Subway Real Estate Corp. v Jahedi
2020 NY Slip Op 30365(U)
February 7, 2020
Supreme Court, New York County
Docket Number: 652369/2017
Judge: Margaret A. Chan

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. MARGARET A. CHAN** **PART** **IAS MOTION 33EFM**

Justice

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SUBWAY REAL ESTATE CORP.

Plaintiff,

- v -

MANIJEH JAHEDI,

Defendant.

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INDEX NO. 652369/2017

MOTION DATE 11/18/2019

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 78, 79, 80

were read on this motion to/for DISMISS.

In this action to recover unpaid rent, plaintiff Subway Real Estate Corp. n/k/a Subway Real Estate LLC ("SRL")[1] moves to dismiss defendant Manijeh Jahedi's counterclaims, her fifth, eleventh, and fourteenth affirmative defenses, and paragraphs eight and nine of the Answer pursuant to CPLR 3211(a)(5). Plaintiff argues that these claims and defenses arise under a Franchise Agreement with non-party Doctor's Associates LLC and that defendant is collaterally estopped from interposing such claims and defenses by an order of Hon. Janet Hall dated October 3, 2019, in a related case brought in the U.S. District Court for the District of Connecticut, *Doctor's Associates LLC v Mainjeh Jahedi*, which granted Doctor's Associates LLC's Petition to Compel Arbitration and directed Jahedi to submit to arbitration her claims relating to the Franchise Agreement. Defendant opposes the motion. The Decision and Order is as follows:

BACKGROUND

As way of background, non-party Doctor's Associates LLC ("DAL") is the franchisor of Subway Sandwich Shops and sublicenses the proprietary system for establishing and operating Subway Sandwich Shops. Plaintiff SRL is in the business of leasing retail locations for the purpose of subletting those locations to DAL franchisees to operate Subway Sandwich Shops. On or about June 26, 2013, SRL, as sublessor, and defendant, as sublessee, entered into a Sublease for a

[1] During the course of this ongoing litigation, plaintiff Subway Real Estate Corp. apparently changed its name to Subway Real Estate LLC without formally amending the caption. Both parties in this motion refer to plaintiff as Subway Real Estate LLC (SRL). To avoid any confusion, plaintiff will be referred to SRL in this Decision and Order to be uniform with the parties' reference of plaintiff in their respective submission in this motion.

Subway Sandwich Shop located at 1264 St. Nicholas Avenue in the city, state, and county of New York. Additionally, on that same date, DAL, as franchisor, and defendant, as franchisee, entered into a written "Franchise Agreement", permitting Jahedi to operate a Subway Sandwich Shop.

Plaintiff initiated this action by filing a Summons and Complaint on May 2, 2017, to recover alleged damages incurred due to defendant's failure to pay rent and additional rent under the sublease and for vacating the premises prior the expiration of the term (NYSCEF #1 - Complaint). On May 8, 2019, this court issued a Decision and Order which denied defendant's pre-answer motion to dismiss, denied plaintiff's cross-motion for summary judgment, and ordered defendant to file an answer within twenty days (NYSCEF #37 – May 8, 2019 Decision and Order).

Defendant filed her Answer with Counterclaims on May 23, 2019 (NYSCEF #42). Portions of defendant's Answer are predicated on the Franchise Agreement.

Subsequent to defendant's Answer, DAL filed a Petition to Compel Arbitration in the US District Court of the District of Connecticut in the matter entitled *Doctor's Associates LLC v Manijeh Jahedi* (Case No. 3:19-cv-00924).

On June 18, 2019, plaintiff SRL moved in this matter by Order to Show Cause to stay the proceedings pending the outcome of the petition to compel arbitration (NYSCEF #45 – June 17, 2019 OSC). This court stayed the instant matter and directed plaintiff to update this court as to the status of the arbitration (NYSCEF ## 58, 60).

On October 3, 2019, Judge Hall issued the "District Court Order" in *Doctor's Associates LLC v Jahedi* granting DAL's petition to compel arbitration and directing defendant to submit to arbitration the claims that she raised in this instant action relating to the Franchise Agreement (NYSCEF #71). The District Court Order stated that "although the Franchise Agreement bound Jahedi and DAL to arbitrate '[a]ny dispute, controversy or claim arising out of or relating to this [Franchise] Agreement or breach thereof... it allowed DAL and its affiliates, including SRL, to bring an action 'to exercise its rights under the Sublease' outside of arbitration" (*id.* at 3-4).

In light of the District Court Order, this court issued an Order on October 18, 2019, vacating the stay and directing the parties to appear for a conference on November 13, 2019 (NYSCEF #63 – October 18, 2019 Order).

Plaintiff's counsel affirms that on October 28, 2019, he sent defendant's counsel a proposed Stipulation Withdrawing Certain Defenses and Counterclaims (NYSCEF #65 – Pl's Aff in Support at ¶ 23; NYSCEF #73 – Proposed Stipulation). The proposed Stipulation sought to have defendant withdraw without prejudice

counterclaims one and two, affirmative defenses five, eleven, and fourteen, and to delete portions of paragraphs eight and nine in the Answer (NYSCEF #73). Defendant refused to sign the stipulation; hence, plaintiff filed the instant motion on November 12, 2019 (NYSCEF #64).

DISCUSSION

Plaintiff moves to dismiss defendant's counterclaims one and two, affirmative defenses fifth, eleventh, and fourteenth, and paragraphs eight and nine of the Answer pursuant to CPLR 3211(a)(5) on the basis that the claims are collaterally estopped by the District Court Order.

As a preliminary matter, defendant argues that plaintiff's motion should be denied as it has moved under the wrong CPLR provision and that this motion should be under CPLR 3211(b). However, there is no requirement that a movant identify a specific statute or rule in the notice of motion, only that the notice "specify... the relief demanded and the grounds therefor" (CPLR 2214[a]). And "[e]ven though the [movants'] notice of motion... did not formally and specifically request relief... a court may grant relief that is warranted by the facts plainly appearing on the papers on both sides, if the relief is not too dramatically unlike the relief sought, the proof offered supports it, and there is no prejudice to any party" (*Frankel v Stavsky*, 40 AD3d 918, 918-919 [2d Dept 2007] [internal citations omitted]).

Here, it is clear that plaintiff seeks to dismiss defendant's eighth and ninth answers, multiple affirmative defenses, and counterclaims. The relief under CPLR 3211(b) is nearly identical to CPLR 3211(a) and the evaluative standard is the same (*compare Granite State Ins. Co. v Transatlantic Reins. Co.*, 132 AD3d 479, 481 [1st Dept 2015] [CPLR 3211(b) standard] *with Leon v Martinez*, 84 NY2d 83, 87 [1994] [CPLR 3211(a) standard]). There is ample proof to support plaintiff's motion. And neither party will be prejudiced as there is sufficient notice of the relief sought by plaintiff. As such, there is no reason to deny plaintiff's motion on the basis that it is insufficiently specific.

Thus, in deciding a motion to dismiss pursuant to CPLR 3211(a), the court must liberally construe the pleading, accept the alleged facts as true, and accord the non-moving party the benefit of every possible favorable inference (*see Leon*, 84 NY2d at 87; *Goldman v Metropolitan Life Ins. Co.*, 5 NY3d 561, 570 [2005]). "The court must determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon*, 84 NY2d at 88). CPLR 3211(a)(5) states that a "cause of action may not be maintained because of... collateral estoppel" (CPLR 3211[a][5]).

Additionally, CPLR 3211(b) governs a motion to dismiss defenses. On such a motion, "plaintiff bears the heavy burden of showing that the defense is without

merit as a matter of law. The allegations set forth in the answer must be viewed in the light most favorable to the defendant, and 'the defendant is entitled to the benefit of every reasonable intendment of the pleading, which is to be liberally construed'. Further, the court should not dismiss a defense where there remain questions of fact requiring a trial" (*Granite State Ins. Co*, 132 AD3d at 481 [citations omitted]).

"Collateral estoppel, or issue preclusion, 'precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party... whether or not the tribunals or causes of action are the same'" (*Parker v Blauvelt Volunteer Fire Co.*, 93 NY2d 343, 349 [1999], quoting *Ryan v New York Tel. Co.*, 62 NY2d 494, 500 [1984]). "The party seeking the benefit of collateral estoppel has the burden of demonstrating the identity of the issues in the present litigation and the prior determination, whereas the party attempting to defeat its application has the burden of establishing the absence of a full and fair opportunity to litigate the issue in the prior action" (*Kaufman v Eli Lilly and Co.*, 65 NY2d 449, 456 [1985]).

Here, plaintiff demonstrates that there are issues in the present litigation that are identical to that in the federal litigation. The District Court determined that defendant's claims relating to the Franchise Agreement are subject to arbitration and are not to be heard in this court. Additionally, there is no dispute that defendant was a party to the federal litigation and was able to fully and fairly litigate the issue in federal court. As such, defendant's claims that relate to the Franchise Agreement must be dismissed.

While defendant does not object to dismissal of her counterclaims, which are dismissed without prejudice, defendant does object to dismissal of her affirmative defenses and answers. Defendant argues that there is no identity here as the District Court Order did not address the affirmative defenses or defendant's answers present in the instant action. Defendant argues that the District Court Order relates only to "claims". Defendant makes a similar argument with regards to her opportunity to fairly and fully litigate whether her affirmative defenses and answers are subject to arbitration, claiming that this issue was not raised in the federal litigation.

However, defendant's argument is flawed. The District Court Order specifically stated that "[a]ny dispute, controversy or claim arising out of or relating to this [Franchise] Agreement or breach thereof" must be subject to arbitration (NYSCEF #71 at 3-4). This necessarily includes defendant's answers and affirmative defenses asserted in this matter that relate to the Franchise Agreement.

Nevertheless, plaintiff's motion is overly broad in its request for dismissal of defendant's answers and affirmative defenses. The District Court Order only

acknowledges that any dispute arising out of the Franchise Agreement must be arbitrated, but it does not speak to defendant's claims that do not arise out of the Franchise Agreement. As such, this Decision and Order is cabined to dismiss defendant's affirmative defenses and answers only to the extent as they relate to the Franchise Agreement. At this time, there is no basis to dismiss defendant's affirmative defenses and answers wholesale as plaintiff has not made a showing or offered argument that defendant's claims are inextricably linked to the Franchise Agreement.

The fifth affirmative defense states that "[a]ny and all claims asserted in the Complaint are barred by [p]laintiff by its own breach of contract. Plaintiff's damages are the result of its own or its affiliates' own breach of certain agreements and failure to perform duties under the agreements" (NYSCEF #42 – Answer, ¶ 27). To the extent that "certain agreements" contemplates the Franchise Agreement, defendant's fifth affirmative defense is dismissed as collaterally estopped.

The eleventh affirmative defense states "[p]laintiff's claims are barred by plaintiff's own negligence, carelessness, and fault in failing to protect Subway brand from numerous scandals and from attacks on its reputation" (*id.,* ¶ 33). To the extent that plaintiff's negligent failure "to protect Subway brand from numerous scandals and from attacks on its reputation" arises under the Franchise Agreement, defendant's eleventh affirmative defense is dismissed as collaterally estopped.

The fourteenth affirmative defense states "[p]laintiff's claims are barred for failure to join necessary parties. Necessary parties including the Subway franchisor, DAL, and/or its predecessor Doctor's Associates, Inc., Development Agents Paul Landino and John Musco or the Development Agents' successors, Subcon, Inc., ("Subcon") Franchise World Headquarters, LLC ("FWH"), were not joined in this action" (*id.,* ¶¶ 36-37). Defendant is barred from advancing an affirmative defense that involves DAL or Doctor's Associates, Inc. that predicates their necessity on a claim arising out of the Franchise Agreement. However, as plaintiff has not shown that Paul Landino, John Musco, Subcon, or FWH are parties to the Franchise Agreement or affiliated with it in any capacity, defendant's affirmative defense as to these parties is not barred. As such, defendant's fourteenth affirmative defense is dismissed as collaterally estopped only as to the parties shown and known as related to the Franchise Agreement.

Defendant's eighth answer denies defendant's assumption the obligations of the sublessee and denies that the documents mentioned in paragraph eight of the complaint reflect the complete agreement between the parties, which involved a franchise relationship governed under New York and federal laws (*id.,* ¶ 8). The portion of this answer which alleges that the Franchise Agreement governs the relationship between the parties is dismissed as it is subject to arbitration.

Defendant's ninth answer denies that the documents mentioned in paragraph nine of the complaint reflect the complete agreement between the parties (*id,* ¶ 9). The portion of this answer that alleges that the Franchise Agreement governs the relationship between the parties is dismissed as it is subject to arbitration.

Defendant failed to oppose plaintiff's motion with regards to its two counterclaims. The first counterclaim for breach of contract claiming that plaintiff failed to protect the reputation and image of the brand from the may scandals involving the Subway brand, which caused sales at defendant's shop to drop and damaging defendant in excess of $80,000.00 and attorneys' fees in the amount of $15,000.00 (*id.,* ¶¶ 39-57). The second counterclaim for breach of contract claims that plaintiff, through its affiliate DAL, failed to provide assistance and instead issued numerous fines for minor infractions, which forced defendant to surrender her business to plaintiff (*id.*, ¶¶ 58-63). These counterclaims are predicated entirely on the Franchise Agreement and are dismissed as collaterally estopped.

Accordingly, it is ORDERED that the branch of plaintiff's motion to dismiss without prejudice defendant Manijeh Jahedi's counterclaims is granted; it is further

ORDERED that the branch of plaintiff's motion to dismiss the fifth, eleventh, and fourteenth affirmative defenses, and paragraphs eight and nine of the Answer is granted only to the extent as the claims relate to the Franchise Agreement; and it is further

ORDERED that the parties appear for a status conference in Part 33, located at 71 Thomas St., Room 305, New York, NY 10013 on February 19, 2020, at 10:00 a.m.; and it is further

ORDERED that the Clerk of the Court enter judgment as written.

This constitutes the Decision and Order of the court.

2/7/2020
DATE

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	DENIED		GRANTED IN PART	X	OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE