Laocoon Group LLC v Clinton
2020 NY Slip Op 31122(U)
April 24, 2020
Supreme Court, Kings County
Docket Number: 502589/2020
Judge: Leon Ruchelsman

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

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THE LAOCOON GROUP LLC,

Plaintiff,

Decision and Order

-against-

April 24, 2020

Index #502589/2020

WILLIAM JAMES CLINTON, THE WILLIAM JAMES CLINTON LIVING TRUST & WILLIAM JAMES CLINTON LIVING TRUST by WILLIAM JAMES CLINTON TRUSTEE,

Defendants,

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PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved seeking a Yellowstone injunction. The defendant has opposed 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 maintains a lease concerning property located at Greene Avenue in Kings County. Specifically, the plaintiff maintains a restaurant called 'The Finch' at that location. On January 2, 2020 the defendant served a notice of default alleging the plaintiff violated paragraph 9 of the lease renewal by failing to expeditiously complete necessary work pursuant to the lease. This motion seeking a Yellowstone followed wherein

the plaintiff seeks to toll the default period so that they can cure any violations.

Conclusions of Law

It is well settled that a commercial tenant is entitled to a Yellowstone injunction to preserve the status quo pending determination of its underlying dispute with its landlord only when it can demonstrate that it has both the desire and the ability to cure the alleged default by any means short of vacating the premises (see, First National Stores v. Yellowstone Shopping Center, 21 NY2d 630, 290 NYS2d 721 [1968]). Thus, a tenant seeking a Yellowstone must demonstrate that: (1) it holds a commercial lease, (2) it has received from the landlord a notice of default, (3) its application for a temporary restraining order was made prior to expiration of the cure period and termination of the lease, and (4) it has the desire and ability to cure the alleged default by any means short of vacating the premises (see, Xiotis Restaurant Corp., v. LSS Leasing Ltd. Liability Co., 50 AD3d 678, 855 NYS2d 578 [2d Dept., 2008]).

Pursuant to Paragraph 9 of the Lease Renewal the tenant was required to file plans and "proceed expeditiously with the completion of all work described in the attached plans and in no event complete all work, including the DOB approval and

inspection at the end, no later than eight (8) months after the execution of this Lease Renewal, which deadlines shall be extended on a day to day basis due to any delays outside of Tenant's control" (id).

The defendant argues the failure to satisfy the above provisions is an incurable default similar to the failure to secure appropriate insurance which obviously cannot be cured (see, JT Queens Carwash Inc., 88-16 Northern- Blvd LLC, 101 AD3d 1089, 956 NHS2d 536 [2d Dept., 2012]). The defendant asserts that "the tenant cannot now be deemed nunc pro tunc to have proceeded expeditiously. And certainly nothing can be done now to recreate the past changing the Tenant's failure to strictly comply with the Renewal" (see, Defendant's Memorandum of Law in Opposition, page 2).

The plaintiff counters that the delays were "almost entirely due to Landlord's refusal to cooperate, including the refusal to sign off on the plans for several months, and the drastic changes in DOB rules in the summer of 2019" (see, Affidavit of Gabe McMackin, ¶10). Further, Mr. McMackin provides a timeline detailing the alleged delays on the part of the defendant. The defendant disputes these allegations and Dana Trezza the project coordinator on behalf of the defendant presented a timeline essentially disputing the plaintiff and

providing an alternative where the plaintiff was indeed at fault (see, Affidavit of Dana Trezzia, ¶¶6-27).

It is well settled that when questions of fact exist a Yellowstone injunction should not be denied since doing so would adjudicate the underlying case (see, Boi To Go Inc., v. Second 800 No. 2 LLC, 58 AD3d 482, 870 NYS2d 334 [1st Dept., 2009], W & G Wines LLC v. Golden Chariot Holdings LLC, 46 MIsc3d 1202(A), 7 NYS3d 245 [Supreme Court Kings County 2014]). Therefore, since there are questions of fact concerning the reasons for the delay an injunction is appropriate.

Therefore, at this juncture the motion seeking a Yellowstone injunction is granted.

So ordered.

ENTER:

Dated: April 24, 2020
Brooklyn, N.Y.

Hon. Leon Ruchelsman
JSC