

Greenpoint Mgt. Sys., LLC v Pensco Trust Co.

2018 NY Slip Op 32249(U)

September 11, 2018

Supreme Court, Kings County

Docket Number: 500565/18

Judge: Wavny Toussaint

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 70 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 11th day of September 2018.

PRESENT:

HON. WAVNY TOUSSAINT,

Justice.

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GREENPOINT MANAGEMENT SYSTEMS, LLC
AND ENERGYSTARS, INC.,

Plaintiffs,

- against -

Index No. 500565/18

PENSCO TRUST COMPANY CUSTODIAN
FBO MARIE KAMINEZ,

Defendants.

-----X

The following papers numbered 1 to 8 read herein:

Papers Numbered

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations) Annexed _____
Opposing Affidavits (Affirmations) _____
Reply Affidavits (Affirmations) _____

1-3, 4-5
5, 6
7, 8

Upon the foregoing papers, plaintiffs Greenpoint Management Systems, LLC (Greenpoint) and Energystars, Inc. (Energystars) (collectively, plaintiffs) move (in motion sequence 1) for an order consolidating the instant action with a holdover proceeding in Kings County Civil Court entitled *Pensco Trust Company Custodian fbo Marie Kaminez v. Energystars, Inc., Greenpoint Management Systems LLC and "John Doe" and "Jane Doe,"* index No. 87293/17. Defendant Pensco Trust Company Custodian fbo Marie Kaminez

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(defendant) cross-moves (in motion sequence 2) to dismiss the action pursuant to CPLR 3211 a (1), (a) (3) and (a) (7).

Background and Procedural History

According to the complaint (which the court accepts as true for purposes of the cross motion to dismiss), defendant is the owner of a condominium unit in a building located at 231 Norman Avenue in Brooklyn. On June 14, 2016, defendant and Greenpoint contracted for defendant to sell the unit to Greenpoint for \$300,000. On that date Greenpoint tendered a \$15,000 deposit on the purchase price and later gave a second down payment of \$5,000. On September 23, 2016, Eagle Abstract Corp. issued a title report certifying title subject to liens, encumbrances, and other issues. On June 15, 2017, defendant emailed Greenpoint a “time is of the essence letter” requiring Greenpoint to close by June 29, 2017 or be deemed in breach of the contract. In response to that letter Greenpoint noted the title deficiencies and declared the “time is of the essence” letter a nullity

On October 1, 2017, defendant commenced the previously mentioned commercial holdover proceeding against Greenpoint and Energystars in Kings County Civil Court to evict them from the above premises. Energystars was a tenant of the unit pursuant to a December 14, 2009 commercial lease. On January 9, 2018, plaintiffs commenced this action for specific performance of the contract, damages and consolidation with the holdover proceeding. On January 9, 2018, plaintiffs moved, by order to show cause, to consolidate this action with the Kings County Civil Court holdover proceeding and stay this action. Defendant cross-moved to dismiss the action.

Discussion

The cross motion to dismiss, if granted, would resolve this action and is therefore addressed first. Defendant argues that Greenpoint was never formed as a limited liability company (LLC), and therefore, pursuant to CPLR 3211 (a) (3), lacks the capacity to sue. Limited Liability Company Law § 202 (a) gives an LLC the power to sue or be sued. However, if an LLC does not exist at the time a suit is commenced it lacks legal capacity to sue (*see Westside Fed. Sav. & Loan Assn. of N.Y. City v Fitzgerald*, 136 AD2d 699, 699 [2d Dept 1988]; *Brach v Levine*, 36 Misc 3d 1213[A], 2012 NY Slip Op 51312[U], *3-*4 [Sup Ct, Kings County 2012]). Defendant, in support of its argument, has proffered a printout from the Department of State, Division of Corporations' website showing that on January 12, 2018 “[n]o business entities were found for greenpoint management systems.” Cognizant that the court, on a motion to dismiss, must accept all facts as presented in the complaint as true (*see Leon v Martinez*, 84 NY2d 83, 87-88 [1994]), it has been held that “material derived from official government websites may be the subject of judicial notice” (*Kingsbrook Jewish Med. Ctr. v Allstate Ins. Co*, 61 AD3d 13, 19-21 [2d Dept 2009]). Therefore, despite plaintiffs' allegation that Greenpoint is a duly formed company pursuant to the Laws of the State of New York, the documentary evidence shows that it was not a duly formed LLC at the time this action was commenced.¹ The action as to Greenpoint is dismissed.

As for Energystars, defendant argues that they are not a party to the contract of sale and therefore lack standing to bring an action for performance or damages pursuant to the

¹ It is noteworthy that plaintiffs' opposition to the motion to dismiss does not argue that Greenpoint was a duly formed LLC

contract. Plaintiffs respond that Energystars and Greepoint are closely held corporations with the same officers and shareholders. It is uncontroverted that the contract at issue is between Greenpoint and defendant. That Energystars and Greenpoint are closely related (even assuming they have identical members) does not confer any basis for Energystars to maintain this action on a contract to which it is not a party.

“The fact that an individual closely affiliated with a corporation (for example, a principal shareholder, or even a sole shareholder), is incidentally injured by an injury to the corporation does not confer on the injured individual standing to sue on the basis of either that indirect injury or the direct injury to the corporation” (*New Castle Siding Co. v Wolfson*, 97 AD2d 501, 501 [2d Dept 1983], *affd* 63 NY2d 782 [1984], *rearg denied* 64 NY2d 755 [1984] [internal citations omitted]).

If an individual member of a corporation lacks standing to sue, then it certainly follows that another corporation with the same members similarly lacks standing. Therefore, Energystars lacks standing to maintain this action, and the action is dismissed. Hence, plaintiffs’ motion is denied as moot. Accordingly, it is

ORDERED that defendant’s cross motion to dismiss, pursuant to CPLR 3211, is granted, and the action is dismissed; and it is further

ORDERED plaintiffs’ motion is denied as moot.

The foregoing constitutes the decision and order of the court.

E N T E R,



J. S. C.

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