

**Rahman v Alim**

2019 NY Slip Op 33798(U)

November 7, 2019

Supreme Court, Queens County

Docket Number: 715746/17

Judge: Darrell L. Gavrin

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NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DARRELL L. GAVRIN  
Justice

IA PART 27

MOHAMMED RAHMAN individually and as sole  
owner and managing member of CORE FOODS 7  
CATERING LLC D/B/A MAYURYA BANQUET  
HALL & RESTAURANT,

Index No. 715746/17

Motion

Date June 25, 2019

Plaintiff,

Motion

Cal. No.

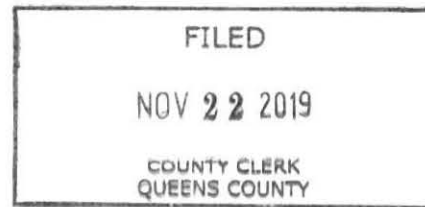
- against-

MOHAMMED ALIM, MOHAMMED UDDIN, RAN  
NY GROUP LLC D/B/A JOYA HALL and JOHN  
DOES #1-10,

Motion

Seq. No. 6

Defendants.



The following numbered papers read on this motion by plaintiff, Mohammed Rahman (plaintiff), individually and as sole owner and managing member of Core Foods & Catering LLC d/b/a Mayurya Banquet Hall & Restaurant (Core Foods), for partial summary judgment, pursuant to CPLR 3212, only against defendants, Mohammed Alim, Mohammed Uddin, and Ran NY Group LLC d/b/a Joya Hall, on plaintiff's third, fourth, and eight causes of action, for specific performance under RPAPL 853, and for declaratory judgment ordering that defendants be ejected from premises located at 63-108A and 63-110 Woodhaven Boulevard, in the County of Queens, and liable for treble damages.

Papers  
Numbered

Notice of Motion - Affirmation - Exhibits.....	EF 55-69
Affirmation in Opposition - Exhibits.....	EF 70-76, 78
Reply Affirmation.....	EF 81-83

Upon the foregoing papers, it is ordered that the motion is determined as follows:

In his amended verified complaint plaintiff has alleged causes of action sounding in: 1) breach of contract, 2) breach of implied covenant of good faith and fair dealings, 3) specific performance, 4) wrongful eviction under RPAPL 853, 5) unjust enrichment, 6) conversion, 7) fraud, rescission and civil conspiracy, and 8) for declaratory judgment. Plaintiff has alleged that

he had been in negotiations regarding the sale of his business, Core Foods, to defendants, Mohammed Alim and Mohammed Uddin (hereinafter referred to as defendants).

Plaintiff has further alleged that, without finalizing the sale of the business and without his consent, defendants ejected him from premises located at 63-108A and 63-110 Woodhaven Boulevard, in the County of Queens, appropriated a lease agreement for the premises, used his personal and financial information, changed the name of the business he was operating at the premises, and began to operate a new restaurant at the premises under the name Joya Hall. In a prior order dated June 28, 2018, and entered on July 12, 2018, this court dismissed plaintiff's causes of action for unjust enrichment and fraud and rescission. In a stipulation dated March 25, 2019, and entered on March 28, 2019, plaintiff discontinued the instant action against defendant, Woodhaven Associates, Inc.

Plaintiff has now moved for partial summary judgment on his third, fourth, and eight causes of action, for specific performance under RPAPL 853, for declaratory judgment ordering that defendants be ejected from the subject premises, and liable for treble damages. On a motion for summary judgment, the movant has the initial burden of demonstrating the absence of any material issues of fact (*see Smalls v AJI Indus., Inc.*, 10 NY3d 733, 735 [2008]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1984]).

The court will first address the branch of plaintiff's motion regarding his third cause of action sounding in specific performance. In his amended verified complaint and in his motion papers, plaintiff has alleged that he took all steps necessary to perform under the lease agreement he entered into with Woodhaven Associates, Inc. Inasmuch as this action has been discontinued against Woodhaven Associates, Inc., plaintiff is not entitled to relief against Woodhaven Associates, Inc., in the form of specific performance of the lease agreement and this branch of his motion is denied as moot.

With regard to the branches of plaintiff's motion as to his fourth cause of action sounding in wrongful eviction under RPAPL 853, and eight cause of action for declaratory judgment ordering that defendants be ejected from the premises and for treble damages, plaintiff has argued that the evidence has demonstrated that he was forced out of the subject premises and intimidated by defendants and that he is entitled to summary judgment under RPAPL 853. RPAPL 853, entitled "Action for forcible or unlawful entry or detainer; treble damages," provides the following:

"If a person is disseized, ejected, or put out of real property in a forcible or unlawful manner, or, after he has been put out, is held and kept out by force or by putting him in fear of personal violence or by unlawful means, he is entitled to recover treble damages in an action therefor against the wrong-doer."

The record before the court contains, among other things, the following: plaintiff's affidavit, the affidavit of defendant, Alim Muhammed, sued herein as Mohammed Alim, a copy

of a lease agreement dated October 8, 1998, between non-parties U.S. Nat Corp., and Isak Mastov, as lessees, and Woodhaven Associates, Inc., as owner, a copy of "Amendment #1" to the lease dated June 23, 2014, between Woodhaven Associates, Inc., as landlord, and non-party Mohammad Kamarul Islam and plaintiff, as tenants, a copy of an "Assignment and Assumption of Lease" dated June 23, 2014, between non-parties Shivalik Restaurant Corp., Randhir Khullar, and Arjun Arora, as assignors, and Mohammad Kamarul Islam and plaintiff, as assignees, a copy of a "Limited Power of Attorney for Finances" dated July 26, 2014, naming non-party Hassan Abdullah as attorney-in-fact, a copy of an "Agreement of Absolute Transfer and Assignment" dated May 18, 2015, between "Core Food Catering LLC (dba Mayurya) Shareholders" via Hassan Abdullah as attorney-in-fact, as transferee, and defendants, copies of two letters from Woodhaven Associates, Inc., dated October 16 and 29, 2014, a copy of an "Assignment of Lease with Consent of Landlord" dated May 19, 2015, between Mohammad Kamarul Islam and plaintiff via Hassan Abdullah, attorney-in-fact, as assignor, and defendants, as assignees, the affidavit of non-party Michael Gedell (Gedell), President of Woodhaven Associates, Inc., and a copy of "Amendment #2" to the lease dated September 2015, between Woodhaven Associates, Inc., as landlord, and Mohammad Kamarul Islam and plaintiff, as tenants.

In his affidavit, plaintiff stated that he is the owner of Core Foods and that in June 2014, through an assumption of a pre-existing lease, he entered into a lease with Woodhaven Associates, Inc. Plaintiff stated that he negotiated with defendants, along with non-party Ruhul Abdin, to sell Core Foods to defendants, who failed to finalize the sale, but instead, entered the subject premises, forcibly changed the locks, and changed the name of the business to operate it as Joya Hall. Plaintiff further stated that defendants' claim that they are in valid possession of the subject premises is fraudulent, that the copy of an assignment purportedly signed by non-party Hassan Abdullah as his "attorney-in-fact" is fraudulent, that Hassan Abdullah was not his individual attorney-in-fact, and that Hassan Abdullah had no authority to assign the lease. In his affidavit, plaintiff stated that the assignment of the lease was fraudulent because the signature of the landlord, Gedell, was forged, and that two additional letters from Woodhaven Associates, Inc., dated October 16 and 29, 2014, were also forged.

In Gedell's affidavit, he has disputed the authenticity of some documents in the record. He stated that he was the President of Woodhaven Associates, Inc., that he did not sign an "Assignment of Lease with Consent of Landlord," and that he did not write or sign the two letters issued on Woodhaven Associates, Inc., letterhead, dated October 16 and 29, 2014, that the letters were not written at his direction and that the only assignment of the lease that he consented to was the June 2014 assignment.

Contrary to the above statements, in his affidavit, Muhammed Alim stated that Hassan Abdullah represented to him that Hassan Abdullah had a power of attorney to act on behalf of plaintiff regarding Core Foods, that he entered into an agreement with Hassan Abdullah to take over ownership of Core Foods, along with the company's debts and outstanding rent arrears, all of which defendants undertook to pay. Muhammed Alim further stated that defendants entered

into an "Assignment of Lease with Consent of the Landlord," that was signed by Hassan Abdullah on behalf of plaintiff and signed by plaintiff's partner, Mohammad Kamarul Islam, and that neither he, nor Mohammed Uddin ever forged anyone's signatures on any documents.

Muhammed Alim stated that Gedell was aware that defendants operated a different company that was not Core Foods, that Gedell allowed them onto the premises to change the locks, to change the signage, that he accepted rent from them, and that he allowed them to operate the restaurant without objection. Muhammed Alim further stated that in August/September 2015, Gedell agreed to amend the lease to reflect defendants' names as tenants. Muhammed Alim stated that plaintiff was fully aware of the transfer of ownership of the business, that plaintiff copies of sent bills that needed to be paid to defendants as part of the transaction and that defendants are entitled to occupy the subject premises.

Taking into consideration the conflicting statements set forth above as well as the remaining, disputed evidence in the record, the court has determined that plaintiff has failed to satisfy his *prima facie* burden on these branches of his motion (*see Alvarez v Prospect Hosp.*, 68 NY2d at 324). Under the particular circumstances of this case and in light of the myriad of genuine issues of material fact that remain, summary relief is precluded.

Lastly, to the extent that plaintiff has sought sanctions against defendants, he has failed to satisfy his burden on this branch of his motion (Rules of Chief Admin of Cts [22 NYCRR] 130-1.1[a],[c]).

Accordingly, plaintiff's motion for summary judgment is denied in its entirety.

Dated: November 7, 2019

DARRELL L. GAVRIN, J.S.C.

