

Synergy Exec. Suites, LLC v Andreoli

2017 NY Slip Op 31999(U)

September 14, 2017

Supreme Court, New York County

Docket Number: 650528/2017

Judge: Gerald Lebovits

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NEW YORK STATE SUPREME COURT
NEW YORK COUNTY: PART 7

SYNERGY EXECUTIVE SUITES, LLC,

Plaintiff,

-against-

NICOLE ANDREOLI and PATHWAYS
PSYCHOLOGICAL SERVICES, PLLC,

Defendants.

Index No.: 650528/2017
DECISION/ORDER
Motion Seq No. 001

Recitation, as required by CPLR 2219 (a), of the papers considered in reviewing defendants' motion under CPLR 3211.¹

Papers bered	Num- ber
Defendants' Notice of Motion to Dismiss	1
Plaintiff's Affirmation in Opposition to Defendants' Motion to Dismiss	2

The Rambadadi Law Office G.P., New York (Robert M. Rambadadi of counsel), for plaintiff.
Richard Campisi G.P., New York (Richard Campisi of counsel), for defendants.

Gerald Lebovits, J.

Plaintiff filed a complaint against defendants alleging four causes of action, specifically breach of contract, detrimental reliance, unjust enrichment, and punitive damages. All causes of action relate to a license agreement that plaintiff entered into with defendants regarding renting a commercial property, suites 205, 236, and 238 at 20 West 20th Street, in New York County (the premises). Plaintiff alleges that defendants failed to comply with their payment obligations according to the license agreement.

Defendants assert that in March 2016, it notified plaintiff of their intent to vacate the premises by May 31, 2016. According to defendants, they vacated the premises on May 20, 2016, leaving the premises in broom clean condition. According to defendants; they did not owe any rent or fees to plaintiff. Defendants argues that they were released from any liability after they turned over the keys to the premises. The license agreement's Good Guy/Gal clause provides that "[g]uarantor shall not be liable for obligations after the Release Date." Plaintiff completed a "Closing Procedure" form indicating that defendants had no outstanding rent or fees. Defendants then filed an action in Civil Court for the return of their security deposit. Defendants

¹ Defendants' submitted a Reply after the motion was fully submitted. The court disregards defendants' Reply. In any event, the court notes that defendants allege virtually the same arguments and attach the same documents in its reply papers as defendants did in its moving papers.

argue that plaintiff filed this frivolous lawsuit in retaliation because defendants filed a lawsuit in Civil Court for the return of their security deposit.

Defendants now move to dismiss the complaint pre-answer under CPLR 3211 (a) (1) and CPLR 3211 (a) (7) and under NYCRR 130-1.1 for reasonable attorney fees for \$2,500 and for sanctions against plaintiff for \$5,000. Defendants further assert that plaintiff's claim is barred under the doctrine of collateral estoppel.

I. Defendants' CPLR 3211 (a) (1) Motion

Defendants' motion to dismiss under CPLR 3211 (a) (1) is denied. A CPLR 3211 (a) (1) motion to dismiss based on a defense founded upon documentary evidence "may be appropriately granted only where the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law." (*Goshen v Mut. Life Ins. Co. of New York*, 98 NY2d 314, 326 [2002].)

In support of its motion, defendants provide documentary evidence in the form of a license agreement, two "Closing Procedure forms, and the court documents for the Civil Court, New York County action under index # 15327/2016. Defendants argue that the plain language of the contract bars the relief sought by the plaintiff and that the "Closing Procedure" documents fully release defendants from all liability. (Defendants' Notice of Motion to Dismiss, ¶ 32.)

Nicole Andreoli's affidavit and the emails between the parties are not the type of documentary evidence the court may consider on a CPLR 3211 (a) (1) motion.

Defendants' documentary evidence does not utterly refute plaintiff's factual allegations. The Good Guy/Gal clause of the license agreement provides that guarantor, Nicole Andreoli, is liable for any default by licensee in the payment of fees up to the release date. The license agreement further provides under the "Acceleration of Fees" provision that the premises are licensed for a fee of \$ 113,808.60 for the entire license agreement term and that the fee is payable at the time of making of the license agreement and that the provision for the payment of the fees in installments is for licensee's convenience. The defendants' debt thus accrued at the due date set within the license agreement. (*See Eujoy Realty Corp. v Van Wagner Communications, LLC*, 22 NY3d 413, 424 [2013] ["When a lease sets a due date for rent, that date is the date on which the tenant's debt accrues."].)

Plaintiff's complaint explains the amount that defendants allegedly owe. Defendants argue that because the "Closing Procedure" forms do not provide any outstanding balance, defendants are thus not liable. Given the allegations in the complaint, these "Closing Procedure" documents do not conclusively establish defendants' defense.

II. Defendants' CPLR 3211 (a) (7) Motion

Defendant's motion to dismiss under CPLR 3211 (a) (7) is denied.

When considering a CPLR 3211 (a) (7) motion to dismiss for failure to state a cause of action, "the court must afford the pleading a liberal construction, accept all facts as alleged in

the pleading to be true, accord the plaintiff the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory.” (*Peery v United Capital Corp.*, 84 AD3d 1201, 1201-1202 [2d Dept 2011], quoting *Breyman v Olinville Realty, LLC*, 54 AD3d 703, 703-704 [2d Dept 2008].) Thus, “a motion to dismiss made pursuant to CPLR 3211 (a) (7) will fail if, taking all facts alleged as true and according them every possible inference favorable to the plaintiff, the complaint states in some recognizable form any cause of action known to our law.” (*E. Hampton Union Free Sch. Dist. v Sandpebble Builders, Inc.*, 66 AD3d 122, 125 [2d Dept 2009], quoting *Shaya B. Pac., LLC v Wilson, Elser, Moskowitz, Edelman & Dicker, LLP*, 38 AD3d 34, 38 [2d Dept 2006].)

Plaintiff argues that defendants breached their contract and unjustly enriched themselves by failing to fulfill their obligation to pay the fees owed under the license agreement and that plaintiff relied on defendants’ assurances to rent the commercial premises for two years. (Plaintiff’s Affirmation in Opposition to Defendants’ Motion to Dismiss, Exhibit F, ¶¶ 23-28.) Plaintiff’s complaint alleges that at the time defendants vacated the premises, defendants owed over \$95,000; defendants also owed over \$800 in storage fees. At defendants’ request, plaintiff hired contractors to modify the premises before defendants moved it; plaintiff alleges that defendants owe \$2000 for the modifications to the premises. Plaintiff also allege that defendants owe \$2900 because plaintiff installed drapes and lamps in the premises.

In its complaint, plaintiff refers to several exhibits, including an invoice itemizing the fees that defendants owe, namely, Exhibit B. But plaintiff does not attach any of the exhibits to the complaint or to its opposition papers. In any event, plaintiff’s complaint, as discussed above, sufficiently explains the amounts defendants allegedly owe.

Defendants argue that plaintiff fails to state a cause of action because the agreement clearly states that they were entitled to terminate their obligation to pay and thus plaintiff’s complaint is unfounded. Defendants’ argument is insufficient to dismiss the complaint. Taking plaintiff’s allegations as true and giving them every possible favorable inference, plaintiff’s complaint sufficiently states causes of action for breach of contract, unjust enrichment, and detrimental reliance.

III. Doctrine of Collateral Estoppel

Plaintiff’s claim is not barred by collateral estoppel. The doctrine of collateral estoppel provides that a party is precluded “from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party or those in privity, whether or not the tribunals or causes of action are the same.” (*Ryan v New York Telephone Co.*, 62 NY2d 494, 500 [1984].) To invoke collateral estoppel, two requirements must be satisfied: (1) “the identical issue necessarily must have been decided in the prior action and be decisive of the present action” and (2) “the party to be precluded from relitigating the issue have had a full and fair opportunity to contest the prior determination.” (*Kaufman v Eli Lilly and Co.*, 65NY2d, 449, 455 [1985].)

Defendants argue that collateral estoppel applies. Defendants argue that plaintiff never raised in the Civil Court action — as an affirmative defense or as a counterclaim or both in their

answer — that defendants owe outstanding money for the premises. Defendants also argue that plaintiff is relitigating the identical issue that was already decided in the Civil Court action.

But defendants do not explain — other than in conclusory fashion — how collateral estoppel applies. Defendants state that the Civil Court action is pending. And the documents defendants attach to its motion from the Civil Court action do not show how collateral estoppel applies here.

IV. Attorney Fees and Sanctions

Defendants’ motion for attorney fees and sanctions against plaintiff is denied. Defendants have not demonstrated that plaintiff’s conduct is frivolous.

Accordingly, it is

ORDERED that defendants’ motion is denied; and it is further

ORDERED that plaintiff serve a copy of this decision and order with notice of entry on defendants; and it is further

ORDERED that defendants must file its answer to the complaint within 20 days of service of this order with notice of entry; and it is further

ORDERED that the parties appear for a preliminary conference in Part 7, at 60 Centre Street, room 345, on November 15, 2017, at 11:00 a.m.

Dated: September 14, 2017


J.S.C.

HON. GERALD LEBOVITS
J.S.C.