

Tsinias Enters., Ltd. v Taza Grocery, Inc.
2017 NY Slip Op 32707(U)
December 21, 2017
Supreme Court, New York County
Docket Number: 153992/2017
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 32

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TSINIAS ENTERPRISES, LTD.,

Plaintiff,

Index No. 153992/2017
Motion Seq: 001

-against-

TAZA GROCERY, INC., and JAMIL YABROUDI,

DECISION & ORDER
ARLENE P. BLUTH, JSC

Defendants.

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The motion to dismiss the complaint is granted.

Background

This action arises out of a landlord-tenant relationship at a commercial space located at 350 Park Avenue South, New York, New York. The parties entered into four separate agreements: a ten-year lease dated June 1, 2005, a first amendment dated May 31, 2007, a second amendment dated July 29, 2009 and a third amendment dated May 10, 2012. These three amendments each extended the lease, which now runs until 2035.

When the lease and the first two amendments were signed, plaintiff's principal was Nicholas Tsiniias ("Nicholas"). Plaintiff alleges that on December 2, 2009, an irrevocable trust became the general partner of plaintiff instead of Nicholas. While plaintiff maintains that Nicholas did not have authority to bind plaintiff to the third amendment in 2012 because he was no longer the principal of plaintiff, plaintiff admits that it never informed the tenants, including defendants, that Nicholas no longer had the authority to bind plaintiff.

The complaint seeks rescission of the three amendments on the ground that they were procured by fraud. Plaintiff claims that defendant Yabroudi (president of defendant Taza Grocery, Inc.) befriended Nicholas and began assisting Nicholas with the management of the building. Plaintiff contends that Yabroudi placed the first amendment (which extended his business' lease at the building) in a stack of other documents for Nicholas to sign. Plaintiff claims that Nicholas did not read this amendment or any of the other amendments extending Taza's lease, although plaintiff admits that Nicholas signed these documents. Plaintiff complains that Nicholas and Yabroudi never had any negotiations about these lease extensions.

Nicholas has not submitted any affidavit on this motion. Plaintiff has not explained how it "knows" that Nicholas never read what he signed or how it "knows" that defendants slipped the documents, which were notarized, into a stack of papers or how it "knows" there were no negotiations.

Defendants move to dismiss on the ground that plaintiff failed to plead fraud with the requisite particularity. Defendants contend that simply not reading documents before signing them, even if true, cannot support a claim that Nicholas was misled. Defendants claim that plaintiff is bound by the terms of the agreements Nicholas signed. Defendants argue that the complaint fails to identify any false statements made by Yabroudi to Nicholas about the amendments nor does it provide enough details to state a claim for fraud. Defendants also argue that even if Nicholas did not have actual authority to bind plaintiff to the 2012 amendment, plaintiff acknowledges that defendants did not know about the existence of the irrevocable trust, and so Nicholas, the long-time landlord, had apparent authority.

In opposition, plaintiff stresses (without proof) that Yabroudi would prepare these lease amendments and slip these extensions into other documents Nicholas was signing for the building. Plaintiff maintains that it is troubling that three years prior to the expiration of the original lease (which started in 2005 and was due to expire in 2015), the lease had already been extended three times for a total of 20 years. Plaintiff insists that Yabroudi “preyed” upon an elderly landlord (Nicholas) and that it is entitled rescind the lease extensions. Plaintiff does not explain why Nicholas was allowed to sign certain building documents (if defendants were slipping lease extensions in between other documents, then he must have been allowed to sign certain documents) but not these particular lease extensions.

Discussion

“On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction. We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*Leon v Martinez*, 84 NY2d 83, 87-88, 614 NYS2d 972 [1994] [citations omitted]).

Plaintiff alleges four causes of action against defendants: fraudulent inducement, fraud, ejectment and legal fees.

Fraudulent Inducement

“To state a claim for fraudulent inducement, there must be a knowing misrepresentation of material present fact, which is intended to deceive another party and induce that party to act on

it, resulting in injury” (*Gosmile, Inc. v Levine*, 81 AD3d 77, 81, 915 NYS2d 521 [1st Dept 2010]).

Here, plaintiff fails to state a cause of action for fraudulent inducement. It is undisputed that Nicholas signed all three agreements *all of which were notarized* (NYSCEF Doc. Nos. 8-10). And these three agreements clearly provide for the extension of Taza’s commercial lease. Each agreement includes the language “Lease Extension Agreement” and identifies the increasing rent for each year of the extension (*id.*). There is nothing on the face of these agreements that evidences a misrepresentation or an intent to deceive. Nor is there anything suspicious about them; for example, the monthly rent does not decrease, or even remain flat.

In fact, the Court notes that each of these lease extensions include rent increases for each year through 2035 (*see id.*). While not wholly dispositive, the fact that the rent increased from \$10,438.18 per month in June 2015 to \$18,303.40 in 2035 establishes that, facially, these lease extensions included valid consideration for the additional years. Although plaintiff claims that the rent in these amendments is below market value, that does not state a claim for fraudulent inducement. The fact that plaintiff’s new general partner might have tried to bargain for a better deal for the third amendment does not establish that Yabroudi made a material misrepresentation. Just because plaintiff now regrets entering into these agreements does not mean they were procured by fraud.

There is also no basis to allege that Nicholas was deceived because he did not read these documents. Nicholas, as a signatory to these documents, “is presumed to know the contents of the instrument [he] signed and to have assented to such terms” (*British W. Indies Guar. Trust Co. v Banque Internationale A Luxembourg*, 172 AD2d 234, 234, 567 NYS2d 731 [1st Dept 1991])

[enforcing a forum selection clause selecting Luxembourg despite plaintiff's claim that she did not read the provision and that it was not specifically brought to her attention]). Claiming that the lease extensions should be rescinded because the signatory did not read them does not support an actionable claim (even if, unlike here, there was proof, such as an affidavit saying "I never read it").

The Court also notes that although plaintiff references Nicholas' age throughout the complaint and the motion papers (Nicholas is now in his 80s), plaintiff does not argue that Nicholas was incapable of comprehending or understanding these agreements. Even if plaintiff emphasized Nicholas' age to support its fraudulent inducement claim, plaintiff did not submit any evidence demonstrating that Nicholas had diminished faculties or that Yabroudi knew about Nicholas' abilities. There are no affidavits or other documents describing Nicholas' mental abilities. Under these circumstances, without allegations that Yabroudi took advantage of someone he knew was incapable of understanding the lease extensions, plaintiff is unable to state a cognizable cause of action for fraudulent inducement.

The Court also finds that plaintiff has not stated a cause of action to rescind the third agreement, signed after the irrevocable trust was formed, because it was not Yabroudi's duty to find out whether Nicholas had the authority to sign on behalf of plaintiff. It is undisputed that Nicholas had actual authority to sign the original lease and the first two extensions. And plaintiff admits that defendants were not aware that Nicholas no longer had authority to bind plaintiff when the third extension was signed in 2012 (*see* NYSCEF Doc. No. 1, ¶ 39). Under these circumstances, defendants were entitled to rely on the fact that Nicholas, as the apparent general

partner of plaintiff, had the authority to sign the third extension (*see Odell v 704 Broadway Condominium*, 284 AD2d 52, 728 NYS2d 464 [1st Dept 2001]).

Fraud

“The elements of a cause of action for fraud require a material misrepresentation of fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the plaintiff and damages” (*Eurycleia Partners, LP v Seward & Kissel, LLP*, 12 NY3d 553, 559, 883 NYS2d 147 [2009]).

For the same reasons described above, plaintiff fails to state a cause of action for fraud. Plaintiff cannot articulate the material misrepresentation of fact conveyed by defendants and relied upon by plaintiff. The lease extensions are clear and they were signed by Nicholas. There is no allegation that there was anything false about the content of these documents or that Nicholas did not understand what he was signing. Alleging that Yabroudi “slipped” the lease extensions into a pile of papers does not constitute a material misrepresentation of fact, especially where every lease extension contains a notary attesting that Nicholas signed the agreements, and each extension is notarized by a different individual.

Summary

The Court recognizes that signing three lease extensions in 5 years is likely not a customary practice— but it is not the Court’s role to rip up contracts where the Court might have pursued a different business strategy. Whether or not these agreements make good business sense is beyond the purview of this Court. Although plaintiff may not like that it is locked into a lease

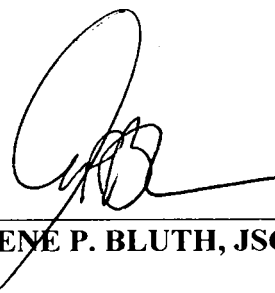
until 2035, the fact is that these agreements included Nicholas' notarized signatures and he was actually authorized to sign the first two and had apparent authority to sign the third. Plaintiff failed to identify the material misrepresentation made by defendants to support its fraud and fraudulent inducement claims. Plaintiff's requests for the rescission of these contracts, ejectment, and attorneys' fees are denied.

Accordingly, it is hereby

ORDERED that defendants' motion to dismiss is granted, this action is dismissed and the clerk is directed to enter judgment accordingly.

This is the Decision and Order of the Court.

Dated: December 21, 2017
New York, New York



HON. ARLENE P. BLUTH, JSC