

Real World Holdings, LLC v 393 W. Broadway Corp.
2017 NY Slip Op 31767(U)
August 21, 2017
Supreme Court, New York County
Docket Number: 160732/15
Judge: Carol R. Edmead
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

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REAL WORLD HOLDINGS, LLC,

Plaintiff,

-against-

Index N^o.: 160732/15
Motion Seq. Nos. 001
and 004

DECISION AND ORDER

393 WEST BROADWAY CORPORATION, TIMOTHY
CLARK, JOAN HARDIN, JAMES SCAEUFELE,
MARIACRISTINA PARRAVICINI, and JOHN
WOTOWICZ,

Defendants.

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CAROL R. EDMEAD, J.S.C.:

In a case involving a dispute in a cooperative building between a proprietary leaseholder and the building, plaintiff Real World Holdings, LLC (Real World) moves for a preliminary injunction (motion seq. No. 001) and partial summary judgment (motion seq. No. 004). As to the preliminary injunction, Real World seeks an order, pursuant to CPLR Article 63, compelling defendant 393 West Broadway Corporation (the Coop) to fully replace, or perform certain repairs, to the portion of the Coop’s roof of which Real World has exclusive use (the private roof). In the summary judgment motion, Real World seeks, pursuant to CPLR 3212, an order declaring that: (1) the Coop is responsible for paying for replacement of the private roof; (2) Real World is responsible for paying its proportionate share of the cost for the replacement of the roof, and (3) the term “proportionate share” means “the ratio which the number of shares of the Apartment Corporation owned by the Tenant-Shareholder bears to the aggregate of all shares, issued and outstanding.” The motions are consolidated for disposition.

BACKGROUND

In January 2008, Real World bought an apartment in the Coop for \$6.8 million. More specifically, it bought 25.5 shares of the common stock of the Coop, which, in total, has issued 220 shares of common stock. Separately, Real World paid \$1.2 million to the Coop for exclusive rights to a portion of the roof over the apartment (the roof purchase agreement). The roof purchase agreement gave Real World the right to: (1) build decking, fences and planters on the private roof; (2) install skylights on the private roof; (3) build a room, up to 600 square feet, on the private roof, provided there is sufficient floor area ratio or excess rights available. The Coop and Real World also executed an amendment to the proprietary lease to incorporate the terms of the roof purchase agreement.

Plaintiff's complaint, filed in October 2015, describes a tortured history following execution of the lease documents. Generally, there are two related developments that have created disagreement and acrimony between the parties. The first is the Coop's refusal to approve certain renovations that Real World wants to perform on the apartment. While the Coop has provided various reasons for its refusal, Real World characterizes them all as pretextual and motivated by the Coop's desire to force Real World to sell its shares, generating flip tax proceeds for the Coop.

The second development, having to do with roof repairs, relates more directly to the summary judgment motion before the court. In 2012, the Coop's board engaged a contractor to perform repairs on the Coop's roof. Although more substantial work was done on the non-private portion of roof, certain work was done on the private roof as well. Real World had numerous complaints relating to the work: including that it violated relevant building

regulations, that workers stole items from Real World's apartment, and that the Coop tried to improperly overcharge it for the work. That final allegation goes to critical question before the court: how much of the cost of roof repairs should Real World bear?

In November 2016, Real World moved for preliminary injunction directing the Coop to perform roof repairs on the private roof. However, at a hearing on May 18, 2017, the Coop acknowledged that the roof needs replacement and that it is the Coop's responsibility to replace it. This rendered the preliminary injunction moot (*see* May 18, 2017 hearing tr at 29). However, it also became clear at the hearing that there was a dispute as to which party should bear the cost of replacing the roof. After conferring with the parties, the court directed Real World to move on an expedited basis for summary judgment on the issue of who pays for repairs of the private roof and in what proportion.

As the Coop acknowledges that it is responsible for engaging a contractor to replace the roof, and paying the contractor, this motion requires the court to answer the narrow question of what is the proportionate share that Real World must reimburse the Coop for the cost of that work. Both sides agree that Real World must pay a proportionate share of the roof repair. The discrepancy arises from the parties differing interpretations of what a proportionate share is. The Coop argues that Real World must pay a share that corresponds to the private roof's percentage of surface area in relation to the total surface area of the roof, while Real World argues, through an affidavit submitted by its principle, Heidi Messer, that it is required to pay a share corresponding to the percentage of common stock it owns in relation to the total amount of issued common stock.

DISCUSSION

“Summary judgment must be granted if the proponent makes ‘a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact,’ and the opponent fails to rebut that showing” (*Brandy B. v Eden Cent. School Dist.*, 15 NY3d 297, 302 [2010], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). However, if the moving party fails to make a prima facie showing, the court must deny the motion, “regardless of the sufficiency of the opposing papers” (*Smalls v AJI Indus., Inc.*, 10 NY3d 733, 735 [2008], quoting *Alvarez*, 68 NY2d at 324).

Proportionate Share

The term proportionate appears in several of the contract documents between the parties. The proprietary lease defines the term as “the ratio which the purchase number of shares of the Apartment Corporation owned by the Tenant-Shareholder bears to the aggregate of all shares, issued and outstanding” (*see Messer aff*, ex 3, § 2.2.1). While the term appears in other contract documents, such as the roof purchase agreement, the term is not defined in any other document.

The roof purchase agreement places the burden of doing structural work, such as a replacement, on the private roof on the Coop:

... the Corporation shall keep in good repair and shall be solely responsible for the performance of the structural repairs and replacement of the Private Roof and any portion of the parapet walls, the underpinnings or structural support of the roof membrane or any other area of the Property to which the Purchaser’s Private Roof installations may tie into, rest upon or which may be directly or indirectly affected by such installations, including, without limitation, ensuring water tightness of the foregoing

(*Messer aff*, ex 2, § 10.1).

This obligation of the Coop is qualified by Real World's obligation to pay its "proportionate share" of the costs:

"Purchaser shall be responsible for its proportionate share of the costs incurred by the Corporation to resurface the roof and Private Roof membrane, in the event the Corporation determines to do so in its sole discretion. Purchaser hereby agrees to reimburse the Corporation for the costs and expenses for which it is responsible under the terms of this paragraph, within ten (10) days of written demand from the Corporation and the same shall be collectible as rent/maintenance under the terms of the Proprietary Lease"

(*id.*).

The second amendment to the lease, which incorporates the roof purchase agreement, reiterates that Real World will reimburse the Coop its proportionate share of costs and expenses:

"Shareholder shall also be responsible for payment of its proportionate share of the costs incurred by the Corporation to resurface the structural components of the roof, the roof surface retained by the Corporation, and the Private Roof membrane, in the event the Corporation determines it is necessary to replace the roof in its sole discretion"

(Messer aff, ex 4, § 3.2.3.2).

Real World makes a prima facie showing of entitlement to summary judgment because the plain language of the lease documents indicate that the proportionate share for which Real World is required to reimburse the Coop regarding the subject roof replacement refers to the percentage of common stock it holds. The Coop tries to raise an issue of fact as to the meaning of "proportionate share" under the roof purchase agreement and the lease amendment, by submitting an affirmation from its former attorney, Margaret Baisley (Baisley), who drafted the roof purchase agreement. Baisley states that proportionate share, even though it is not defined under the roof purchase agreement, had a separate meaning from its definition under the lease agreement:

“we agreed that when the Coop proceeded to resurface the roof and the Private Roof membrane, which at the time we believed would be done simultaneously, the Coop would pay 60% of the total cost based on its ownership of approximately 60% of the entire roof, while Plaintiff would be responsible for paying the remaining 40%. If we had meant that the Coop would be responsible for the total payment (and that Plaintiff would only pay its share through maintenance just as any other shareholder), we would simply have written that the resurfacing of the roof and Private Roof was at the Coop’s sole cost and expense”

(Baisley affirmation, ¶ 10).

There are several problems with Baisley’s affirmation. Initially, the court notes that, given the nature cooperative buildings, the Coop owns 100%, rather than 60% of the roof, even if Real World has exclusive rights to a portion of it. Second, Baisley is referring to discussions regarding a roof repair that never took place, rather than general obligations governing the parties’ respective obligations as to roof repair and maintenance, which is the subject of the operative paragraph of roof purchase agreement. Finally, and most importantly, the term “proportionate share,” as used in the roof purchase agreement and the other lease documents, is not ambiguous. Accordingly, there is no need to consult Baisley’s testimony as to what the parties intended (*ABS Partnership v AirTran Airways*, 1 AD3d 24, 29 [1st Dept 2003] [holding that “[w]hen the terms of a contract are clear and unambiguous, the intent of the parties must be found within the four corners of the document, and the court must enforce it without recourse to parol evidence”).

“[D]ocuments executed at about the same time and covering the same subject matter are to be interpreted together, even if one does not incorporate the terms of the other by reference, and even if they are not executed on the same date, so long as they are

substantially contemporaneous” (*Brax Capital Group, LLC v WinWin Gaming, Inc.*, 83 AD3d 591, 592 [1st Dept 2011] [internal quotation marks and citation omitted]). Here, the relevant agreements are all substantially contemporaneous, with the proprietary lease and the roof purchase agreement both being executed in July 2007, and the second amendment to the proprietary lease having been executed in August 2007. Moreover, the documents reference each other and were plainly meant to be interpreted together. In these circumstances, if the parties had intended “proportionate share” to have one meaning in the proprietary lease, and another in the roof purchase agreement and the second amendment in the proprietary lease, they would have stated such explicitly.

While it is true that courts interpret contracts “to give meaning to all of [their] terms” (*US Bank N.A. v Lightstone Holdings LLC*, 103 AD3d 458, 459 [1st Dept 2013] [internal quotation marks and citation omitted]), parties are free reiterate obligations that transcend multiple interlocking agreements. To decide otherwise here would be to give a term defined by one part of an interlocking set of agreements a meaning other than the definition specified in another. Only the parties, at the time of drafting, and not the court, years later, are free to do that. Plainly, under the roof purchase agreement and the second amendment to the proprietary lease, the term “proportionate share” refers to percentage of common stock held by Real World.

Accordingly, it is

CONCLUSION

Accordingly, it is

ORDERED that plaintiff's motion for a preliminary injunction (motion seq. No. 001) is denied as moot; and it is further

ORDERED that plaintiff's motion for partial summary judgment is granted and it is further

ORDERED, ADJUDGED and DECLARED that the Coop is responsible for paying for replacement of the private roof; and it is further

ORDERED, ADJUDGED and DECLARED that the plaintiff Real World is responsible for paying its proportionate share of the cost of the roof, and it is further

ORDERED, ADJUDGED and DECLARED that the term "proportionate share" means "the ratio which the number of shares of the Apartment Corporation owned by the Tenant-Shareholder bears to the aggregate of all shares, issued and outstanding;" and it is further

ORDERED that counsel for plaintiff, within twenty (20) days, shall serve a copy of this Order with notice of entry on defendants.

This constitutes the order and decision of the court.

Date: August 21, 2017

ENTER:



Hon. CAROL R. EDMED, J.S.C.

HON. CAROL R. EDMED
J.S.C.