Jet Wave Corp. v Wedgewood SNF LLC
2020 NY Slip Op 31505(U)
May 18, 2020
Supreme Court, Kings County
Docket Number: Index No. 514783/2019
Judge: Peter P. Sweeney
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 73

Index No. 514783/2019

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JET WAVE CORP.,

Plaintiff,

-against -

DECISION/ORDER

WEDGEWOOD SNF LLC, GREENVILLE SNF LLC, PARK VIEW SNF LLC, WHISPERING OAKS SNF LLC, and VERNON SNF LLC,

Defendant(s).

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The following papers numbered 1 through 3 were read on this motion.

Papers:	**Numbered**:
Notice of Motion/Order to Show Cause/ Affirmations/Affidavits/Exhibits/Memo of Law	1
Answering Affirmation/Affidavits/Exhibits	2
Reply Affirmations/Affidavits/Exhibits	3

Upon the foregoing papers, the Court finds as follows:

In this action alleging causes of action for breach of contract and reformation involving five equipment lease agreement agreements, defendants, WEDGEWOOD SNF ("Wedgewood"), GREENVILLE SNF ("Greenville"), PARK VIEW SNF ("Park View"), WHISPERING OAKS SNF ("Whispering Oaks") and VERNON SNF ("Vernon") move for an order pursuant to CPLR 3211(a)(1), CPLR 3211(a)(7) or CPLR 3013 dismissing plaintiff's first amended complaint.

I. **Background**:

The defendants operate nursing homes. To provide their residents with television services, each of the defendants entered into an equipment lease agreement with the plaintiff, Jet Wave Corp. ("Jet Wave"). Each of these agreements set forth, among other things, specific cancellation dates and termination dates. In the Amended Complaint, Plaintiff refers to the termination dates specified in the lease agreements as the "nominal termination dates." In

paragraph 11 of the Amended Complaint, the Plaintiff admitted that the Defendants stopped making rental payments on the lease agreements as of the "Nominal Termination Dates." Defendants contend that Plaintiff's claims for breach of the lease agreements fail as a matter of law because they had no obligation to continue making payments after the termination dates specified in the lease agreements.

A. The Wedgewood Lease Agreement:

With respect to the Wedgewood lease agreement, Jet Wave alleged in the Amended Complaint that defendant Wedgewood has breached the contract by "failing and refusing to remit rent payments to Jet Wave as required under the Wedgewood Lease agreement for the rental period from and after March 1, 2019 through and including January 18, 2020." The agreement states, "The term of this Lease agreement shall be seven (7) years, such term to commence on December 05, 2012 and to terminate on February 28, 2019 . . ."

B. Vernon Lease Agreement:

With respect to the Vernon Lease agreement, Jet Wave alleged that Vernon breached the lease agreement by "failing and refusing to remit rent payments to Jet Wave as required under the Vernon lease agreement for the rental period from and after July 31, 2019 through and including February 5, 2019." The Vernon lease agreement states, "The term of the equipment lease agreement portion of this Agreement shall be five (6) years, such term to commence Jan. 21, 2014 and to terminate on Jan. 21, 2020."

C. Greenville Lease Agreement:

With respect to the Greenville lease agreement, Jet Wave alleged that Greenville breached the agreement "by failing and refusing to remit rent payments to Jet Wave as required under the Greenville Lease agreement for the rental period from and after March 1, 2019 through

and including January 18, 2020." The Greenville lease provided that "[t]he term of this Lease shall be seven (7) years, such term to commence on March 1, 2011 and to terminate on March l, 2018 unless otherwise terminated in accordance with the terms hereunder…."

D. Park View Lease Agreement:

With respect to the Park View lease agreement, Jet Wave alleged that Park View anticipatorily breached the agreement "by communicating that it will not remit rent payments to Jet Wave as required under the lease agreement for the period commencing October 1, 2019 through and including November 13, 2019." The Park View lease provided that "[t]he term of this Lease shall be seven (7) years, such term to commence on October 1, 2012 and to terminate on October 1, 2019 unless otherwise terminated in accordance with the terms hereunder…."

E. Whispering Oaks Lease Agreement:

With respect to the Whispering Oaks lease agreement, Jet Wave alleges that Whispering Oaks breached the lease agreement "by failing and refusing to remit rent payments to Jet Wave as required under the Whispering Oaks lease agreement for the rental period from and after May 25, 2019 through and including July 2, 2019." The Whispering Oaks lease provided "[t]he terms of the equipment lease portion of this agreement shall be five (5) years, such time to commence on May 25th, 2014 and to terminate on May 25th, 2019 unless otherwise terminated in accordance with the terms hereunder…."

Defendants further claim that plaintiff's efforts to rewrite (or reform) the lease agreements' express contractual language based on conclusory allegations regarding "industry custom" similarly fail to state a claim. More specifically, defendants contend that the Amended Complaint fails to allege, as it must, that Plaintiff and the Nursing Homes actually and expressly

agreed to use "industry custom" Activation dates as the basis for the commencement and termination dates, instead of those expressly stated in the lease agreements.

In opposition, Plaintiff maintains that three of the lease agreements, the Wedgewood, Greenville and Vernon agreements, are ambiguous on their face as to the stated time period and commencement and termination dates and a trial is necessary to determine the parties' intent. Plaintiff further contends that the parties' oral agreements, conduct, course of dealing and the usage of trade in the industry dictates that the true start date of each lease agreement is the date the equipment was installed and ready for use (the "Activation Date"). Plaintiff refers to the commencement and termination dates stated in the lease agreements as the "Nominal Start" and "Nominal End" dates, because those dates are not an accurate reflection of the parties' intent. Plaintiff prepared the following table summarizing the terms of what it refers to as the Nominal Start/End dates from the Lease Agreements, the Activation Date as alleged in the Complaint and Amended Complaint, the first date Defendants made a payment as alleged in the Amended Complaint, and the dates Defendants claim to have effected cancellations of the Lease Agreements.

Ex	Defendant	Execution Dates	Term	Nominal Start Dates	Nominal End Dates	Activation Dates	First Payment by Defendant	Alleged Cancellation Dates
A	Wedgewood	6/23/2010	7 years	12/5/2012	2/28/2019	1/18/2013	7/25/2013	2/28/2019
B	Greenville	12/29/2011	7 years	3/1/2011	3/1/2018	2/7/2013	6/17/2013	3/1/2019
C	Whispering Oaks	2/17/2014	5 years	5/25/2014	5/25/2019	7/2/2014	7/31/2014	5/25/2019
D	Park View	8/31/2012	7 years	10/1/2012	10/1/2019	11/13/2012	11/30/2012	10/1/2019
E	Vernon	1/21/2014	"Five (6) years"	1/21/2014	1/21/2020	2/5/2014	5/23/2014	7/31/2019

II. Discussion:

"To succeed on a motion to dismiss pursuant to CPLR 3211(a)(1), the documentary evidence that forms the basis of the defense must be such that it resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff's claim" (*Summer v. Severance,* 85 A.D.3d 1011, 1012, 925 N.Y.S.2d 627, quoting *Teitler v. Pollack & Sons,* 288 A.D.2d 302, 302, 733 N.Y.S.2d 122; *see Leon v. Martinez,* 84 N.Y.2d 83, 87–88, 614 N.Y.S.2d 972, 638 N.E.2d 511). On a motion to dismiss pursuant to CPLR 3211(a)(7), the court must "accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v. Martinez*, 84 N.Y.2d 83, 87–88, 614 N.Y.S.2d 972, 638 N.E.2d 511; *see Sokol v. Leader*, 74 A.D.3d 1180, 1181, 904 N.Y.S.2d 153).

A. The Breach of Contract Claims:

A written agreement that is complete, clear, and unambiguous on its face must be enforced to give effect to the meaning of its terms and the reasonable expectations of the parties, and the court should determine the intent of the parties from within the four corners of the contract without looking to extrinsic evidence to create ambiguities (*see South Rd. Assoc., LLC v. International Bus. Mach. Corp.,* 4 N.Y.3d 272, 277, 793 N.Y.S.2d 835, 826 N.E.2d 806; *W.W.W. Assoc. v. Giancontieri,* 77 N.Y.2d 157, 162, 565 N.Y.S.2d 440, 566 N.E.2d 639; *Belle Harbor Wash. Hotel, Inc. v. Jefferson Omega Corp.,* 17 A.D.3d 612, 795 N.Y.S.2d 597). A contract is considered to be clear and unambiguous where the language used has "a definite and precise meaning, unattended by danger of misconception in the purport of the [agreement] itself, and concerning which there is no reasonable basis for a difference of opinion" (*Breed v. Insurance Co. of N. Am.,* 46 N.Y.2d 351, 355, 413 N.Y.S.2d 352, 385 N.E.2d 1280). "The threshold question of whether a contract is

unambiguous, and the subsequent construction and interpretation of an unambiguous contract, are issues of law within the province of the court" (*NRT N.Y., LLC v. Harding,* 131 A.D.3d at 954, 16 N.Y.S.3d 255).

On the other hand, if the terms of a contract are "reasonably susceptible of more than one interpretation" (*Chimart Assoc. v. Paul*, 66 N.Y.2d 570, 573, 498 N.Y.S.2d 344, 489 N.E.2d 231), the contract is ambiguous and the ""[t]he resolution of an ambiguous provision, for which extrinsic evidence may be used, is for the trier of fact' " (*Cohen v. Cohen*, 163 A.D.3d 762, 763, 82 N.Y.S.3d 55, quoting *Boster–Burton v. Burton*, 92 A.D.3d 909, 910, 940 N.Y.S.2d 111). "Extrinsic and parol evidence of the parties' intent may not be admitted to create ambiguity in a contract that is unambiguous on its face" (*id., see also NRT New York, LLC v. Brown*, 167 A.D.3d 764, 765, 89 N.Y.S.3d 695, 697). In *Cont'l Manor II Condo. Homeowners Assn v. Depew*, 277 A.D.2d 340, 340, 717 N.Y.S.2d 206, 207, a case almost directly on point, the contract expressly provided that "the term of this agreement shall be one year beginning December 1, 1996." The Court found that the contract was clear and unambiguous on its face and precluded the admission of parol and extrinsic evidence to create an ambiguity (277 A.D.2d at 340, 717 N.Y.S.2d at 207).

Here, the Wedgewood and Vernon lease agreements are ambiguous on their face and are susceptible to different interpretation as to when the lease agreement terminated. The Wedgewood lease agreement expressly provided for a term of seven (7) years with the commencement date stated to be December 5, 2012. If the lease commenced on December 5, 2012, the correct termination date would be December 5, 2019. The termination date defendant Wedgewood relies on and the one stated in the lease agreement is February 28, 2019. Since Plaintiff is suing for non-payment under the lease agreement for the period March 1, 2019 to

January 18, 2020, if it is determined that the lease agreement, properly construed, terminated on December 5, 2019, Plaintiff has a viable claim for non-payment from March 1, 2019 to December 5, 2019. Accordingly, whether plaintiff has a viable claim for breach of the Wedgewood lease agreement therefore requires extrinsic evidence and cannot be decided as a matter of law.

Whether Plaintiff has a viable claim for breach of the Vernon lease agreement will also require extrinsic evidence and cannot be decided as a matter of law. The Vernon lease agreement expressly states that the lease term was both five and six years. Notably, the commencement and termination dates specified in the lease agreement support a finding that the lease term was six years. Defendant Vernon's motion presupposes a five-year term. If the lease agreement is construed as defendant Vernon urges, Plaintiff's claim for breach of the lease agreement would fail. On the other hand, if the lease agreement is construed as having a six-year term, as Plaintiff urges, Plaintiff has viable claim for breach of the lease agreement.

The other lease agreements are clear and unambiguous on their face and must be enforced pursuant to their terms. Plaintiff's contention that the actual commencement dates of these leases was the Activation dates is belied by the clear language of the lease agreements and Plaintiff's reliance on parol and extrinsic evidence, including the dealings between the parties, trade practice and oral communications is an impermissible attempt to create ambiguity when none exists.

Since the Amended Complaint and lease agreements which are part of the record demonstrate that the Plaintiff does not have viable claims for breach of the Greenville, Whispering and Park View lease agreements for services rendered after those lease agreements expired pursuant to their terms, the motion of Defendants pursuant to CPLR 3211(a)(1) and

3211(a)(7) to dismiss those claims is **GRANTED.** Defendants' motion to dismiss Plaintiff's claims for breach of the Wedgewood and Vernon lease agreements is **DENIED** for the reasons stated above.

B. The Claim for Reformation:

To state a cause of action for reformation, a plaintiff must allege either a mutual mistake or unilateral mistake induced by fraud (see e.g. *Friedland Realty, Inc. v. 416 W, LLC*, 120 A.D.3d 1185, 1186). "A claim of mutual mistake is stated where the allegations indicate that the parties have reached an oral agreement and, unknown to either, the signed writing does not express that agreement" (*Aventine Inv. Mgt. v. Canadian Imperial Bank of Commerce,* 265 A.D.2d 513, 514, 697 N.Y.S.2d 128; *see Chimart Assoc. v. Paul,* 66 N.Y.2d 570, 573, 498 N.Y.S.2d 344, 489 N.E.2d 231; *Phillips v. Phillips,* 300 A.D.2d 642, 643, 754 N.Y.S.2d 297). Absent fraud, "the mistake shown must be one made by both parties to the agreement, so that the intentions of neither are expressed in it" (*Migliore v. Manzo,* 28 A.D.3d 620, 621, 813 N.Y.S.2d 762; *see Ribacoff v. Chubb Group of Ins. Cos.,* 2 A.D.3d 153, 154, 770 N.Y.S.2d 1; *Matter of Shaw,* 202 A.D.2d 433, 434, 608 N.Y.S.2d 707). "A claim predicated on mutual mistake must be pleaded with the requisite particularity necessitated under CPLR 3016(b)" (*Simkin v. Blank,* 19 N.Y.3d 46, 52, 945 N.Y.S.2d 222, 968 N.E.2d 459), which provides that "where a cause of action or defense is based upon misrepresentation, fraud, mistake, wilful default, breach of trust or undue influence, the circumstances constituting the wrong shall be stated in detail."

Similarly, a claim of unilateral mistake must be supported by legally sufficient allegations of fraud on the part of defendants to support a claim for reformation (*see, Backer Mgt. Corp. v. Acme Quilting Co.,* 46 N.Y.2d 211, 218–219, 413 N.Y.S.2d 135, 385 N.E.2d 1062; *Nash v. Kornblum,* 12 N.Y.2d 42, 46, 234 N.Y.S.2d 697, 186 N.E.2d 551, *see also Amend v.*

Hurley, 293 N.Y. 587, 595, 59 N.E.2d 416). Here, applying the above principles, the allegations in the Amended Complaint fail to support a claim for reformation based upon either mutual mistake or unilateral mistake. Accordingly, Defendants' motion to dismiss Plaintiff's claims for reformation pursuant to CPLR 3211(a)(7) is **GRANTED**.

Accordingly, it is hereby

ORDERED, the defendants' motion is **GRANTED** to the extent indicated above and is in all other respects **DENIED**.

This constitutes the decision and order of this court.

Dated: May 18, 2020

PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020