

Nick & Duke, LLC v Talla
2016 NY Slip Op 31519(U)
August 10, 2016
Supreme Court, New York County
Docket Number: 155676/2015
Judge: Geoffrey D. Wright
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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NICK & DUKE, LLC,

Plaintiff,

-against-

DECISION/ORDER

Index No.: 155676/2015

TALLA, DAVID M,

Defendant.

-----X

RECITATION , AS REQUIRED BY CPLR 2219(A), of the papers considered in the review of this Motion to vacate or Modify Decision of Referee.

PAPERS

NUMBERED

Notice of Motion and Affidavits Annexed.....	_____ 1 _____
Order to Show Cause and Affidavits Annexed	_____
Answering Affidavits.....	_____ 2 _____
Replying Affidavits.....	_____ 3 _____
Exhibits.....	_____
Other.....cross-motion.....	_____

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows

BACKGROUND

In or around May 31st, 2007 MJG acquired a leasehold interest in 567 West 23rd Street. MJG acquired the leasehold in order to operate an adult club with female strippers on the ground floor. The 1965 Certificate of Occupancy permits the property to operate as a eating and drinking establishment on the first floor. The second and third floors consist of forty-five Single Resident Occupancies (“SRO”).

On November 26, 2007, MJG applied for a Certificate of No Harassment with New

York City's Department of Housing Preservation and Development (HPD). HPD subsequently denied MJG's submittal for a Certificate of No Harassment. As a result, West 23rd Street property was burdened with several statutory obligations to cure which directly affected the value of the property for its owners, Nick & Duke. In particular, Nick & Duke are subject to a taking by HPD of up to twenty-eight percent of the existing improvements to the property or twenty percent of total buildable square footage, whichever is greater.

Nick & Duke originally filed a complaint alleging negligence, negligence per se, and tortious interference with plaintiff's economic advantage of its ownership in the West 23rd Street building. The parties agree that this case is one sounding in tort. Thus, the statute of limitations for a property tort is three years. The complaint was originally dismissed on the grounds that the plaintiff's claims were time barred, exceeding the three year statute of limitations period. Plaintiff now motions for reargument on the basis that the Court misapprehended the relationship between Eric Davis, Esq. and Plaintiff at the time of the Division of Housing and Community Renewal's fact finding determination. Upon reargument, the Court upholds its previous decision as the relationship between Eric Davis and the Plaintiff was and remains irrelevant to the Statute of Limitations.

DISCUSSION

The issue before the court then and now is when the statute of limitations begins to run. "The Statute of Limitations does not run until there is a legal right to relief." Kronos,

Inc. V. AVX Corp., 81 NY2d 90, 94, 612 N.E.2d 289, 595 N.Y.S.2d 931 [1993].

Furthermore, the three year limitations period accrues when a final determination of a penalty is issued. Espada 2001 v. New York City Campaign Fin. Bd., 59 A.D.3d 57, 870 N.Y.S.2d 293 (1st Department 2008). Kronos and Espada make abundantly clear that the statute of limitations is independent of express notice as the Plaintiffs suggest. Contrary to Plaintiff's position, when a cause of action materializes the Statute of Limitations begins to run. When HPD rejected the Defendant's submittal for a Certificate of No Harassment there were statutory penalties imposed at the moment the rejection was issued. These penalties included a taking by HPD of up to twenty-eight percent of the existing improvements to the property or twenty percent of total buildable square footage, which ever were greater. Thus, a three year Statute of Limitations for property claims sounding in tort begins to run at the date in which the injury occurs not when the plaintiff is put on notice of his injury.

Plaintiffs put much emphasis on the Court's reference to Eric Davis and further suggest that the Statute of Limitations cannot begin to run because Eric Davis did not represent Nick & Duke at the time the DHRC fact finding hearing occurred. However, Plaintiff's motion for reargument operates on the mistaken belief that the Court specifically relied on Eric Davis' presence at the DHRC fact finding hearing. On the contrary, the Court's Order on motion sequence 002 primarily relies on the fact that the Statute of Limitations is rendered toothless if the Statute of Limitations clock never begins

Accordingly, Plaintiff's motion for regargument is granted and I adhere to my prior decision. This constitutes the decision and order of the Court.

Dated: August 10, 2016


GEOFFREY D. WRIGHT
AJSC

JUDGE GEOFFREY D. WRIGHT
Acting Justice of the Supreme Court