

Core Dev. Group, LLC v Charles H. Greenthal Mgmt. Corp.
2021 NY Slip Op 30587(U)
March 1, 2021
Supreme Court, New York County
Docket Number: 652160/2020
Judge: Debra A. James
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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. DEBRA A. JAMES **PART** **IAS MOTION 59EFM**

Justice

-----X

CORE DEVELOPMENT GROUP, LLC,

Plaintiff,

- v -

CHARLES H. GREENTHAL MGMT. CORP., 85TH
ESTATES COMPANY, CORE MANAGEMENT NY, LLC,
FATION SPAHO, and BESNIK SPAHO,

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 31, 32, 33, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 49, 50, 51, 52, 53, 54, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 83

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

ORDER

Upon the foregoing documents, it is

ORDERED that the motion of plaintiff for a preliminary injunction is DENIED and the temporary restraining order issued on June 12, 2020 is vacated and lifted; and it is further

ORDERED that the cross motion of defendants to dismiss is granted only to the extent that the second, third, fourth, fifth, seventh, eighth, tenth, eleventh and twelfth causes of action of the complaint are dismissed; and it is further

ORDERED that defendants Core Management NY, LLC, Fation Spaho and Besnik Spaho are directed to serve (an) answer(s) to the complaint, posting upon NYSCEF, within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to post a proposed preliminary conference order or proposed counter preliminary conference order to NYSCEF on April 3, 2021.

DECISION

As the purpose of a preliminary injunction is to maintain the status quo, to the extent that plaintiff seeks an order granting it immediate access to the premises, such relief is unavailable. With regards to plaintiff's application for provisional relief concerning money, i.e., the collection of rent, plaintiff has not shown irreparable damage. In the case of the plaintiff's request that this court order the return of its security deposit, such ultimate relief is not available as a provisional remedy. See Spectrum Stamford, LLC v 400 Atlantic Title, LLC, 162 AD3d 615 (1st Dept 2018).

Plaintiff's second cause of action for breach of implied covenant of good faith and fair dealing and eighth cause of action for return of the security deposit are duplicative of its first cause of action for breach of contract. As plaintiff does not allege that it vacated the premises due to defendant 85th Estates breach of the covenant of quiet enjoyment, its fourth cause of action also fails. See Pier 59 Studios LP v Chelsea Piers LP, 27 AD3d 217, 218 (1st Dept. 2006).

The third cause of action of fraud is inadequately pled as there is no allegation that any of the defendants made false representations to plaintiff, as opposed to each other. See Pasternack v Laboratory Corp of America Holdings, 27 NY3d 817

(2016). Likewise, as plaintiff does not allege that it detrimentally relied on any false representation made to it, the fifth cause of action for fraudulent inducement is likewise inadequately pled. See Meyercord v Curry, 38 AD3d 315 (1st Dept 2007).

Nor is plaintiff's seventh cause of action for violation of RPAPL § 853 meritorious, as the signing of a lease renewal does not constitute an unlawful ejectment.

Plaintiff has not alleged "a relationship of trust and confidence giving rise to fiduciary duties", and thus the eleventh cause of action for breach of fiduciary duty fails to state a cause of action. See RNK Capital LLC v Natsource LLC, 76 AD3d 840, 841 (1st Dept 2010).

Nor does plaintiff make any allegations about consumer-oriented conduct on the part of any of the defendants in its twelfth cause of action for violation of General Business Law § 349. See New York University v Continental Insurance Company, 87 NY2d 308, 320-321 (1995). Thus, it must be dismissed for lack of merit.

Plaintiff alleges that it has a written lease with defendant Charles H Greenthal Management Corp, as agent of defendant owner 85th Estates Company, which the latter companies do not deny. See Desmangles v Woodside Management, Inc, 107 AD3d 551 (1st Dept 2013). Therefore, the tenth cause of action for unjust enrichment, which is based upon such written lease, is not viable.

In the action at bar, plaintiff has joined Charles H. Greenthal Mgmt Corp and 85th Estates Company, two defendants in addition to those named in Core Development Group, LLC v Spaho (Index No. 152684/2019, Perry, J) (Core Development Group v Spaho). Such new defendants are added on issues germane to the defendants in the original action. Further, as such additional defendants are independent of and not affiliated with such original defendants, it cannot be said that there is "substantial identity" among parties in the two lawsuits. See White Light Productions, Inc v On the Scene Productions, Inc, 231 AD2d 90, 93-94 (1st Dept 1997). Thus, defendants are not entitled to relief pursuant to CPLR 3211(a)(4).¹

Defendants set forth no basis for dismissal of the ninth cause of action for conversion pursuant CPLR 3211(a)(7), as plaintiff has supplied to the complaint at bar the factual allegations that were found wanting in Core Development Group v Spaho, the prior, and since dismissed, action.

Debra A. James

20210301185554DJAMES5F09F479EC8C471FA96FFA6ACAB8A4EF

<u>3/1/2021</u> DATE					<u>DEBRA A. JAMES, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

¹The court also sua sponte takes judicial notice of the decision dated October 28, 2020 in Core Development v Spaho, which dismissed in its entirety the complaint therein. Thus, there is no longer any prior action pending pursuant to CPLR 3211(a)(4).