

Barakat v Levi

2021 NY Slip Op 30501(U)

February 22, 2021

Supreme Court, Kings County

Docket Number: 504469/20

Judge: Leon Ruchelsman

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

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HOSSAM E. BARAKAT,
Plaintiff, Decision and order

- against - Index No. 504469/20

OZ LEVI, WB PARK AVENUE LLC, TRIBECA EQUITIES
LLC, 1815 PARK AVENUE ACQUISITION LLC,
Defendants, February 22, 2021

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PRESENT: HON. LEON RUCHELSMAN

The defendants have moved and cross moved seeking to dismiss the complaint. The plaintiff has also moved seeking a default judgement. Papers were submitted by the parties and arguments held. After reviewing all the argument this court now makes the following determination.

According to the complaint the plaintiff leased a store front from the defendant at 100 East 125th Street in New York county from an entity 1815 Parl Hotel Associates LLC. The lease commenced on September 15, 2009 and was for a period of ten years. Thereafter the lessor transferred their interest in the property to the defendants WB Park Avenue LLC, Tribeca Equities LLC and Oz Levi. The plaintiff fell behind in rental payments and by February 2018 owed \$133,949.06 in back rent. Thus, on February 28, 2018 the parties entered into a stipulation whereby the plaintiff agreed to vacate the premises and release all claims against the defendants and that the defendants would release all claims against the plaintiff. The complaint further

asserts that on June 12, 2014 the plaintiff entered into a surrender agreement relinquishing his rights and interests in the 2009 lease in exchange for \$350,000. Pursuant to the surrender agreement the plaintiff was paid \$35,000 and was to be paid the remainder upon vacating the premises. The plaintiff asserts the defendants never established a closing date and thus breached the surrender agreement. The complaint alleges the defendants began to harass the plaintiff, turned off the gas and water and placed scaffolding in front of the premises which constituted a constructive eviction. The complaint alleges causes of action for breach of contract, unjust enrichment, constructive eviction, fraud, negligence and negligent infliction of emotional distress. The defendants have now moved seeking to dismiss the complaint on the grounds it fails to allege any cause of action.

Conclusions of Law

"[A] motion to dismiss made pursuant to CPLR §3211[a][7] will fail if, taking all facts alleged as true and according them every possible inference favorable to the plaintiff, the complaint states in some recognizable form any cause of action known to our law" (AG Capital Funding Partners, LP v. State St. Bank and Trust Co., 5 NY3d 582, 808 NYS2d 573 [2005]). Whether the complaint will later survive a motion for summary judgment, or whether the plaintiff will ultimately be able to prove its claims, of course, plays no part in the determination of a pre-

discovery CPLR 3211 motion to dismiss (see, EBC I, Inc. v. Goldman Sachs & Co., 5 NY3d 11, 799 NYS2d 170 [2005]).

It is well settled that a stipulation or settlement agreed in open court should not thereafter be disturbed by the court (Itoko Suzuki v. Peters, 12 AD3d 612, 784 NYS2d 393 [2d Dept., 2004]). Indeed, a court should not disturb a settlement unless some fraud or mistake or some other significant reason presents itself mandating changing the settlement terms (Maury v. Maury, 7 AD3d 585, 776 NYS2d 489 [2d Dept., 2004]).

The 'Stipulation of Settlement' provides that each party will release the other from any claims, rights or demands which each party may have against the other. Thus, paragraph 20 states that the plaintiff herein "hereby waives and releases any and all claims against Petitioner [defendant's herein], its predecessors and successors in interest, including all shareholders, assigns, partners, officers, directors and any other person or entity which he may now or hereafter have a direct or indirect equitable or beneficial interest in the relating to the Lease and Respondent's occupancy of the Premises from the beginning of time to the date hereof" (id). Likewise, Paragraph 21 states that defendants "hereby waives and releases any and all claims against Respondent [plaintiff herein], its predecessors and successors in interest, including all shareholders, assigns, partners, officers, directors and any other person or entity which he may

now or hereafter have a direct or indirect equitable or beneficial interest in the relating [sic] to the Lease and Respondent's occupancy of the Premises from the beginning of time to the date hereof" (id). It is thus true that no party can sue the other regarding any claims for any conduct that took place before the date of that agreement. Thus, a general release by its very nature settles not only specific differences between the parties but all claims of every character, even those unknown, as long as they arose prior to the date of the release.

In this case the Stipulation of Settlement states the release is in effect for all past claims the parties ever had or against each other. This includes any provisions of the stipulation of settlement and it also includes any claims that may arise out of the surrender agreement dated June 12, 2014. Further, there has been no evidence presented the surrender agreement was executed by defendant Oz Levi in his individual capacity. That agreement is executed by the plaintiff and the "new landlord Tribeca Equities LLC and signed by Levi. Clearly, Levi was signing on behalf of Tribeca Equities. Therefore, the stipulation and settlement released any and all claims that may flow from that surrender agreement.

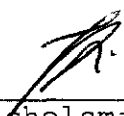
Thus, the plaintiff cannot maintain any claims against the defendants because all such potential claims have been released pursuant to the stipulation and settlement executed February 28,

2018. That release includes any claims base upon the surrender agreement or any other activity such as constructive eviction and negligence that arose any other time. All such claims are barred. Thus, the motions seeking to dismiss the complaint are all granted. The motion seeking a default is denied.

So ordered.

ENTER:

DATED: February 22, 2021
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC