Trinity NYC Hotel, LLC v Metropolitan Tr. Auth.
2020 NY Slip Op 33815(U)
November 16, 2020
Supreme Court, New York County
Docket Number: 150665/2020
Judge: Suzanne J. Adams
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. SUZANNE J. ADAMS — *Justice*

PART IAS MOTION 21

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TRINITY NYC HOTEL, LLC,

Plaintiff,

- v -

METROPOLITAN TRANSIT AUTHORITY, NEW YORK CITY TRANSIT AUTHORITY,

Defendant.

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INDEX NO. 150665/2020

MOTION DATE N/A

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 165, 166, 167, 168, 169, 170, 171, 172, 173

were read on this motion to/for DISMISS.

This matter arises out of a hotel construction project located at 50 Trinity Place, New York, New York (the "50 Trinity Project"), of which Trinity NYC Hotel, LLC ("Trinity"), is the developer, as well as the fee owner of the underlying property at 50 Trinity Place. To date, this court has issued two decisions on motions and cross-motions made by the respective parties since the inception of this matter: the Decision and Order dated March 25, 2020 (the "March Decision"), and the Decision and Order dated June 10, 2020 (the "June Decision"). Reference is made to these decisions for a recitation of the underlying facts and the meaning of any defined terms used herein. In brief, the March Decision granted Trinity a preliminary injunction enjoining and restraining MTA and NYCTA from (1) moving or interfering with Trinity's construction fence and (2) enforcing the Stop Work Order of January 13, 2020, pending resolution of Trinity's petition pursuant to CPLR Article 78 for permanent relief and for declaratory judgment pursuant to CPLR § 3001; denied MTA's cross-motion to dismiss this

action; granted Trinity's cross-motion to dismiss a separate and simultaneous petition by MTA (referred to in the March Decision as Action No. 2, which had been consolidated with this action prior to its dismissal); and dismissed MTA's motion for preliminary injunctive relief in Action No. 2 as moot. The June Decision granted Trinity a preliminary injunction enjoining and restraining MTA and NYCTA from (1) maintaining MTA's October 21, 2019, letter to the NYC Department of Transportation ("DOT") on the basis of New York Public Authorities Law § 1266(12) (the "PAL Letter"); and (2) interfering with Trinity's project and site permits, including the release thereof; and denied MTA and NYCTA's cross-motion for leave to reargue and renew their prior motions decided by the March Decision. MTA and NYCTA have filed notices of appeal of both decisions. They were granted leave to appeal the March Decision and await a determination of their motion for leave to appeal the June Decision. (Affirmation of John J. Nicolich, Esq., ¶ 12)

Subsequent to the June Decision, MTA and NYCTA served the Verified Answer and Counterclaims of Respondents Metropolitan Transportation Authority and New York City Transit Authority dated July 3, 2020. The Verified Answer asserts two counterclaims. The First Counterclaim sounds in trespass, encroachment and improper preliminary injunction, in violation of Public Authorities Law § 1266(12), and is asserted against Trinity as well as Rinaldi as counterclaim defendants. The Second Counterclaim, solely against Trinity, alleges breach of the implied covenant of good faith and fair dealing of the First Amendment to Easement Agreement dated November 29, 2017. Trinity now moves to dismiss the counterclaims. MTA and NYCTA oppose the motion and cross-move to stay this action pending determination of their appeals as noted hereinabove and for summary judgment dismissing Trinity's claims. Both the motion and cross-motion also seek sanctions against the opposing parties. (In separate motion sequences,

Rinaldi moves to dismiss the First Counterclaim as asserted against it, and MTA and NYCTA move to strike certain materials submitted by Trinity on its instant motion. These motions are being decided separately and concurrently with the instant motion and cross-motion.)

For the reasons discussed below, Trinity's motion is granted to the extent that the First Counterclaim is dismissed, and MTA and NYCTA's cross-motion is denied in its entirety. The court declines to award sanctions against any party at this time.

Motion to Dismiss Counterclaims

The First Counterclaim alleges that Trinity and Rinaldi have "unlawfully occupied, trespassed upon, and encroached upon the Trinity Place sidewalk without valid permits and approvals and in violation of section 1266(12) of the PAL." (Affirmation of William R. Fried, Esq., Exh. B, ¶ 195) The counterclaim is founded upon MTA's and NYCTA's allegation that the statute affords MTA the right to occupy the sidewalk area at issue, despite that fact that the March Decision ruled that the statute is inapplicable to the circumstances of this matter. In light of the March Decision, MTA and NYCTA are barred from maintaining this claim by virtue of the doctrine of law of the case. This doctrine "addresses the potentially preclusive effect of judicial determinations made in the course of a single litigation *before* final judgment [citations omitted]." *People v. Evans*, 94 N.Y.2d 499, 502 (2000). The doctrine "has been aptly characterized as 'a kind of intra-action res judicata' (Siegel, *New York Practice* § 448, at 723 [3d ed])." *Evans*, 94 N.Y.2d at 502. It "expresses the practice of courts generally to refuse to reopen what has been decided." *Id.* at 503 (quoting *Messenger v. Anderson*, 225 U.S. 436, 444). MTA and NYCTA therefore cannot assert a claim that was previously dismissed by this court. The fact that an appeals court is not bound by this court's decision does not change this outcome. MTA and NYCTA cite no authority that requires this court to put aside its own prior

determinations in light of a pending appeal. Only when the appeal is decided will the parties be obliged to abide by its outcome.

Furthermore, there is no new evidence that could allow this court to alter the findings of the March Decision. Subsequent to the March Decision, Trinity applied to Empire State Development ("ESD") to have the 50 Trinity Project declared "essential" so that construction could continue despite the lockdown occasioned by the state-wide, pandemic-incurred halt to "non-essential" construction. MTA and NYCTA argue that in its request to ESD, Trinity admitted that the 50 Trinity Project constituted the type of project that falls within PAL § 1266(12). (Nicolich Aff., Exh. H) However, the application's description of "an ADA-related Capital Improvement project for New York City Transit Authority ('NYCTA') directly connected to the 'R' Line station" is not new, as it was set forth in the Easement Agreement and the First Amendment to Easement Agreement. Nor can the context and language of the application be construed as a legal pronouncement on either the nature of the work itself or the general construction and applicability of PAL § 1266(12). Whether the work at issue, occasioned by §§ 91-43 and 37-40 of the New York City Zoning Resolution, constitutes the type of project that allows MTA to occupy the sidewalk at issue under PAL § 1266(12) is a legal question that was addressed and answered in the March Decision (and reiterated in the June Decision). Accordingly, the First Counterclaim is dismissed for failure to state a cause of action pursuant to CPLR 3211(a)(7).

With respect to the Second Counterclaim, Trinity's motion is denied. The Second Counterclaim, solely against Trinity, alleges that Trinity's refusal to vacate the disputed sidewalk "has deprived NYCT of important benefits of the First Amendment, in breach of the implied covenant [sic] and fair dealing of the First Amendment." (Fried Aff., Exh. B, ¶ 201; the

complete phrase "covenant of good faith and fair dealing" appears in ¶ 202) The claim rests upon Section 6 of the First Amendment (Fried Aff., Exh. I), which provides:

> Consents; Developer consents to work being performed by Authority and/or third parties including but not limited to TPHGreenwich and their employees, contractors, consultants within the sidewalk and vault space adjacent to the Property for the construction of the New Elevator and the New Stair.

MTA and NYCTA allege, in sum, that Trinity's refusal to vacate the sidewalk has prevented 42 Trinity Developer's construction of the new elevator, in contravention of Trinity's agreement to consent to such work per Section 6, thereby depriving NYCTA of the benefit of the elevator's construction.

"On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction (*see,* CPLR 3026). We 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 (1994). Whether a party is ultimately able to establish its allegations is not to be considered in determining a motion to dismiss. *Charles Schwab Corporation v. Goldman Sachs Group, Inc.*, 186 A.D.3d 431 (1st Dep't 2020). Here, according MTA and NYCTA the benefit of a favorable inference, they have alleged sufficient facts to state a claim sounding in breach of an implied covenant of good faith and fair dealing, as they have alleged facts which tend to show that Trinity has acted so as to withhold from NYCTA certain benefits of the First Amendment. *See Aventine Investment Management, Inc., v. Canadian Imperial Bank of Commerce*, 265 A.D.2d 513, 514 (2nd Dep't 1999). As such, dismissal of the Second Counterclaim is not warranted.

Cross-Motion to Stay Proceedings and for Summary Judgment

MTA and NYCTA cross-move to stay the current action pursuant to CPLR § 2201 pending a decision on the appeals of the March Decision and June Decision. "The granting of a stay pending an appeal rests in the sound discretion of the court (*Burgdorf v. Kasper*, 183 A.D.3d 1553 [4th Dept.2011]). Courts consider the following factors when determining whether a discretionary stay is appropriate, i.e., whether (1) the appeal has merit, (2) any prejudice will result from granting or denying a stay, and (3) the stay is designed to delay proceedings [citation omitted]." *Schneiderman v. College Network, Inc.*, 53 Misc. 3d 1210A (Sup. Ct., Albany Cty. 2016).

There are a number of factors that militate against staying this action pending appeal. Given the limited amount of case law on the issue on appeal, it is not obvious that MTA and NYCTA's appeal has merit. Moreover, besides the fact that a decision on the March Decision appeal is not imminent, and leave to appeal the June Decision has not yet been granted, even if the March Decision were reversed, disclosure with respect to the issues underlying this action (and possibly the dismissed Action No. 2, involving the same underlying issues) would still have to proceed. To that extent, prejudice occasioned by a stay in the action would inure to both sides, who appear from their respective submissions to this court since this past January to be anxious to reap the benefits of their various contractual relationships and building projects. That MTA and NYCTA would seek a stay in such circumstances could only give credence to the view that the request for a stay is designed to delay proceedings for some kind of tactical advantage. Accordingly, the cross-motion for a stay pending appeal is denied.

The second branch of the cross-motion seeks dismissal of Trinity's claims pursuant to CPLR 3212 on the grounds that Trinity (1) has failed to include the DOT as a necessary party

and (2) has engaged in inequitable conduct and with "unclean hands." MTA and NYCTA contend that the DOT is a necessary party to the action because any judgment in the instant proceeding will affect the DOT and will involve its rights and powers. However, the cross-movants do not address the fact that at the inception of this action, they agreed that the DOT was *not* a necessary party, and voluntarily discontinued Action No. 2 as to the DOT as a nominal respondent, after the DOT's counsel appeared and represented to the court that the agency was not issuing permits to Trinity based on the PAL Letter. (*See* Reply Affirmation of Brendan O. Schmitt, Esq., ¶ 4) The DOT's position is set forth in its April 10, 2020, email exchange with Trinity. (Schmitt Aff., Exh C). This email exchange was previously considered in connection with the June Decision, in which this court determined that

> Trinity and Rinaldi's purportedly unlawful occupation of the sidewalk without applicable DOT permits was occasioned by MTA's directive to the DOT, in the PAL Letter, not to reissue the permits. As such, MTA created the circumstances in which it claimed Trinity and Rinaldi were unlawfully occupying the subject sidewalk. Now, in contravention of the March Decision's preliminary injunction, MTA and NYCTA have continued to act in such a way as to prevent the 50 Trinity Project from proceeding. Regardless of the exact language of any communications between MTA and/or NYCTA, and DOT that occurred subsequent to the March Decision, the undisputed effect has been DOT's withholding of permits to Trinity and Rinaldi specifically because of MTA and NYCTA's pending appeal of the March Decision.

There is no indication that circumstances have changed since the June Decision, such that the DOT is withholding permits for reasons other than the PAL Letter. The relief sought by Trinity does not entail directing the DOT to act, but rather pertains to the acts of MTA. Thus it remains that the DOT is not a necessary party to this action, as "[c]omplete relief can be granted here between the parties." *New York County Lawyers' Association v. Michael R. Bloomberg*, 30

Misc. 3d 921, 928, (Sup. Ct. New York Cty. 2011), *aff'd*, 95 A.D.3d 92, (1st Dep't), *aff'd*, 19 N.Y.3d 712 (2012).

MTA and NYCTA's second basis for summary judgment, that Trinity has acted inequitably or with unclean hands, rests on three contentions: that Trinity has proceeded with construction of the 50 Trinity Project without proper DOT permits; that Peter Zen of Trinity falsely promised to vacate the disputed sidewalk by December 31, 2019; and that Trinity obtained the exemption from ESD based in part on certain demonstrably false representations. None of these contentions are factually supported in the record before the court.

First, there is no evidence presented that Trinity is operating unlawfully at the worksite. As discussed above, the absence of any proper DOT permitting is the result of MTA and/or NYCTA's actions. Second, the email cited by MTA and NYCTA does not establish an unqualified, finalized promise by Mr. Zen to vacate the disputed sidewalk by December 31, 2019. (Nicolich Aff., Exh. C) The first email in the chain of Exhibit C consists of an MTA deputy general counsel's characterization of Mr. Zen's promise, rather than a promise by Mr. Zen himself, to vacate the area in question in return for MTA's allowing Trinity to continue occupy the area in connection with its construction work. The last item of the exhibit is an unsigned letter from MTA to Mr. Zen dated November 25, 2019, that recites that Trinity has agreed to "be off the street and sidewalk along Trinity Place [other than for a designated area]" and that in consideration of that agreement, MTA and NYCTA will rescind the PAL Letter. The PAL Letter was not rescinded, so there appears to be no basis for MTA and NYTA's reliance on any purported promise by Mr. Zen.

Finally, MTA and NYCTA allege that Trinity obtained an exemption from ESD to continue construction during the state-wide shutdown of "non-essential" business due to the

pandemic by falsely representing in its application to ESD that the 50 Trinity Project would include an elevator machine room. (Nicolich Aff., Exh. H) However, the First Amendment states that Trinity is to construct a room for NYCTA's exclusive use, at its sole option, for any station-related use, including "a mechanical room for an elevator," and that once the room is constructed, NYCTA "will permit TPHGreenwich to construct or cause to be constructed the elevator machine room for the New Elevator within the MTA Room . . . and/or the MTA Room will be built out as an elevator machine room at a later date." (Fried Aff., Exh. I, pp. 4-5) Thus, Trinity's reference in its ESD application to construction of an elevator machine room as part of its building project is based upon the First Amendment. In sum, MTA and NYCTA have not established a basis for summary dismissal of Trinity's action based on any inequitable conduct by or unclean hands of Trinity.

Accordingly, it is hereby

ORDERED that Trinity's motion is granted to the extent that MTA and NYCTA's First Counterclaim is dismissed, and the remainder of Trinity's motion is denied; and it is further

ORDERED that MTA and NYCTA's cross-motion is denied in its entirety.

This constitutes the decision and order of the court.

11/16/2020
DATE

SUZANNE J. ADAMS, J.S.C.

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