

Axton Owner, LLC v St. Luke-Roosevelt Hosp. Ctr.

2014 NY Slip Op 32266(U)

August 13, 2014

Supreme Court, New York County

Docket Number: 653932/13

Judge: Charles E. Ramos

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

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AXTON OWNER, LLC,

Plaintiff,

Index No. 653932/13

-against-

THE ST. LUKES-ROOSEVELT HOSPITAL CENTER
CONTINUUM HEALTH PARTNERS ACO, LLC,
CONTINUUM HEALTH PARTNERS, INC., and
MOUNT SINAI HEALTH SYSTEMS, INC.,

Respondents.

-----x

Hon. Charles E. Ramos, J.S.C.:

Defendants The St. Luke's-Roosevelt Hospital Center (St. Luke's), Continuum Health Partners ACO, LLC, Continuum Health Partners, Inc. (Continuum Entities), and Mount Sinai Health System, Inc. (Mount Sinai) move to dismiss the complaint pursuant to CPLR 3211 (a) (1) and (a) (7).

Background

The facts set forth herein are taken from the pleadings and are assumed to be true for the purpose of disposition.

This dispute arises out of a 15-year commercial lease (Lease) entered into between landlord, plaintiff Axton Owner, LLC (Axton) and tenant, St. Luke's, in September 2012 for a portion of the second floor and lobby of a premises located at 721-733 Amsterdam Avenue in Manhattan.

Under the Lease, Axton agreed to perform certain work to the premises prior to St. Luke's taking possession. Specifically,

Axton was to complete the "Base Building Work," as defined in the Lease, and deliver the premises to St. Luke's by July 1, 2013. The Base Building Work included the completion of the construction of a 4'-6' x 6' deep elevator located inside the building.

At some point, St. Luke's requested a new, bigger elevator than that provided in the Base Building Work definition, set forth in article 4.12 (H) of the Lease, which Axton agreed to.

By email dated January 13, 2013, Axton's representative informed St. Luke's that a change work order (Change Order) would be provided for the redesign of the larger elevator that St. Luke's had requested. By email dated February 4, 2013, Axton's representative emailed the Change Order to St. Luke's, and informed it of the long lead time necessary for the new elevator. Over the following month, the parties engaged in discussions by email concerning the project timeline, and specifically, the elevator.

On March 7, 2013, Axton forwarded the revised elevator Change Order to St. Luke's for approval with the proviso that, if approved, the forecasted completion date of the new elevator would be September 20, 2013, beyond the July 1, 2013 Base Building Work Outside Date originally required by the Lease. On that same date, St. Luke's responded by email approving the Change Order for the elevator.

Subsequently, St. Luke's requested a "space swap," memorialized in a July 1, 2013 email, wherein it proposed swapping a portion of the leased premises for a portion of another space in the building. Axton informed St. Luke's that it would look into it. In the meantime, Axton was pursuing the elevator work, and the parties were in frequent communication concerning timeline and progress.

On July 17, 2013, Axton provided St. Luke's with a revised construction schedule, and informed that it was still working on securing alternate swap space, as St. Luke's had requested. The same day, Mt. Sinai merged with the Continuum Entities, the parent of St. Luke's.

On August 22, 2013, St. Luke's purportedly agreed to a further extension of time for the completion of the Base Building Work Outside Date. St. Luke's indicated it would send a formal Lease modification which the extended Base Building Work completion date, and addressing the swap space (August Agreement).

Axton maintains that, instead of receiving a revised Lease modification incorporating the agreed upon terms, on August 28, 2013, St. Luke's, acting through its corporate parents the Continuum Entities and/or Mt. Sinai, purported to exercise its right of termination of the Lease. St. Luke's cited to a provision in the Lease which granted it the express right to

terminate the Lease upon 60 days written notice if Axton failed to substantially complete the Base Building Work on or before the Base Building Work Outside Date of July 1, 2013.

In November 2013, Axton commenced this action against St. Luke's, the Continuum Entities and Mt. Sinai, who allegedly participated in and negotiated the Lease on behalf of St. Luke's. Axton asserts causes of action for breach of contract, quantum meruit, declaratory judgment, specific performance, lease reformation, tortious interference with contract, and attorney's fees.

Discussion

Defendants move to dismiss the claims for breach of contract, declaratory judgment, and specific performance on the ground that St. Luke's had the express right under Article 4.12 to terminate the Lease upon 60 days written notice if Axton failed substantially to complete the Base Building Work on or before the Base Building Work Outside Date of July 1, 2013. Defendants assert that Axton does not allege that it substantially completed the Base Building Work on or before the July 1, 2013 deadline, or that St. Luke's failed to terminate the Lease within the relevant 60-day period.

Axton counters that its claims for breach of contract, declaratory judgment and specific performance are premised on the allegation that St. Luke's termination of the Lease was premature

and invalid, because St. Luke's agreed to extend the Base Building Work Outside Date, first from July 1, 2013 to September 20, 2013, and then from September 20, 2013 to July 1, 2014, as evidenced in an email exchange between the parties and the Change Order.

At oral argument held on the motion to dismiss, the Court ruled that St. Luke's failed to demonstrate by irrefutable documentary evidence that the Base Building Work Outside Date was not extended (7/23/14 Tr 13:8-13, 22-26). St. Luke's does not dispute that the March 7, 2013 Change Order was approved by both parties, and reflects an anticipated completion date of September 20, 2013 for "elevator construction" (Exhibit C, annexed to the Ramos Aff.).

It is not clear from the record whether the parties intended "elevator construction" in the Change Order to refer to the Base Building Work.

Axton alleges that the phrase "elevator construction" in the Change Order refers to the Base Building Work, and thus, by agreeing to the Change Order, St. Luke's approved the extension of the Base Building Work Outside Date to September 20, 2013. On a pre-answer motion to dismiss, the Court must accept the facts as alleged as true, and accord the plaintiff the benefit of every possible favorable inference (*Leon v Martinez*, 84 NY2d 83 [1994]). Further, in the event that discovery demonstrates that

the Change Order reflects the parties intent to extend the Base Building Work Outside Date by the phrase "elevator construction," the Change Order constitutes a written extension of the deadline to complete that work, and St. Luke's termination of the lease on August 28, 2013, before any actual breach occurred, was premature and a nullity (7/23/14 Tr 13:8-13, 22-26).

For these reasons, the motion to dismiss the first claim for breach of contract, third claim for declaratory judgment seeking a declaration that the Lease was extended by amendment of the parties, and the fourth claim for specific performance directing St. Luke's to abide by the Lease, as amended, is denied.

The motion to dismiss the second claim for quantum meruit is also denied.

St. Luke's argues that the claim for quantum meruit must be dismissed, citing to the well-established principle that a claim in quasi-contract fails in light of an enforceable agreement governing the subject matter of the dispute, and because Axton fails to plead that St. Luke's received any benefit in exchange for Axton's services.

In support of the claim, Axton maintains that the parties came to an agreement in August 2013 (August agreement) with respect to the swap space and a further extension of the Base Building Work Outside Date beyond the deadline set forth in the Change Order, which constitutes a binding contract. In the event

the Court determines that the August agreement is not a binding agreement, Axton seeks to plead quantum meruit in the alternative, in order to recover for the expenditures it incurred in obtaining the swap space and construction costs stemming from building a larger elevator, as requested by defendants but not set forth in the Lease.

The elements of a claim for quantum meruit are the "performance of services in good faith, acceptance of the services by the person to whom they are rendered, an expectation of compensation therefor, and the reasonable value of the services" (*Georgia Malone & Co., Inc. v Ralph Rieder*, 86 AD3d 406, 410 [1st Dept 2011]). "If there is a bona fide dispute as to the existence of a contract ... a plaintiff may proceed upon a theory of quasi contract as well as contract" (*Foster v Kovner*, 44 AD3d 23, 29 [1st Dept 2007]).

As the Court of Appeals has observed, the "plaintiff recovers the reasonable value of his performance whether or not the defendant in any economic sense benefitted from the performance. The quasi-contractual concept of benefit continues to be recognized by the rule that the defendant must have received the plaintiff's performance" (*Farash v Sykes Datatronics, Inc.*, 59 NY2d 500, 505-06 [1983]).

With these principles in mind, the Court rejects defendants' contention that St. Luke's received no benefit from Axton's

services. Axton alleges that it made significant expenditures by working to obtain the swap space and complete the additional elevator work at an accelerated pace as per the specifications set forth in the parties email exchanges and Change Order, at St. Luke's request, that Axton would not otherwise have made. Axton alleges that it diverted vast resources to the effort, was deprived of rent from either St. Luke's or other tenants for the premises, and a brokerage commission.

Axton has sufficiently alleged that it conferred a benefit upon St. Luke's arising out of St. Luke's representations that it would compensate Axton for the services performed. The law imposes upon St. Luke's a duty, in quasi-contract, to restore Axton's former status by permitting recovery of the fair and reasonable value of the performance rendered, and "not merely to surrender any enrichment or benefit that he [St. Luke's] may unjustly hold or have received" (*Farash*, 59 NY2d at 505-06).

Axton is permitted to plead an alternative claim for quasi-contract, and has sufficiently stated the claim.

Axton's fifth cause of action for reformation of the Lease is dismissed, for failure to plead the essential elements of unilateral or mutual mistake (*Greater N.Y. Mut. Ins. Co. v United States Underwriters Ins. Co.*, 36 AD3d 441 [1st Dept 2007]).

Defendants also seek to dismiss the contract and quasi-contract claims asserted against Mt. Sinai and the Continuum

Entitles because they are not parties to the Lease, Axton does not allege that Axton performed any services at their behest, or that these entities exercised control or dominion over St. Luke's that would justify piercing the corporate veil. The Court agrees.

Axton alleges that St. Luke's, the undisputed party to the Lease, was formerly wholly owned by the Continuum Entities prior to its acquisition by Mt. Sinai, and that a representative of the Continuum Entities served as St. Luke's primary point of contact with regard to all matters related to the Lease. On this basis, Axton wishes the Court to draw the conclusion that the Continuum Entities had complete domination over the Lease.

Piercing the corporate veil requires that "the owners exercised complete domination of the corporation in respect to the transaction attacked; and that such domination was used to commit a fraud or wrong against the plaintiff which resulted in plaintiff's injury" (*Cobalt Partners, L.P. v GSC Capital Corp.*, 97 AD3d 35, 40-41 [1st Dept 2012]).

Notwithstanding the absence of any alleged wrongdoing committed by Mt. Sinai, the allegations of the complaint are insufficient to establish that the Continuum Entities abused control of St. Luke's in order to harm Axton. Axton does not allege that the Continuum Entities abused St. Luke's corporate form in order to cause it to engage in a harmful transaction and

shield assets from Axton (see *ABN AMRO Bank, N.V. v MBIA Inc.*, 17 NY3d 208, 229 [2011]). While a parent may be liable for the contractual obligations of its subsidiary or affiliate, Axton has failed to allege the type of wrongs that would sustain a corporate veil-piercing theory (*UMG Recordings, Inc. v FUBU Records, LLC*, 34 AD3d 293 [1st Dept 2006]). Thus, the allegations are insufficient to state a claim against defendants Mt. Sinai and the Continuum Entities.

Finally, Axton's claim for attorney's fees is dismissed because it is improperly pled as an independent claim. Attorney's fees are recoverable only as an element of contract damages if breach is proven, and not as a separate claim (*Pier 59 Studios L.P. v Chelsea Piers L.P.*, 27 AD3d 217 [1st Dept 2006]).

Axton has voluntarily withdrawn the claim for tortious interference with contract (7/23/14 Tr 28:16-17).

Accordingly, it is hereby

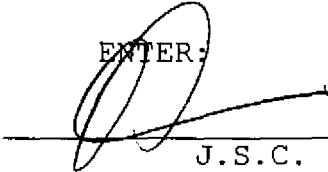
ORDERED that the motion to dismiss is granted, in part, to the extent of dismissing the fifth, sixth and seventh claims, and severing and dismissing all claims asserted against defendants Continuum Health Partners ACO, LLC, Continuum Health Partners, Inc., and Mount Sinai Health System, Inc., and the Clerk of the Trial Support Office is directed to amend the caption reflecting such dismissal; and it is

ORDERED that the motion to dismiss is otherwise denied; and

it is

ORDERED that defendant The St. Luke's-Roosevelt Hospital Center is directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry.

Dated: August 13, 2014

ENTER:

J.S.C.

CHARLES E. RAMOS