

Matter of Vintaco Inc. v Metropolitan Transp. Auth.

2015 NY Slip Op 32591(U)

June 17, 2015

Supreme Court, New York County

Docket Number: 150667/2015

Judge: Debra A. James

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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: DEBRA A. JAMES
Justice

PART 59

In the Matter of the Application of
VINTACO INC. d/b/a GRANDE HARVEST WINES,

Index No.: 150667/2015

Petitioner,

Motion Date: 05/22/15

- v -

Motion Seq. No.: 003

METROPOLITAN TRANSPORTATION AUTHORITY,

Motion Cal. No.:

Respondent.

The following papers, numbered 1 to 2 were read on this motion to remove and consolidate the New York City Civil Court hold-over summary proceeding with this action, or alternatively to stay the prosecution of such hold-over summary proceeding pending the resolution of this action.

Table with 2 columns: PAPERS NUMBERED, 1, 2

Order to Show Cause -Affidavits -Exhibits

Answering Affidavits - Exhibits

Replying Affidavits - Exhibits

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

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that the motion of petitioner to remove and consolidate the hold-over summary proceeding now pending in New York City Civil Court with the CPLR Article 78 proceeding at bar, or in the alternative to stay prosecution of the hold-over summary proceeding pending resolution of the instant Article 78 proceeding, shall be denied.

With respect to petitioner Vintaco Inc (Vintaco)'s application to remove and consolidate the hold-over summary proceeding in Metropolitan Transportation Authority v Vintaco, Inc., New York City Civil Court L&T Index No. 010709/15

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE SETTLE/SUBMIT ORDER/JUDG.

(D'Aguste, J.) (Civil Court summary proceeding) with the instant CPLR Article 78 proceeding, this court concurs with respondent Metropolitan Transportation Authority (MTA) that there are no common questions of law or fact to justify such removal and consolidation. This action is distinguishable from the facts of Morrell & Co. Wine Emporium v Richalan Realty Corp., 93 AD2d 736 (1st Dept 1983), where in its breach of lease claim, plaintiff sought the equitable remedy of specific performance under the lease, relief that was not available in the New York City Civil Court holdover proceeding, and which relief would resolve plaintiff's defense in the summary proceeding that it was entitled to continued possession. By contrast, in this action, the Article 78 proceeding in which Vintaco seeks an order declaring, to wit, that the respondent's award and execution of the new lease for the premises is null and void and that such new lease be awarded to Vintaco, neither bears upon nor would resolve the Civil Court summary proceeding in which the MTA seeks possession of the premises based upon the alleged termination of a written month-to-month tenancy. Nor would any judgment in favor of Vintaco in this Article 78 proceeding constitute a defense to the Civil Court proceeding, since Vintaco's position in the summary proceeding is that it has a right to continue in possession of the premises under an allegedly extant month-to-month lease, which has nothing to do with whether it was entitled

to be awarded a new lease in the bidding process.

As for staying the Civil Court action, this court concurs with the MTA, that Vintaco has not demonstrated a likelihood of success on the merits since the remedy that Vintaco seeks, i.e., an Article 78 judgment compelling the award of the new lease to a particular bidder, here Vintaco, is unavailable. Such mandamus type relief is unavailable as plaintiff

does not have a "clear legal right" to the award of the lease since the determination of who is the "[highest] responsible bidder" necessarily involves the exercise of discretion. This court will not usurp the [MTA's] discretion under the circumstances in the absence of a showing of dishonesty, fraud, collusion, corruption or bad faith in awarding the [lease].

Matter of Progressive Dietary Consultants of NY v Wyoming County, 90 AD2d 214, 219 (4th Dept 1982). See also Square Parking Sys v Metropolitan Transp Auth, 92 AD2d 782, 784 (1st Dept 1983) (affirming the trial court's dismissal of "[t]he first cause of action for a declaration that plaintiff has a valid and binding five-year lease...and a mandatory injunction requiring MTA-Conrail to execute and deliver such a lease to plaintiff.")

In addition, Vintaco has not shown irreparable harm should the Civil Court proceeding not be stayed since, should it prevail in the Article 78 proceeding at bar, the court may direct the MTA to seek new bids for the lease, availing Vintaco of the opportunity to be the successful bidder. Matter of Progressive Dietary Consultants of NY, supra, at 219.

Accordingly, it is

ORDERED that the motion of petitioner Vintaco, Inc. d/b/a Grande Harvest Wines to remove and consolidate Metropolitan Transportation Authority v Vintaco, Inc., New York City Civil Court L&T Index No. 010709/15 with this action, or alternatively to stay all proceedings in Metropolitan Transportation Authority v Vintaco, Inc., New York City Civil Court L&T Index No. 010709/15 pending disposition of this action is denied.

This is the decision and order of the court.

Dated: June 17, 2015

ENTER:

~~V. Ch. J. 2015-06~~
DEBRA A. JAMES J.S.C.
J.S.C