

201 Pearl LLC v Herbs & Spices, LLC

2014 NY Slip Op 32772(U)

October 21, 2014

Supreme Court, New York County

Docket Number: 650075/2014

Judge: Anil C. Singh

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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 61

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201 PEARL LLC,

Plaintiff,

-against-

HERBS & SPICES, LLC
a/k/a HERBS AND SPICES, LLC d/b/a HOT CLAY
OVEN, and VIK MANCHANDA a/k/a VIKRAM
MANCHANDA, VIC MANCHANDA, and VICTOR
MANCHANDA,

Defendant.
-----X

DECISION AND
ORDER

Index No. 650075/2014

HON. ANIL C. SINGH, J.:

Plaintiff 201 Pearl LLC (“Owner”) moves (1) to strike the Answer and Counterclaim of defendant Vik Manchanda a/k/a Vikram Manchanda, Vic Manchanda and Victor Manchanda (“Mr. Manchanda”); and (2) for summary judgment on its Complaint against the defendant, pursuant to CPLR 3212. Defendant, pro se, opposes cross motion for summary judgment.

This is an action brought by plaintiff 201 Pearl LLC to collect rent, additional rent, and use and occupy charges under a guaranty based on the allegation that the tenant Herbs & Spices LLC breached the lease and failed to pay rent.

The undisputed facts are as follows:

Tenant executed the Lease for the premises with Owner. See Notice of Motion (motion sequence number 002), Exhibit B. To induce Owner into the Lease, tenant's principal, Mr. Manchanda executed the Guaranty of Tenant's Lease obligations, including the obligation to pay rent and additional rent. See Id., Exhibit C:

[I]n consideration of the premises and other good and valuable consideration . . . and in order to induce Landlord to enter into the Lease . . . Guarantor guarantees, absolutely and unconditionally, to Landlord (a) the full and prompt performance of all terms, covenants, conditions and agreements to be performed and observed by Tenant . . . (b) the full and prompt payment of (i) all Base Rent (as defined in Lease), additional rent and other charges, cost s and expenses . . . [W]ithout notice or demand, Guarantor will reimburse Landlord . . . for all expenses (including reasonable attorneys' fees and disbursements) incurred by Landlord in connection with (a) default by Tenant . . .

Id.

The tenant failed to pay rent. The plaintiff commenced a holdover summary proceeding in the Civil Court of the City of New York, New York County.

The Civil Court order dated August 10, 2013, granted the petitioner Owner summary judgment striking the respondent tenant's cross-motion and the tenant's defenses as conclusory. Petitioner was awarded the possession of the premises. The tenant was eventually evicted from the space.

By sworn affidavit of Krisitin E. Sather, an officer of plaintiff, states that defendant owes a total of \$495,310.50 with interest in rent and additional rent including attorneys' fees and other charges owed under the Lease and Guaranty. The account statement setting forth those charges is appended as Exhibit H.

Defendant Manchanda opposes arguing that the plaintiff breached the Lease by failing to complete construction in accordance with Schedule B of the Lease. \$197,250 was expedited by the tenant. Expediter fees in the sum of \$32,000 were not reimbursed pursuant to the Lease.

Mr. Manchanda explains that Hurricane Sandy disrupted the business, resulting in a shutdown and significant damages which were not covered by insurance. According to defendant, plaintiff liquidated a letter of credit that was offered as security for the lease for the amount of \$85,000 without notice to defendant and these funds are due back to defendant as rent was paid in full to plaintiff. Moreover, defendant requests the court to award 1) \$197,250 for the construction work not completed by plaintiff that was, as a result, completed by Manchanda, 2) \$32,500 for the expediter fees as per the agreement in the lease, 3) \$75,000 for the damages caused by plaintiff during Hurricane Sandy and were paid by Manchanda for the repairs of the premises, 4) \$85,000 of the securities monies from letter of credit that was liquidated by plaintiff, egregious circumstances for the defendant, and 5) punitive damages in the sum of \$500,000 for emotional distress caused by plaintiff.

Although this Court empathizes with defendant's circumstances battling leukemia and dealing with the aftermath of Hurricane Sandy, the defenses could have been raised in the summary proceeding. (See Tewksbury Management Group, LLC v Rogers Investments NV LP, 110 AD3d 546 [1st Dept 2013])(Since plaintiff tenant could have raised claims of defendant landlord's breach of lease in the summary proceeding for nonpayment of rent, the claims were properly dismissed under res judicata.)). Under the doctrine of res judicata, final judgment bars further actions between the same parties or those in privity with them on either the same cause of action or any claim related to the same course of conduct. (See Ginezra Assoc. LLC v. Ifantopoulos, 70 AD3d 427,429 [1st Dept 2010]). In Tewksbury, the First Department found that allegations of defendant landlord's failure to obtain valid certificate of occupancy, remove building violations, provide heat, and deliver entire premise to plaintiff, were claims "inextricably intertwined with defendant's claims in the summary proceeding." (110 AD3d at 546). Similarly here, Mr. Manchanda could have raised his related claims in the summary proceeding for nonpayment of rent, and is therefore precluded from raising them under res judicata.

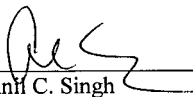
Furthermore, Mr. Manchanda, as the tenant's principal, is precluded from raising this defense since the judgment in a prior action is binding not only on the parties to that action, but on those in privity with them. (See Green v Santa Fe Indus., 70 NY2d 244[1987]; see also Syncora Guar. Inc. v J.P. Morgan

Sec. LLC, 110 AD3d 87, 93 [1st Dept 2013](Privity was established to bar plaintiff from amending the claims against the underwriter who acted in concert and as a single entity with the sponsor, against whom the plaintiff's commenced an earlier action.)). Here, defendant does not dispute that he is the principal of the tenant, and thus, is in privity with the tenant. As such, he is precluded from raising these defenses against plaintiff. Accordingly, it is

ORDERED that defendant's answer and cross claim is struck and plaintiff's motion for summary judgment is granted. Defendant's cross motion is denied, and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of plaintiff and against defendants in the sum of \$495,310.50 with statutory interest from August 23, 2013 together with costs and disbursements as directed by the Clerk.

Date: October 21, 2014
New York, New York


Anil C. Singh

**HON. ANIL C. SINGH
SUPREME COURT JUSTICE**