

3320 Leasehold Corp. v Sahim
2016 NY Slip Op 30141(U)
January 26, 2016
Supreme Court, New York County
Docket Number: 652333/2015
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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3320 LEASEHOLD CORP,

Plaintiff,

-against-

Index No. 652333/2015

DECISION/ORDER

SUSAN SAHIM AND S&S EQUITIES OF NY & NJ, INC.,

Defendants.

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HON. CYNTHIA KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion
for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Affidavits in Opposition.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Defendants Susan Sahim and S&S equities of NY & NJ, Inc. (“S&S”) have brought the present motion to dismiss plaintiff’s complaint and for sanctions. As will be explained more fully below, the motion is granted in part and denied in part.

The relevant facts, as alleged in the amended complaint, and supplemented by documentary evidence, are as follows. Carl Silverman is the sole shareholder of plaintiff 3320 Leasehold Corp. In 2006, plaintiff signed a lease for the entire third floor of 33 E. 20th St. (the “leased premises”). Plaintiff owned and paid for the improvements to the leased premises including the fixtures which were attached to the walls. In 2014, defendants occupied a portion of the leased premises. At that time, a petition was brought for the judicial dissolution of defendant S&S. Susan Sahim was a party to that proceeding as was Carl Silverman. In that proceeding, the court entered an order as part of a resolution of the action whereby the defendants in this action were to vacate the premises no later than September 30, 2014. Silverman and Sahim were each to retain their own personal office

furniture and defendant S&S was to retain the balance of the office furniture. In that prior proceeding, no mention was made with respect to any fixtures in the leased premises. In September 2014, the defendants removed all of the fixtures in the leased premises, including light fixtures, cabinets and workspace countertops which were owned and were the property of plaintiff and failed to return or pay for such fixtures despite due demand. The amended complaint also alleges that the defendants damaged the leased premises when they removed these fixtures. Plaintiff further alleges that it intended to sublease the premises for the remaining three years of the lease but was unable to do so because the cost to repair the damages caused by the defendants and to replace the fixtures made this economically unfeasible. Based on the foregoing allegations, the plaintiff has asserted causes of action against the defendants in this action for conversion, tortious interference with contract, tortious interference with economic relations and unjust enrichment.

Defendants move to dismiss the amended complaint on the grounds that it is devoid of any allegations to justify piercing the corporate veil of the corporate defendant to impose individual liability on the individual defendant, that this court's prior order issued in September 2014 has already decided the issues giving rise to the instant action and plaintiff should not be allowed to circumvent the court's order and that plaintiff's amended complaint fails to state a cause of action.

Initially, defendant's argument that the complaint must be dismissed as against the individual Susan Sahim on the ground that plaintiff fails to allege any basis for individual liability against her is without merit. The complaint clearly alleges that the individual defendant personally removed the fixtures from the leased premises and personally damaged the premises while she was moving the fixtures. Therefore, plaintiff is not attempting to pierce the corporate veil to hold the individual liable for the actions of the corporation but instead is alleging that the individual defendant herself converted the fixtures, was unjustly enriched and interfered with plaintiff's

contract and economic relations. As a result, defendant Sahim is not entitled to dismissal of the complaint on the ground that plaintiff has not alleged any facts to justify piercing the corporate veil.

Similarly, the argument by defendants that this court's prior order issued in September 2014 already decided the issues giving rise to the instant action is also without basis. Although it is undisputed that the prior order provided that defendants could remove furniture, the order was silent with respect to the right of either defendant to remove fixtures from the leased premises or damage the leased premises.

The court will now address defendant's motion to dismiss the four causes of action on the ground that they fail to state a cause of action. On a motion addressed to the sufficiency of the complaint, the facts pleaded are assumed to be true and accorded every favorable inference. *Morone v. Morone*, 50 N.Y.2d 481 (1980). Moreover, "a complaint should not be dismissed on a pleading motion so long as, when plaintiff's allegations are given the benefit of every possible inference, a cause of action exists." *Rosen v. Raum*, 164 A.D.2d 809 (1st Dept. 1990). "Where a pleading is attacked for alleged inadequacy in its statements, [the] inquiry should be limited to 'whether it states in some recognizable form any cause of action known to our law.'" *Foley v. D'Agostino*, 21 A.D.2d 60, 64-65 (1st Dept 1977) (quoting *Dulberg v. Mock*, 1 N.Y.2d 54, 56 (1956)). However, "conclusory allegations – claims consisting of bare legal conclusions with no factual specificity – are insufficient to survive a motion to dismiss." *Godfrey v. Spano*, 13 N.Y.3d 358, 373 (2009).

As an initial matter, defendants' motion for an order dismissing plaintiff's cause of action for tortious interference with contract on the ground that it fails to state a cause of action is granted. To state a claim for tortious interference with contract, a plaintiff must allege: (1) the existence of a valid contract between plaintiff and a third party; (2) defendant's knowledge of that contract; (3)

defendants' intentional procurement of the third-party's breach of the contract without justification; (4) actual breach of the contract; and (5) damages resulting therefrom. *Lama Holding Company v. Smith Barney*, 88 N.Y.2d 413, 424 (1996). "Although on a motion to dismiss the allegations in a complaint should be construed liberally, to avoid dismissal of a tortious interference with contract claim a plaintiff must support his claim with more than mere speculation." *Burrowes v. Combs*, 25 A.D.3d 370, 373 (1st Dept 2006).

In the present case, plaintiff has failed to state a cause of action for tortious interference with contract. Although it alleges in its complaint that the tortious interference with contract claim is based on defendants interfering with a contract that plaintiff has with its landlord to lease the premises, it states in its opposition papers that the contract that defendants have allegedly interfered with is the sublease between plaintiff and Silverman. However, whether the contract that defendants allegedly interfered with is the lease between plaintiff and its landlord or the sublease between plaintiff and its subtenant Silverman, plaintiff has failed to sufficiently allege an essential element of tortious interference with contract which is that defendants intentionally procured a breach by either the landlord or the subtenant of their lease with plaintiff.

The court will next address the motion by defendants to dismiss plaintiff's claim for tortious interference with economic relations. "As federal courts applying New York law have recognized, conduct constituting tortious interference with business relations is, by definition, conduct directed not at the plaintiff itself, but at the party with which the plaintiff has or seeks to have a relationship. (*G.K.A. Beverage Corp. v. Honickman*, 55 F.3d 762, 768 [2d Cir.1995] [claim dismissed because alleged conduct was not directed at plaintiff's customers]; *Fonar Corp. v. Magnetic Resonance Plus, Inc.*, 957 F.Supp. 477, 482 [S.D.N.Y.1997] ['(U)nder New York law, in order for a party to make out a claim for tortious interference with prospective economic advantage, the defendant must ... direct some activities towards the third party ...']; *Piccoli A/S v. Calvin Klein Jeanswear Co.*, 19 F

Supp 2d 157, 167–168 [S.D.N.Y.1998] [claim must fail because ‘defendants’ alleged conduct concededly was not directed towards any third party with whom Piccoli had an existing or prospective business relationship’].)” *Carvel Corp. v. Noonan*, 3 N.Y.3d 182, 192 (2004).

In the present case, plaintiff has failed to state a valid claim for tortious interference with economic relations as it has failed to allege any conduct by defendants directed at prospective tenants of the leased premises. Plaintiff’s claim for tortious interference with economic relations is based on its allegation that defendants tortuously interfered with plaintiff’s economic relationship with prospective tenants as plaintiff would have subleased the premises to prospective tenants but for defendants’ conduct in unlawfully removing the fixtures and creating damage, thereby making the premises uneconomically viable to sublease. However, there is no allegation that there was any conduct by these defendants which were directed at the prospective tenants which plaintiff sought to have a relationship with as opposed to conduct directed towards the plaintiff itself. Therefore, the claim for tortious interference with economic relations is insufficient as a matter of law.

The court will next address defendant’s motion to dismiss the claim for conversion and unjust enrichment. “[T]o establish a cause of action in conversion, the plaintiff must show legal ownership or an immediate superior right of possession to a specific identifiable thing and must show that the defendant exercised an unauthorized dominion over the thing in question...to the exclusion of the plaintiff’s rights.” *Fiorenti v. Central Emergency Physicians*, 305 A.D.2d 453, 454 (2d Dept 2003), citing *Independence Discount Corp. v. Bressner*, 47 A.D.2d 756, 757 (2d Dept 1975); see also *Fitzpatrick House III, LLC v. Neighborhood Youth & Family Servs.*, 55 A.D.3d 664 (2d Dept 2008). A plaintiff asserting a claim for unjust enrichment must show “that (1) the other party was enriched, (2) at that party’s expense, and (3) that ‘it is against equity and good conscience

to permit [the other party] to retain what is sought to be recovered.” *Mandarin Trading Ltd. v. Wasserstein*, 16 N.Y.3d 173 (2011).

In the present case, the court finds that plaintiff has stated a valid cause of action against both defendants for conversion and unjust enrichment. Plaintiff has sufficiently alleged in the complaint that the defendants both removed the fixtures from the leased premises and that the defendants failed to return or pay for the fixtures that were owned or were the property of plaintiff despite due demand. Plaintiff also sufficiently alleges that both of the defendants were enriched at plaintiff’s expense by taking the fixtures which they had no right to possess. As previously discussed, the argument by defendants that plaintiff does not have any claim for conversion or unjust enrichment because defendants were permitted to remove the fixtures by the prior court order is without basis as the court order was silent as to any party’s right to take possession of the fixtures in the leased premises.

To the extent that defendants argue for the first time in the reply papers that plaintiff cannot assert any claim based on the removal of the fixtures from the leased premises because these fixtures belong to the landlord pursuant to the lease, the court declines to consider such argument as it is well-settled that evidence submitted for the first time in reply will not be considered by the court. *See Migdol v. City of New York*, 291 A.D.2d 201 (1st Dept 2002)(“The affidavit...submitted with appellant’s reply papers was properly rejected by the motion court since it sought to remedy these basic deficiencies in appellant’s prima facie showing rather than respond to arguments in plaintiff’s opposition papers.”).

The court will next address defendants’ motion to dismiss plaintiff’s claim for punitive damages. “Punitive damages are permitted when the defendant’s wrongdoing is not simply intentional but evinces a high degree of moral turpitude and demonstrates such wanton dishonesty

