

115 Essex St. LLC v Tenth Ward LLC

2020 NY Slip Op 33565(U)

October 28, 2020

Supreme Court, Kings County

Docket Number: 502984/19

Judge: Leon Ruchelsman

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

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115 ESSEX STREET LLC,

Plaintiff,

Decision and order

- against -

Index No. 502984/19

TENTH WARD LLC, ET AL,

Defendants,

October 28, 2020

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PRESENT: HON. LEON RUCHELSMAN

The defendant Edward Doyle has moved seeking to reargue a decision and order dated September 14, 2020 which denied his request to vacate a default judgement entered against him. The plaintiff 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.

As recorded in the prior order, the defendant Tenth Ward LLC was a commercial tenant at property located at 115 Essex Street in New York County. On July 13, 2004 the defendant accepted an earlier lease from another tenant and thus became bound by all the terms of the lease. The defendant Edward Doyle executed a guaranty on July 13, 2004 promising to pay any outstanding rent that was owed as of the date of any eviction. The defendant owed rent from July 2017 through January 2018 and obtained a judgement on default in the amount of \$156,567.71. The court rejected Doyle's request to vacate the default on the grounds the guaranty signed in 2004 was never intended to be extended through 2011 and 2016 and therefore he should not be

responsible for debt that was incurred in 2017. The court explained that the guaranty signed stated that "this Guaranty shall be a continuing guaranty, and the liability of Guarantor hereunder shall in no way be affected, modified, impaired or diminished by reason of any event or circumstance which might otherwise constitute a legal or equitable discharge of Guarantor, including, without limitation: (i) any assignment, renewal or modification of the Lease" (id). Thus, the court concluded the guarantee extended to any lease renewals or modifications.

Upon reargument the defendant maintains the lease expired on May 31, 2011 thus extinguishing the guaranty. It is true that a new lease was entered into on August 11, 2011, however, that lease was not an extension of the prior lease that contained the guaranty but a new lease completely. Indeed, the defendant points out the new lease included an increase in rent as well as different rental space, further demonstrating the new lease was not a modification. Thus, the defendant argues the court should reconsider its decision and vacate the default. The plaintiff asserts these arguments have no merit.

A motion to reargue must be based upon the fact the court overlooked or misapprehended fact or law or for some other reason mistakenly arrived at in its earlier decision (Deutsche Bank National Trust Co., v. Russo, 170 AD3d 952, 96 NYS2d 617 [2d Dept., 2019]).

The lease entered into dated August 11, 2011 states that it is a 'lease extension and modification agreement'. Further, the modification states that "WHEREAS, Landlord and Essex Food Group, Inc., Tenant entered into a Lease dated May 29th 2001 (hereinafter the "Lease") for the premises known as South Store at 115 Essex Street, New York, NY (hereinafter the "Demised Premises") for a term of Ten (10) years (the "Term") commencing on the first day of June, 2001 and expiring on the 31st day of May, 2011 (hereinafter the "Expiration Date"); thereafter said lease was modified on August 26, 2003 and subsequently assigned to Tenth Ward, LLC. DBA Boss Tweeds on July 13, 2004. WHEREAS, Tenant has expressed its desire to extend the term of the Lease and WHEREAS, Landlord has agreed to extend the term of this Lease on the terms and conditions as set forth herein" (see, Lease Extension and Modification Agreement, page 1). These terms clearly demonstrate that this lease was not a "new agreement" but was a continuation of the existing lease, albeit with some changes. Indeed, Paragraph 3 of the lease extension and modification clearly references the earlier lease and modifies the earlier lease by deleting one of the clauses of that earlier agreement. Notably, the clause containing the guaranty was not amended. Further, Paragraph 6 of the lease extension and modification states that "this agreement may not be changed, modified or cancelled orally. Except as hereinabove modified,


amended and extended all other terms and provisions of the original Lease dated May 29, 2001 between 115 Essex Street, LLC. as Landlord, and Essex Food Group, Inc as tenant, extended and modified thereafter is hereby ratified and confirmed in all respects and shall be binding upon the parties hereto and their respective successors and assigns" (id). Thus, there can be no real argument the lease extension and modification was really a new agreement considering the references and reliance upon the original lease and the specific language that all prior provisions are operative. Therefore, the lease extension and modification did not extinguish the guaranty at all. Consequently, the guaranty is still applicable and the defendant has failed to present any meritorious defense.

Therefore, the motion seeking reargument to vacate the default is denied.

So ordered.

ENTER:

DATED: October 28, 2020
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC