Cinema World Prods., Inc. v MBA-Brooklyn LLC.
2021 NY Slip Op 33248(U)
March 18, 2021
Supreme Court, Kings County
Docket Number: Index No. 503698/2021
Judge: Leon Ruchelsman

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

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CINEMA WORLD PRODUCTS, INC.,

Plaintiff, Decision and order

- against - Index No. 503698/2021

MBA-BROOKLYN LLC., T. CO METALS, INC. &
John Does 1, 2, & 3,

Defendants, March 18, 2022

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PRESENT: HON. LEON RUCHELSMAN

The defendants have moved seeking to reargue a decision and order dated December 16, 2021 which granted the plaintiff an injunction. The plaintiff has cross-moved seeking summary judgement. The motions have been opposed respectively. Papers were submitted by the parties and after reviewing all the arguments this court now makes the following determination.

As recorded in the prior order, on April 11, 1990 the plaintiff tenant entered into a lease with the defendant landlord concerning rental space located at 220 Dupont Street in Kings County. The lease was amended on March 27, 2002 and provided a termination date of April 30, 2011. On April 22, 2011 the parties entered into a third amendment which extended the lease until April 30, 2021. The court held there were questions of fact whether the tenant exercised the lease renewal options and granted an injunction pending the resolution of the lawsuit. The defendants now seek to reargue that determination on the grounds

the tenant has failed to timely continue to pay rent and on the grounds the court did not impose a bond. The tenant has cross-moved seeking summary judgement that as a matter of law the lease renewal was proper.

Conclusions of Law

Where the material facts at issue in a case are in dispute summary judgment cannot be granted (Zuckerman v. City of New York, 49 NYS2d 557, 427 NYS2d 595 [1980]). Generally, it is for the jury, the trier of fact to determine the legal cause of any injury, however, where only one conclusion may be drawn from the facts then the question of legal cause may be decided by the trial court as a matter of law (Marino v. Jamison, 189 AD3d 1021, 136 NYS3d 324 [2d Dept., 2021).

Paragraph 8(a) of the Second Amendment provides that any options to extend the terms of the lease "shall be exercised by Tenant giving notice to Landlord...at least one hundred eighty (180) days before the first day of the related Extension Term" (id). This provision does not specify the form of such notice. However, paragraph 28 of the original lease states that "any notice by Tenant to Owner must be served by registered or certified mail addressed to Owner" (id). The tenant argues that Paragraph 8 of the second amendment governs because the paragraph defines such notice as an 'option notice' clearly indicating the

primacy of any form of notice. Further, the plaintiff asserts that other notice provisions even within paragraph 8 require written notice thereby stressing the notice of any renewal option may be furnished in any manner. However, paragraph 28 of the original lease clearly requires that "any notice" must be in writing. Thus, the contracts do not exhibit an ambiguity which can be interpreted against the drafter, rather there are questions which provision governs this case, specifically whether any notice permitted by paragraph 8 of the second amendment overrides the written notice required by paragraph 28. While an explicit provision should generally prevail over an implicit one indicating that written notice is required, a summary determination cannot be made at this time that the notice provided complied with the lease and amendments.

The tenant offers two other reasons why summary judgement should be granted. The first is that the course of conduct exhibits by the parties in the past effectively constituted a waiver of any writing requirement for any notices. Second, the plaintiff argues equity demands the mere failure to serve written notice should be waived since the failure was inadvertent and non-wilful. While those reasons are compelling and might ultimately enable the plaintiff to prevail it cannot be said at this time that there are no questions of fact whether the

defendant waived the writing requirement or whether the court should simply ignore a provision of the lease agreement because enforcing that provision would cause losses to the plaintiff.

Therefore, based on the foregoing the motion seeking summary judgement is denied.

Turning to the motion seeking reargument it is based upon the fact the tenant has failed to pay rent as required by the prior order. However, a review of the demands for such rent reveal they consist of property taxes imposed and late fees. Those matters were not subject to the original motion and are not a basis upon which to seek reargument. If the parties dispute whether such taxes are due they can be litigated in the ordinary course as all such disputes which arise. This issue is not proper within a motion to reargue.

Further, the defendant has not raised any information seeking to alter the court's prior decision declining to impose the posting of an undertaking at this time. Therefore, the motion seeking reargument is denied.

So ordered.

ENTER:

DATED: March 18, 2021
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC