Metro Global Group, Inc. v Queens Blvd 40th Owners Corp.
2020 NY Slip Op 30892(U)
March 30, 2020
Supreme Court, New York County
Docket Number: 653165/2018
Judge: Louis L. Nock
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 38

METRO GLOBAL GROUP, INC., and RAMI YAZER, Plaintiffs, -against- QUEENS BLVD 40th OWNERS CORP. d/b/a QUEENS BLVD 40th ASSOCIATES, d/b/a SUNNYSIDE ASSOCIATES, SUNNYSIDE 40th LLC, and MODESTA MEDRANO, Defendants.	Index No. 653165/2018 DECISION AND ORDER

LOUIS L. NOCK, J.

Plaintiffs move (seq. no. 002) for a default judgment against corporate defendants Queens Blvd 40th Owners Corp. (doing business as captioned) and Sunnyside 40th LLC. Affidavits of service of process on said defendants are on file, regular on their faces, constituting *prima facie* evidence of service of process (*e.g., Scarano v Scarano*, 63 AD3d 716 [2d Dept 2009]). Said defendants have not appeared in the action and are in default in responding to the amended complaint.[1]

As alleged, plaintiff Metro Global Group, Inc. ("Metro"), was a lessee of commercial space located at 39-34 Queens Boulevard, Queens, New York, owned by defendant Queens Blvd 40th Owners Corp., n/k/a defendant Sunnyside 40th LLC (the "Corporate Defendant"). The amended complaint asserts three causes of action: (i) a first cause of action for breach of an alleged oral promise by the Corporate Defendant to enter into "a new written lease which would

[1] Nor has there been any appearance in response to the initial complaint filed in this action.

explicitly allow Plaintiffs[2] to renovate the space" (Am. Cplt. para 9), causing economic injury; (ii) a second cause of action for conversion of Metro's property by the Corporate Defendant, once situated in the premises; and (iii) a third cause of action for "unlawful eviction" by the Corporate Defendant of Metro from the premises.

As for the first cause of action for breach of an alleged oral promise by the Corporate Defendant to enter into a written lease with Metro for the same premises; but with expanded space and with renovations to be implemented by Metro, no detail of any essential terms are provided, apart from a higher rent amount. It is worth noting that in order to clear the statute of frauds (General Obligations Law 5-703) in the absence of a written lease agreement, Metro would have to allege actions taken that are unequivocally referable to an oral agreement (*see, e.g., Geraci v Jenrette,* 41 NY2d 660 [1977]). It may have done so through some of its allegations, such as the Corporate Defendant accepting the higher rent amount for a period of time and its consent to Metro's purchase of another tenant which occupied the hoped-for expanded space (see, Am. Cplt. paras 13, 33). But there is no escaping the fact that no essential terms of any alleged lease agreement, apart from a higher rent, are alleged. Nothing is alleged as to the temporal term of any such prospective lease, or the allocation of responsibility for expenditures necessary in maintaining the hoped-for leasehold. Absent essential terms, this court cannot possibly conclude that a binding contract to lease the real property had come into being sufficient to sustain any cause of action for breach of contract (*e.g., Central Fed. Sav., F.S.B. v Natl. Westminster Bank, U.S.A.*, 176 AD2d 131 [1st Dept 1991]). Indeed, and quite remarkably, the amended complaint (at paragraph 15) openly concedes that "Plaintiff and Defendants failed

[2] The amended complaint is peppered throughout with haphazard references to the parties in both the plural and singular tense; but it is apparent from the gist of the pleading that the legally operative parties here are the corporate ones. The individual plaintiff and individual defendant were not the ones having the landlord-tenant relationship central to this action.

to reach a new agreement." Accordingly, the court denies the motion for a default judgment as to said first of action.[3]

As for the second cause of action for conversion by the Corporate Defendant of Metro's property that was situated in the premises, the court finds the allegations of the amended complaint sufficient to sustain it, subject to an inquest to enable Metro to prove the compensatory value of such conversion.

As for the third cause of action for what is cast as "unlawful eviction," no details of any actual, unexpired, lease are provided, let alone submission of any such lease upon which to predicate this cause of action. This cause of action, too, cannot succeed on this motion for a default judgment.

The prayer for relief seeks damages for pain and suffering. Nothing in the amended complaint remotely approaches the type of allegations necessary to sustain such a cause (*see, e.g., McDougald v Garber*, 73 NY2d 246 [1989] [speaking in terms of "the loss of enjoyment of life"]). The prayer also seeks punitive and treble damages – again, items of relief that have no application to this case, as framed by Metro in its own pleading. Punitive damages, which must be proven by clear and convincing evidence, are only appropriate to punish actions that could be considered wanton, reckless, and malicious, and capable of repetition (*see, e.g., Rose v Brown & Williamson Tobacco Corp.*, 10 Misc 3d 680 [Sup Ct NY County 2005). Metro could not possibly meet that standard in a commercial landlord-tenant case such as this, especially in the face of its concession that the parties never entered into a new lease (Am. Cplt. para 15). Similarly, no basis is provided for a treble damages award.

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[3] Insofar as Metro feels aggrieved by any possible expenditure it made in improving the Corporate Defendant's physical premises in the hope that a new lease would be entered into in the future, it has not asserted any alternative cause of action for unjust enrichment.

Accordingly, it is

ORDERED that the motion for a default judgment is granted to the extent of the second cause of action for conversion of property owned by plaintiff Metro Global Group, Inc., by defendant Queens Blvd 40th Owners Corp., d/b/a Queens Blvd 40th Associates, d/b/a Sunnyside Associate, n/k/a Sunnyside LLC; and it is further

ORDERED that the quantum of damages recoverable on account of said conversion be heard and determined at a Referee's Hearing, and that said plaintiff shall have judgment against said defendant in the amount to be so determined, plus interest at the legal rate from the date of the Referee's determination through the date of satisfaction of judgment, and that said plaintiff have execution therefor; and it is further

ORDERED that plaintiff Metro Global Group, Inc., will commence coordinating efforts with the Special Referee Clerk's Office of this court no later than sixty days from the date hereof; and it is further

ORDERED that the action is dismissed as against the individual defendant.

This shall constitute the decision and order of the court.

Dated: New York, New York
March 30, 2020

ENTER:

Hon. Louis L. Nock, J.S.C.