

**Chickpea at Penn Inc. v LJKT Enter., Ltd.**

2021 NY Slip Op 30354(U)

February 5, 2021

Supreme Court, New York County

Docket Number: 655546/2020

Judge: Arlene P. Bluth

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. ARLENE P. BLUTH **PART** **IAS MOTION 14**

*Justice*

-----X

CHICKPEA AT PENN INC.,

Plaintiff,

- v -

LJKT ENTERPRISE, LTD., JOHN KRYDA

Defendant.

-----X

**INDEX NO.** 655546/2020

**MOTION DATE** 02/04/2021

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18

were read on this motion to/for

DISMISSAL

The motion to dismiss by defendants is granted in part and denied in part.

**Background**

This action relates to a kiosk at Penn Station. Plaintiff entered into a sublease in December 2019 to operate a kiosk at the Amtrak level at Penn Station (plaintiff already operated a separate restaurant in Penn Station). Defendant LJKT Enterprise, LTD (“LJKT”) contends it is a tenant at Penn Station with Amtrak and it sublets kiosks pursuant to its agreement with Amtrak. LJKT claims that it was able to obtain a rent concession from Amtrak under the Master Lease at the beginning of the ongoing pandemic but by July 2020 Amtrak insisted that payments resume.

LJKT claims that plaintiff began operating its other restaurant in June 2020 but refused to open up the kiosk. It insists that plaintiff made no payment from April 2020 through September

3, 2020 until it terminated the sublease. LJKT insists that over \$50,000 was owed at the time the sublease was terminated.

Plaintiff brings causes of action for wrongful eviction, trespass to chattel, conversion, and fraud. It claims that LJKT sent a letter dated September 2 that threatened property seizure and full acceleration of the lease terms if plaintiff did not respond to arrange a payment option by September 3 at noon. On September 3, 2020, LJKT sent another letter terminating the lease and barring plaintiff from reentering the property to retrieve its property.

### **Discussion**

“On a CPLR 3211(a)(7) motion to dismiss for failure to state a cause of action, the complaint must be construed in the light most favorable to the plaintiff and all factual allegations must be accepted as true. Further, on such a motion, the complaint is to be construed liberally and all reasonable inferences must be drawn in favor of the plaintiff” (*Alden Global Value Recovery Master Fund L.P. v Key Bank Natl. Assoc.*, 159 AD3d 618, 621-622, 74 NYS3d 559 [1st Dept 2018] [internal quotations and citations omitted]).

### **Wrongful Eviction**

Plaintiff’s first cause of action against defendants is for wrongful conviction. It claims that the notices sent on September 2 and September 3, 2020 were not mailed in accordance with the terms of the lease and, therefore, plaintiff did not receive proper notice prior to the termination of the lease. Plaintiff also argues that the governor’s executive order (202.70) directed a moratorium on commercial evictions, which makes the subject eviction wrongful.

Plaintiff has clearly stated a cause of action against LJKT, but the Court dismisses this cause of action against defendant Kryda. Plaintiff insists that it should be able to pierce the corporate veil and go after Kryda because he sent the September letters on behalf of LJKT and Kryda engaged in settlement negotiations on behalf of Kryda.

Nothing alleged in the complaint or in opposition to the motion demonstrates that Kryda exerted complete dominion and control over LJKT such that he could be personally liable. Sending a letter on behalf of a corporate entity is not enough nor is negotiating about a potential resolution. The fact is that a corporate entity needs someone to physically write letters and take actions; the person that does that is not automatically liable for wrongdoing that would ordinarily be sought against the corporate entity.

### **Trespass to Chattel**

“To establish a trespass to chattels, [plaintiff] must prove that [defendant] intentionally, and without justification or consent, physically interfered with the use and enjoyment of personal property in [plaintiff]'s possession, and that [plaintiff] was harmed thereby” (*Sch. of Visual Arts v Kuprewicz*, 3 Misc 3d 278, 281 [Sup Ct, NY County 2003]).

Plaintiff stated a valid cause of action for trespass to chattel. It alleged that LJKT took its property without authority and barred it from retrieving its personal property.

### **Conversion**

“A conversion takes place when someone, intentionally and without authority, assumes or exercises control over personal property belonging to someone else, interfering with that

person's right of possession” (*Colavito v New York Organ Donor Network, Inc.*, 8 NY3d 43, 49-50 827 NYS2d 96 [2006]).

Plaintiff also stated a cause of action for conversion. It claims that LJKT interfered with its possessions in the kiosk.

### **Fraud Misrepresentation**

“To state a cause of action for fraudulent misrepresentation, a plaintiff must allege a misrepresentation or a material omission of fact which was false and known to be false by defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury” (*Gomez-Jimenez v New York Law School*, 103 AD3d 13, 17-18, 956 NYS2d 54 [1st Dept 2012]).

The Court dismisses this cause of action. Plaintiff alleges that Kryda told plaintiff he would surrender the sublease to plaintiff for a payment of \$10,000 to come out of the \$20,000 security deposit. However, according to plaintiff, defendants took possession of the property and terminated the lease. That does not state a cause of action for fraudulent misrepresentation. Plaintiff does not deny that it failed to make a payment on the kiosk for months and that LJKT demanded rent. That defendants did not reach an agreement or a settlement is not fraud. Whether defendants properly terminated the lease is a separate question—clearly, they were entitled to seek payment from a subtenant who doesn’t pay rent.

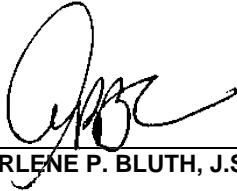
Moreover, this is not a case where plaintiff did anything. The alleged payment was supposed to come out of money already held by defendants. Plaintiff did not take any affirmative steps in reliance on the alleged promise by defendants. Rather, it seems that defendants simply changed their mind about a settlement.

Accordingly, it is hereby

ORDERED that the motion by defendants is granted only to the extent that the first cause of action is dismissed as to defendant Kryda and the fourth cause of action is dismissed, and denied as to the remaining relief requested and defendants are directed to answer pursuant to the CPLR.

Remote Conference: May 26, 2021.

2/5/2021  
DATE

  
ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE