

36 St. Realty Mgt. LLC v New York Pubs, Inc.

2021 NY Slip Op 31828(U)

May 28, 2021

Supreme Court, New York County

Docket Number: 651630/2021

Judge: Arlene P. Bluth

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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

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36 STREET REALTY MANAGEMENT LLC,

Plaintiff,

- v -

NEW YORK PUBS, INC. D/B/A THE GINGER MAN, BOB
PRECIOUS

Defendant.

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INDEX NO. 651630/2021

MOTION DATE 05/27/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 15, 16, 17, 18, 19, 20, 21, 22

were read on this motion to/for DISMISSAL.

The motion by defendant Bob Precious (“Guarantor”) to dismiss the complaint against him and for an award of damages is granted in part and denied in part.

Background

The instant action concerns a commercial landlord tenant dispute. Plaintiff claims that defendant New York Pubs, Inc. dba The Ginger Man (the “Tenant”) has not paid any rent since March 2020. The Guarantor moves to dismiss the claims against him on the ground that the New York City Administrative Code bars recovery against an individual guarantor where the default was due the ongoing pandemic. He also seeks statutory damages under the same provision.

In opposition, plaintiff claims that the relevant provisions of the Administrative Code only apply to guaranties that were specifically referenced in the underlying lease. It contends that because the lease at issue here is silent with respect to the guaranty, it does not apply to the instant situation.

In reply, the Guarantor points out that plaintiff is relying on the wrong version of the Administrative Code and that it was amended (before this case was commenced) to make clear that it applied to stand-alone guaranties.

Discussion

The subject provision provides that:

Personal liability provisions in commercial leases.

A provision in a commercial lease or other rental agreement involving real property located within the city, or relating to such a lease or other rental agreement, that provides for one or more natural persons who are not the tenant under such agreement to become, upon the occurrence of a default or other event, wholly or partially personally liable for payment of rent, utility expenses or taxes owed by the tenant under such agreement, or fees and charges relating to routine building maintenance owed by the tenant under such agreement, shall not be enforceable against such natural persons if the conditions of paragraph 1 and 2 are satisfied:

1. The tenant satisfies the conditions of subparagraph (a), (b) or (c):

(a) The tenant was required to cease serving patrons food or beverage for on-premises consumption or to cease operation under executive order number 202.3 issued by the governor on March 16, 2020;

(b) The tenant was a non-essential retail establishment subject to in-person limitations under guidance issued by the New York state department of economic development pursuant to executive order number 202.6 issued by the governor on March 18, 2020; or

(c) The tenant was required to close to members of the public under executive order number 202.7 issued by the governor on March 19, 2020.

2. The default or other event causing such natural persons to become wholly or partially personally liable for such obligation occurred between March 7, 2020 and March 31, 2021, inclusive.

(Administrative Code of City of NY § 22-1005).

Plaintiff does not dispute the Guarantor's contention that the default (the failure to pay rent) at issue here was caused by the ongoing pandemic. Instead, its opposition offers only one argument- that the language of this provision does not apply to a stand-

alone guaranty. This Court disagrees. The fact is that the New York City Council amended Section 22-1005 to clarify “its intent by stating that it applies to all personal guarantor agreements, regardless of whether those agreements were contained in the original lease or not” (*267 Dev., LLC v Brooklyn Babies and Toddlers, LLC*, 2021 N.Y. Slip Op. 30796[U], 2 [Sup Ct, Kings County 2021]).

However, the Court denies the Guarantor’s request for damages pursuant to Administrative Code Section 22-902(a)(14) under the theory that plaintiff is guilty of commercial tenant harassment. That provision defines harassment to include “attempting to enforce a personal liability provision that the landlord knows or reasonably should know is not enforceable pursuant to section 22-1005 of the code.” The Court is unable to conclude that the landlord “knew” or “reasonably should have known” that the guaranty was not enforceable on a motion to dismiss. Such a conclusion would require the Court to make a factual finding before any discovery was exchanged. The Guarantor could have chosen to answer and counterclaim for this relief; instead, he decided to move to dismiss.

Moreover, the Guarantor does not attach evidence demonstrating the plaintiff’s knowledge about the subject provision, such as an email demanding that plaintiff withdraw its claims prior to making the instant motion. The Court cannot simply guess or speculate that plaintiff knew or should have known based on these papers.

Accordingly, it is hereby

ORDERED that the motion by defendant Bob Precious is granted to the extent that the claims against him are severed and dismissed, and the Clerk is directed to enter judgment accordingly along with costs and disbursements upon presentation of proper papers therefor; and it is further

ORDERED that the motion is denied to the extent it sought damages arising from alleged harassment.

Remote Conference: September 29, 2021.



5/28/2021

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