1809 Emns Ave Inc. v American Signcrafters LLC
2019 NY Slip Op 30152(U)
January 10, 2019
Supreme Court, Kings County
Docket Number: 517955/18
Judge: Leon Ruchelsman
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 16 8

----------x

1809 EMNS AVE INC.,

Plaintiff, Decision and order

- against - Index No. 517955/18

AMERICAN SIGNCRAFTERS LLC,

Defendants, January 10, 2019

----------x

PRESENT: HON. LEON RUCHELSMAN

The defendant has moved seeking to reargue a determination dated October 10, 2018. The plaintiff opposes the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

The plaintiff, the owner of a restaurant, contracted with defendant to install an advertisement sign on the exterior of the restaurant. A dispute arose between the parties and the defendant placed a mechanic's lien on defendant's property in the amount of $13,187.49. That lien precipitated the landlord to issue a termination notice violating a provision of the lease which prohibited the existence of any mechanic's liens. Plaintiff instituted the within lawsuit alleging breach of contract, unjust enrichment and fraud. The plaintiff then moved seeking the removal of the mechanic's lien. On October 10, 2018 the court vacated the mechanic's lien and ordered the plaintiff to place the lien amount in escrow. The defendant now moves seeking reargument of that determination. The defendant asserts the plaintiff did not satisfy the conditions necessary for the vacateur of a lien and

consequently reargument should be granted and the lien should be reinstated.

A motion to reargue which is not based upon new proof or evidence may be granted upon the showing that the court overlooked or misapprehended the facts or law or for some other reason mistakenly arrived at its earlier decision (Delcrete Corp. v. Kling, 67 AD2d 1099, 415 NYS2d 148 [4th Dept., 1979]). Thus, the party must demonstrate that the judge must have overlooked some point of law or fact and consequently made a decision in error. Its purpose is designed to afford an opportunity to establish that the court overlooked or misapprehended relevant facts or misapplied a controlling principle of law. Thus, where a party fails to demonstrate that the Court misapprehended any of the relevant facts or misapplied any controlling principle of law, a motion to reargue must be denied Matter of Mattie M. v. Administration for Children's Services, 48 AD3d 392, 851 NYS2d 236 [2d Dept., 2008], McNamara v. Rockland County Patrolmen's Benevolent Association, Inc., 302 AD2d 435, 754 NYS2d 900 [2d Dept., 2003]).

In the appropriate case a court may require that funds be placed in escrow as an alternative to an undertaking (see, Canales v. Finger, 147 AD3d 549, 47 NYS3d 299 [1st Dept., 2017). In 360 West 11th LLC v. ACG Credit Co. II LLC, 46 AD3d 367, 847 NYS2d 198 [1st Dept., 2007] the court noted that "the motion court exercised its discretion appropriately in granting plaintiff's motion to the

extent of directing defendant to place into escrow a certain sum of money" (id). While those cases dealt generally with injunctions, in Melniker v. Grae, 82 AD2d 798, 439 NYS2d 409 [2d Dept., 1981] the court implied that such option would be available to satisfy the discharge of a mechanic's lien pursuant to Lien Law §19(4). Thus, turning to the injunction, it is well settled that to obtain a preliminary injunction the moving party must demonstrate: (1) a likelihood of success on the merits, (2) an irreparable injury absent the injunction; and (3) a balancing of the equities in its favor (Volunteer Fire Association of Tappan, Inc., v. County of Rockland, 60 AD3d 666, 883 NYS2d 706 [2d Dept., 2009]). While it is true that a preliminary injunction may be granted where some facts are in dispute and it is still apparent the moving party has a likelihood of success on the merits, (see, Borenstein v. Rochel Properties, 176 AD2d 171, 574 NYS2d 192 [1st Dept., 1991]) some evidence of likelihood of success must be presented. The plaintiff has satisfied this initial burden. The defendant argues the plaintiff cannot demonstrate an irreparable injury since money damages are sufficient. It is true that to establish the second prong of irreparable harm it must be demonstrated that monetary damages are insufficient (Autoone Insurance Company v. Manhattan Heights Medical P.C., 24 Misc3d 1229(A), 899 NYS2d 57 [Supreme Court Queens County 2009]). Thus, harm to one's business reputation is a sufficient harm seeking an injunction (see, Klein,

Wagner & Morris v. Lawrence A. Klein P.C., 186 AD2d 631, NYS2d 424 [2d Dept., 1992]). In addition "it is well settled in New York that the loss of the business relationship which ostensibly took time and money to cultivate, constitutes irreparable harm that cannot be compensated by money damages" (see, Liberty Ashes, Inc., v. Taormina, 43 Misc3d 1213(A), 988 NYS2d 523 [Supreme Court Nassau County 2014]). The plaintiff's business model is based upon its relationship with its customers and the termination of the lease could undermine that relationship. Therefore, the second prong has been satisfied. Lastly, regarding the third and final prong, namely the balancing of the equities, it is true that this is a subjective test. The Second Department has stated that in balancing the equities, it "must be shown that the irreparable injury to be sustained...is more burdensome [to the plaintiff] than the harm caused to defendant through imposition of the injunction" (McLaughlin, Piven, Vogel, Inc., v. W. J. Nolan & Co., 114 AD2d 165, 498 NYS2d 146 [2d Dept., 1986]). The harm caused to the plaintiff is readily apparent. On the other hand, any harm caused to the defendant through the imposition of the injunction is hard to quantify. This is especially true since the plaintiff has placed sufficient funds in an escrow account insuring the defendant's damages, if any.

Therefore, based on the foregoing the defendant has failed to present any basis for reconsidering the earlier determination.

Consequently, the motion seeking reargument is denied.

So ordered.

ENTER:

DATED: January 10, 2019
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC