Manhattan Holding USA LTD v 500 Eighth Ave. Ltd. Liab. Co.
2015 NY Slip Op 30465(U)
March 30, 2015
Supreme Court, New York County
Docket Number: 652108/14
Judge: Anil C. Singh
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

[* 1]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

----------X

MANHATTAN HOLDING USA LTD,

Plaintiff,

-against-

500 EIGHTH AVENUE LIMITED LIABILITY CO.; WALTER & SAMUELS, INC., DAVID I BERLEY, MATTHEW WEISS, JOHN DOE AND JANE DOE, ABC CORPORATION,

Defendants.

----------X

DECISION AND ORDER

Index No. 652108/14

HON. ANIL C. SINGH, J.:

Defendants move for an order pursuant to CPLR 3211(a)(1), (3), (5) and (7) dismissing the complaint, contending that plaintiff's claims are barred by the doctrines of res judicata and collateral estoppel; awarding defendants' fees and costs; and enjoining plaintiff from commencing future actions against them. Plaintiff opposes the motion.

Plaintiff commenced the instant action by filing a verified complaint on July 9, 2014. The complaint alleges the following facts.

Plaintiff Manhattan Holding USA Ltd., is the tenant of Suites 800-801 in the building located at 500 Eighth Avenue in Manhattan.

Defendant 500 Eighth Avenue Limited Liability Company c/o Walter

Samuels, Inc., is the owner and lessor of the premises.

Defendant David I. Berley is the Chairman of Walter & Samuels, Inc., and the signor of the lease executed with plaintiff.

Defendant Walter and Samuels, Inc., is the management company for the premises.

Defendant Matthew Weiss is a licensed plumber.

The complaint alleges that plaintiff entered into a lease agreement with defendant/owner on February 27, 2013. Plaintiff intended to use the space, which was then unimproved, for the operation of a school. However, plaintiff could not operate a school on the premises until defendant/owner obtained an amended certificate of occupancy from the Department of Buildings.

The complaint alleges that defendant Matthew Weiss performed plumbing work under plumbing permit number 121611363-01-PL; all of the renovation work on the premises, including the Weiss plumbing job, was completed by May 31, 2003; and plaintiff paid for all of the work at that time.

Plaintiff contends that, to this date, the defendant/owner still has not obtained a certificate of occupancy for school use. As a result, the tenant has not been able to operate their school at the demised premises.

Plaintiff received a notice dated June 2, 2014, that the owner/landlord

desired access along with Matthew Weiss to inspect the Weiss plumbing job, because the Department of Buildings had inspected it and would not approve it, and they wanted to ascertain what had to be done and the likely cost. Plaintiff objected to this request and notified the owner/landlord that it was not going to pay for any plumbing work done by Matthew Weiss. The inspection took place. Subsequently, plaintiff received a notice dated July 8, 2014, from owner/landlord demanding access to the premises on July 11, 2014, with Matthew Weiss, for the purpose of completing the plumbing job. The notice also stated that the plumbing work had failed inspection by the Department of Buildings.

The complaint asserts causes of action for breach of contract, "tortious interference with advantageous relations," and breach of warranty.

Discussion

This is the third action commenced by this plaintiff in the Supreme Court arising from the alleged failure to complete the plumbing work and to obtain a certificate of occupancy for the demised premises.

The first action was commenced under index number 156717/13. The case was assigned to Justice Eileen Rakower. By order dated January 30, 2014, Justice Rakower granted defendants' motion to dismiss, and the complaint was dismissed as against defendants Marke Torre, 500 Eighth Avenue Limited Liability Co.,

Walter & Samuels, Inc., and David I. Berley in its entirety. Plaintiff's first cause of action was for breach of contract based on landlord/owner's alleged delay in applying for a school certificate of occupancy. Justice Rakower found, however, that there was no language whatsoever in the lease agreement suggesting that the landlord would "immediately" submit the required application. The third cause of action was for tortious interference, alleging that because of defendants' "unreasonable delay" in the renovation work and their breach of contract regarding the installation of additional lighting and doors, plaintiff's contract with its contractor had been "strained." Plaintiff alleged that it engaged a construction contractor in reliance upon defendant/property manager's representations, and that the property manager's change in position "strained" the construction contract. Justice Rakower found that the allegations failed to state a cause of action for tortious interference, as the lease set forth specific provisions for "Tenant's Work," and disavowed any oral representations by landlord's agents.

After Justice Rakower granted the defendants' motion to dismiss plaintiff's complaint in the first action, plaintiff commenced a second action against David I. Berley and 500 Eighth Avenue Limited Liability Company under index number 650433/14. The second action was also assigned to Justice Rakower. The complaint alleged two causes of action. The first was for unjust enrichment, based

on defendants' alleged intentional delay in obtaining a certificate of occupancy and the allegations that defendants would be unjustly enriched by all the work and investments plaintiffs' could have put into the premises to prepare it to operate as a school. The second cause of a action was for misrepresentation based on allegations that defendants made assurances and guarantees of their ability to obtain an amended certificate of occupancy for school use of the premises.

By order dated July 2, 2014, Justice Rakower dismissed the complaint in its entirety on the grounds that specific provisions of the lease and rider flatly contradicted the legal conclusions and factual allegations of the complaint.

Now, plaintiff has commenced this third action, which arises from the same basic set of underlying facts arising under a lease agreement between the parties for premises on the eighth floor at 500 Eighth Avenue in Manhattan.

The first cause of action is for breach of contract arising, inter alia, from defendants' failure to file a certificate of occupancy based on the owner/landlord's failure to complete improvements to the premises.

The second cause of action is for "tortious interference with advantageous relations" regarding improvements in the form of plumbing work to the premises.

The third cause of action for breach of warranty alleges that plumbing work at the premises was not done in a workmanlike manner and failed an inspection by

the Department of Buildings.

Discussion

Under the doctrines of res judicata and collateral estoppel, a cause of action may be dismissed where the claim either was, or could have been, raised in a prior action (Munroe v. Park Ave South Management, 99 A.D.3d 426 [1st Dept., 2012]). A valid final judgment bars future actions between the same parties on the same cause of action (Parker v. Blauvelt Volunteer Fire Co., 93 N.Y.2d 343, 347 [1999]). Further, it is fundamental that a judgment in a prior action is binding not only on the parties to that action, but on those in privity with them i.e., those with interests that were represented in the prior proceeding, or who controlled the conduct of the prior action to further their own interests (Green v. Santa Fe Indus., 70 N.Y.2d 244 [1987]). It is also fundamental that once an action has been resolved, all other claims arising out of the same transaction are also barred even if based upon different theories or seeking different remedies (O'Brien v. City of Syracuse, 54 N.Y.2d 353, 357-358 [1981]).

The plaintiff could have raised additional claims – including claims based on plumbing work – in the prior actions, but it opted not to do so.

Here, the Court finds that plaintiff's claims are barred by the doctrine of res judicata. While plaintiff's theories may be different, its claims arise out of the

same set of facts regarding breach of the lease for failure, inter alia, to obtain a certificate of occupancy for the demised premises. These claims were or could have been asserted in the two prior actions before Justice Rakower. Any claims with respect to the plumbing should have been asserted in the two prior actions.

Finally, we find that plaintiff's conduct does not rise to a level that would justify an award of defendants' fees and costs, or an injunction against the commencement of future lawsuits. The Court in its discretion declines to grant such relief.

Accordingly, it is

ORDERED that the motion is granted, and the complaint is dismissed with prejudice.

The foregoing constitutes the decision and order of the court.

Date: 3/3/15
New York, New York

Anil C. Singh