZ III, LLC, SM 84TH TIC, LLC, and THE CITY
OF NEW YORK DEPARTMENT OF BUILDINGS,

Defendants.

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

This is an action for breach of contract, injunctive relief, declaratory relief, and punitive damages based on, *inter alia*, the defendants' alleged failure to comply with the terms of a lease agreement, as well as their reckless disregard of dangerous conditions allegedly existing on the subject premises. Plaintiffs, Jennifer Chaitman ("Dr. Chaitman") and Veterinary Internal Medicine & Allergy Specialists, LLC ("VIMAS") (collectively, "Plaintiffs"), claim to have entered into a commercial lease agreement, as tenants, with defendants, FSM Holdings II, LLC, DMZ III, LLC, SM 84th TIC, LLC (collectively, the "LLC Defendants"), Francis Moezinia, David Moussazadeh ("Moussazadeh"), Samy Mahfar, (collectively, the "Individual Defendants" and together with the LLC Defendants, "Defendants"), as landlords, for

a portion of the building located at 207 East 84th Street, New York, New York (the "Premises"). Plaintiffs claim that defendants failed to provide Plaintiffs with quiet enjoyment of the Premises, that Defendants caused several floods, sewage leaks, and other disturbances in the Premises, and that, as a result, Plaintiffs were not only unable to operate their veterinary practice, but were also constructively evicted from the Premises.

Defendants, Francis Moezina, David Moussazadeh, and Samy Mahfar, move for an Order pursuant to CPLR § 3211(a)(7), dismissing Plaintiffs' complaint as against the Individual Defendants. Defendants submit the affidavit of their attorney, along with exhibits. Individual Defendants request that the Court treat the instant motion and the evidence in support as one for summary judgment, pursuant to CPLR § 3211(c).

Plaintiffs oppose. Alternatively, Plaintiffs request leave to amend their complaint to cure any deficiencies the Court may find.

CPLR § 3211 provides, in relevant part:

(a) a party may move for judgment dismissing one or more causes of action asserted against him on the ground that:

(7) the pleading fails to state a cause of action.

In determining whether dismissal is warranted for failure to state a cause of action, the court must "accept the facts alleged as true ... and determine simply whether the facts alleged fit within any ;7801;7801cognizable ;7802;7802legal ;7803;7803theory." (*People ex rel. Spitzer v. Sturm, Ruger & Co., Inc.*, 309 AD2d 91[1st Dept. 2003]) (internal citations omitted) (*see* CPLR §3211[a][7]).

"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]).

In addition, “[t]he concept of piercing the corporate veil is a limitation on the accepted principles that a corporation exists independently of its owners, as a separate legal entity, that the owners are normally not liable for the debts of the corporation, and that it is perfectly legal to incorporate for the express purpose of limiting the liability of the corporate owners . . . piercing the corporate veil requires a showing that: (1) the owners exercised complete domination of the corporation in respect to the [injury alleged]; and (2) that such domination was used to commit a . . . wrong against the plaintiff which resulted in plaintiff’s injury.” (*Morris v. New York State Dept. of Taxation and Finance*, 82 NY2d 135, 140-42 [1993]). An attempt to pierce the corporate veil “does not constitute a cause of action independent of that against the corporation; rather it is an assertion of facts and circumstances which will persuade the court to impose the corporate obligation on its owners.” (*Id.* at 141).

Individual Defendants argue that Plaintiffs’ complaint fails to state a cause of action against Individual Defendants because Individual Defendants are not personally liable for the obligations of the LLC Defendants. Individual Defendants also argue that Plaintiffs’ complaint fails to state a cause of action against Individual Defendants because Plaintiffs’ complaint does not allege that Individual Defendants participated in the commission of a tort, and is insufficient to support a claim for punitive damages against Individual Defendants personally.

Here, Plaintiffs’ complaint alleges, “Defendants own and operate the building on the northeast corner of Third Avenue and 84th Street, and lease a small portion of the building to VIMAS.” Plaintiffs’ complaint further alleges, “Dr. Chaitman is a veterinarian board-certified in internal medicine who operates VIMAS as a 24-hour small animal hospital servicing the local community,” and that Defendants entered into a lease agreement with Plaintiffs, whereby “Defendants are required to provide VIMAS with the quiet enjoyment of the Premises.” Plaintiffs’ complaint alleges, “In 2010, the Defendants entered into an agreement to lease the Building, other than the Premises and a storefront on Third Avenue, to the N.Y.U. Medical Center’s Women’s Unit (‘NYU’) and they agreed to gut and renovate the Building to meet the needs of NYU (the ‘Renovations’). Plaintiffs’ complaint alleges that, “the Defendants have been utterly reckless in their failure to supervise the Renovations and in their utter

disregard for the safety of VIMAS' employees, clients, and patients," in breach of the lease agreement, and that VIMAS has been constructively evicted from the Premises as a result.

Plaintiffs' complaint alleges that the actions which contributed to Plaintiffs' constructive eviction include, but are not limited to, "noise from the jackhammers and saws cutting through metal right outside the Premises," "Defendants workmen [coming] into the Premises, without VIMAS' consent, to install unsightly pipes for NYU . . . [which] have caused VIMAS flooding and significant damages," "Defendants plac[ing] a piece of plywood above the overhead pipes in the Premises . . . [which] fell on Dr. Han, cutting and bruising her leg," "renovation work above the Premises caus[ing] the ceiling to crumble in the reception area of the Premises," shutting off the water, phone lines, and "computer lines" without first notifying Plaintiffs, "making it impossible for VIMAS to communicate with its clients, to utilize its medical records system, or to process credit card payments." Plaintiffs complaint further alleges that Dr. Chaitman asked Defendants to "ameliorate the situation" on several occasions, and that each time Defendants "completely ignored Dr. Chaitman's request."

Plaintiffs' complaint alleges that Dr. Chaitman informed individual defendant Moussazadeh that, "in late June and early July 2011, there was flooding into VIMAS' space from a leak in the pipe flowing from the toilet in the second floor bathroom," that Moussazadeh refused to address the leak, and that as a result, "On July 16, 2011, VIMAS' kitchen area, back office, and oxygen closet were flooded with human waste from the second floor bathroom." Plaintiffs' complaint also alleges, "Moussazadeh said he would have the area professionally cleaned but he never did." Plaintiffs' complaint asserts, "On November 3, 2011, Dr. Chaitman notified Moussazadeh about the sewage fly infestation which had begun in July and was still not remedied," and "On November 4, 2011, Dr. Chaitman notified Moussazadeh that there was a serious problem with the plumbing pipes because sewage was bubbling up through the drains in the sinks and the dishwasher." Plaintiffs' complaint alleges that Moussazadeh told her to have someone snake the drain, that Dr. Chaitman reported to Moussazadeh, "They snaked the drain. The plumber said that our sinks are tied into the second floor toilet," and that "On November 5, 2011, fecal matter poured out of the sinks and dishwasher in the Premises, flooding the floor." Plaintiff's complaint asserts various

additional instances of flooding and other disruptions, such as lack of heat, in support of Plaintiffs' claims.

Accepting Plaintiffs' allegations as true, Plaintiffs' complaint fails to plead facts and circumstances sufficient to warrant disregarding the corporate form. Although Plaintiff's complaint alleges that Individual Defendants, and particularly Moussazadeh, engaged in certain "callous and reckless conduct" with respect to Plaintiffs, the complaint fails to allege that Individual Defendants exercised complete domination of LLC Defendants with respect to the injuries alleged, or that such domination *was used* to commit a wrong against Plaintiffs which resulted in Plaintiffs' injuries.

Furthermore, it is undisputed that LLC Defendants executed the Lease Agreement. Plaintiffs' complaint does not allege that Individual Defendants were parties to the lease agreement personally, or that Individual Defendants incurred any personal obligations thereunder. Nor does Plaintiffs' complaint allege that Individual Defendants acted in their individual, rather than corporate, capacities, when the claimed "callous and reckless" conduct took place. Accordingly, accepting the allegations in Plaintiffs' complaint as true and drawing all inferences in favor of the non-moving party, the four corners of Plaintiffs' complaint fail to plead facts and circumstances sufficient to support disregarding LLC Defendants' corporate form, and Plaintiffs' complaint fails to adequately state a cause of action against Individual Defendants for breach of the lease agreement.

With respect to Plaintiffs' request for leave to amend their complaint, Plaintiffs make this request via their memorandum of law in opposition to Individual Defendants' motion to dismiss. Plaintiffs have not filed a motion, pursuant to CPLR §3025(b), for leave to amend their complaint. Accordingly, the Court will not consider Plaintiffs' request.

Wherefore, it is hereby

ORDERED that Individual Defendants' motion to dismiss is granted and Plaintiffs' complaint is dismissed as to the Individual Defendants, Francis Moezinia, David Moussazadeh ("Moussazadeh"), Samy Mahfar.

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: MARCH 26, 2014



EILEEN A. RAKOWER, J.S.C.