

3 W. 16th St. LLC v Reid
2022 NY Slip Op 30414(U)
February 3, 2022
Supreme Court, New York County
Docket Number: Index No. 656627/2020
Judge: Louis L. Nock
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LOUIS L. NOCK PART 38M

Justice

-----X

3 WEST 16TH STREET LLC,
Plaintiff,

- v -

JEREMY REID, PINCHME GROUP INC., JOHN DOE, JANE
DOE,

Defendants.

-----X

INDEX NO. 656627/2020
MOTION DATE 05/21/2021
MOTION SEQ. NO. 002

DECISION + ORDER ON
MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 15, 16, 17, 18, 19,
20, 21, 22, 23, 24, 26

were read on this motion to/for DISMISSAL

LOUIS L. NOCK, J.

Upon the foregoing documents, it is hereby ordered that:

Defendants' motion to dismiss the complaint for failure to state a cause of action pursuant
to CPLR 3211(a)(7) is granted in part and denied in part based upon the following memorandum
decision.

Background

In this action for breach of contract, defendants Jeremy Reid ("Reid") and PINCHMe
Group Inc. ("PINCHme") move to dismiss the complaint against them.

Pursuant to a lease dated January 23, 2015, plaintiff 3 West 16th Street LLC ("plaintiff")
leased the fourth floor of the building located at 3 West 16th Street, New York, NY to Reid, for a
term running from January 23, 2015 through May 31, 2016 (NYSCEF Doc. No. 22). At Reid's
request, plaintiff also entered into a nearly identical lease for the premises with Reid's company
PINCHme, for a term running from January 23, 2015 through December 31, 2021 (NYSCEF

Doc. No. 18). Plaintiff and Reid renewed Reid's lease several times by email, eventually running through December 31, 2021 (NYSCEF Doc. No. 22 at 13-17).

On August 3, 2020, Reid notified plaintiff that he would be vacating the premises prior to the end of the term, and did so on August 31, 2020 (NYSCEF Doc. No. 17, ¶ 17). Pursuant to the lease terms, defendants remained responsible for the rent for the remainder of the lease term, and were liable to plaintiff for the difference between the lease rent and rent collected from subsequent tenants over the remaining term of the lease, plaintiffs' expenses in reletting the premises, and plaintiff's reasonable attorney's fees (NYSCEF Doc. No. 18, ¶¶ 15-17; NYSCEF Doc. No. 22, ¶¶ 15-17). Plaintiff now alleges three causes of action for breach of the lease agreements and one cause of action for unjust enrichment against defendants stemming from defendants vacating the premises.

Plaintiff commenced this action by filing a summons and complaint on November 30, 2020 (NYSCEF Doc. No. 1). Defendants appeared and filed the instant pre-answer motion to dismiss.

Standard of Review

“On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction” (*Leon v Martinez*, 84 NY2d 83, 87 [1994]). “[The court] accept[s] the facts as alleged in the complaint as true, accord[ing] plaintiffs the benefit of every possible favorable inference, and determin[ing] only whether the facts as alleged fit within any cognizable legal theory” (*Id.* at 87-88). Ambiguous allegations must be resolved in plaintiff's favor (*JF Capital Advisors, LLC v Lightstone Group, LLC*, 25 NY3d 759, 764 [2015]). “The motion must be denied if from the pleadings' four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law” (*511 West 232nd Owners Corp. v Jennifer*

Realty Co., 98 NY2d 144, 152 [2002] [internal citations omitted]). “[W]here ... the allegations consist of bare legal conclusions, as well as factual claims either inherently incredible or flatly contradicted by documentary evidence, they are not entitled to such consideration” (*Ullmann v Norma Kamali, Inc.*, 207 AD2d 691, 692 [1st Dept 1994]).

Discussion

Breach of Contract (First through Third Causes of Action)

Plaintiff alleges three causes of action for breach of contract: expenses relating to rent due once plaintiff relet the premises and plaintiff’s related expenses, attorney’s fees, and the difference between the rent owed under the lease and the rent paid by the subsequent tenant. A breach of contract requires allegations of “the existence of a contract, the plaintiff’s performance thereunder, the defendant’s breach thereof, and resulting damages” (*Harris v. Seward Park Housing Corp.*, 79 AD3d 425 [1st Dept 2010]).

Here, plaintiff has attached the Reid and PINCHme leases to the complaint (NYSCEF Doc. Nos. 2-3), submitted the email renewals between plaintiff and Reid renewing the Reid lease through December 31, 2021 (NYSCEF Doc. No. 22), and adequately alleged that plaintiff performed under and has been damaged by defendants’ breaches of both leases. Defendants argue that the Reid lease has expired and therefore the complaint must be dismissed against Reid. The emails between the parties, however, at least at the motion to dismiss stage, evidence an intent to renew the Reid lease, as the PINCHme lease ran through December 31, 2021 at its inception, and thus would not need to be renewed (NYSCEF Doc No. 18; NYSCEF Doc. No. 22 at 13-17). *Schwartzman v Weintraub* (43 AD2d 683 [1st Dept 1973]), cited by defendants, is inapposite, as there the court was construing one contract rather than two. Similarly unavailing is *Chelsea Dynasty, LLC v Berg* (2013 WL 6980460 [Sup Ct NY County, Nov. 25, 2013]), in

which the court in that case construed a subsequent agreement's effect on a prior agreement, rather than two contemporaneous agreements. Defendants make mention of COVID-19-related executive orders; but Reid was still occupying the premises as his residence, and plaintiff directs the court's attention to a November 2020 press release by PINCHme announcing financial success in 2020 (*see*, NYSCEF Doc. No. 23). Notably, that press release goes as far as saying: "We are confident that 2020 has laid the foundation for a strong 2021 as the market shift due to the impact of COVID-19 continues to benefit the PINCme business model" (*id.*). Those factors raise issues of fact that affect the contractual and equitable defenses of impossibility of performance, unclean hands, and bad faith. They cannot be resolved on a motion to dismiss (*e.g.* *Williams v Citigroup, Inc.*, 104 AD3d 521, 522 [1st Dept 2013]).

Finally, defendants argue that the second cause of action for attorney's fees should be dismissed, as plaintiff is not the prevailing party, and thus, is not entitled to attorney's fees. Plaintiff's claims remain active, however, and dismissal on this ground would be premature.

Unjust Enrichment (Fourth Cause of Action)

Plaintiff alleges that defendants have been unjustly enriched by their failure to pay the amount of rent due under the lease prior to reletting the premises and plaintiff's reletting expenses. To state a claim for unjust enrichment, a plaintiff must show "that (1) the other party was enriched, (2) at that party's expense, and (3) that it is against equity and good conscience to permit [the other party] to retain what is sought to be recovered" (*Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 182 [2011] [internal citations omitted]). "The existence of a valid and enforceable written contract governing a particular subject matter ordinarily precludes recovery in quasi contract for events arising out of the same subject matter" (*Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 388 [1987]). Here, as both the Redi and PINCHme leases

cover the subject matter of plaintiff's claim, the cause of action for unjust enrichment must be dismissed.

Accordingly, it is hereby

ORDERED that the motion to dismiss is granted in part and the fourth cause of action of the complaint is dismissed; and it is further

ORDERED that defendants are directed to serve an answer to the complaint 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 appear for a virtual preliminary conference via Microsoft Teams, on March 23, 2022, at 10 AM.

This constitutes the Decision and Order of the court.

ENTER:

<u>2/3/2022</u>			<u>LOUIS L. NOCK, J.S.C.</u>
DATE			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE