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

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JACK G. COURT STREET LLC,

Plaintiff, Decision and order

- against - Index No. 500395/2022

16 COURT STREET BROOKLYN OWNER LLC,

Defendant, April 18, 2022

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PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved seeking a Yellowstone injunction. The defendant has opposed the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments, this court now makes the following determination.

On January 12, 2007 the plaintiff tenant entered into a lease with landlord concerning the rental of space located at 16 Court Street, suite 2211 in Kings County. The lease expired on December 31, 2021. On December 15, 2011 the parties executed a lease modification which removed ay rental increases and allowed for a lease extension. Pursuant to Paragraph 6.01 of a lease modification the "tenant must give Landlord written notice of Tenant's intention to exercise such option no later than three hundred sixty-five (365) days prior to the Expiration Date, as to which date time is of the essence" (id). Thus, on December 31, 2020 the tenant sent an email to landlord requesting an extension of the lease. Approximately a week later the landlord's broker responded with specific terms upon which they would renew the lease. The landlord argues that "certainly" the landlord's

broker "did not treat Tenant's December 31, 2020 informal email as an exercise of the Extension Option" (see, Affirmation in Opposition, ¶ 15). The landlord insists this must be true because if the tenant merely sought to exercise its option then there would have been no terms that could have changed and no negotiations would have been possible. The simple fact the landlord presented new terms necessarily means they did not accept the lease renewal option from tenant and were now proposing new terms. However, the letter from the landlord's broker actually states that "pursuant to your recent email sent 12/31/2020, outlined below please find the following terms and conditions which the Landlord is prepared to provide a lease amendment to renew Jack G. Court LLC" (see, Letter dated January 8, 2021, included within Exhibit 3 of Defendant's opposition [NYSCEF #23]). A 'lease amendment' does not reasonably imply a new lease. Morever, the only significant term the landlord sought to change was the amount of rent per square foot. Indeed, the lease modification itself stated that rent during the extension period would be calculated based upon fair market rental value and that "nine months before the expiration date as initially herein set forth, Landlord and Tenant shall commence negotiations in good faith to attempt to agree upon the FMRV" (Lease Renewal, ¶ 6.01(1)). Thus, negotiations concerning rent does not indicate the landlord rejected the tenant's lease

renewal request. Moreover, the broker's letter lists eleven categories of items including building access, electricity, escalations, subleasing, heating ventilation and air conditioning where the letter states "pursuant to tenant's existing lease" (supra). It is difficult to reasonably imagine that the landlord was not entertaining the renewal of the lease at all yet referenced that lease eleven times. It is true that the tenant sought additional and different terms, however, those proposals do not alter the landlord's posture captured by the broker's letter. Therefore, it was reasonable for the tenant to consider the landlord had, in fact, accepted the renewal option.

Further, while Paragraph 28 of the original lease does state that all notices must be served by registered or certified mail, it was reasonable for the tenant to believe the renewal lease abrogated that strict requirement since it made no mention of the method of service of any renewal request. Nor could the parties have assumed that paragraph 28 would act as a default provision requiring such service since the lease modification was new and merely required "written notice" (supra).

Lastly, any ongoing negotiations do not undermine the existence of the renewal option. Thus, the lease did not expire on December 31, 2021.

On December 31, 2021 the landlord served the defendant with a notice to cure based upon outstanding rents that remain due.

The plaintiff has moved seeking a Yellowstone injunction arguing either the default is baseless or that in any event it can readily be cured.

A Yellowstone injunction is a remedy whereby a tenant may obtain a stay tolling the cure period "so that upon an adverse determination on the merits the tenant may cure the default and avoid a forfeiture" (Graubard Mollen Horowitz Pomeranz & Shapiro v. 600 Third Ave. Assocs., 93 NY2d 508, 693 NYS2d 91 [1999], First National Stores v. Yellowstone Shopping Center Inc., 21 NY2d 630, 290 NYS2d 721 [1968]). For a Yellowstone injunction to be granted the Plaintiff, among other things, must demonstrate that "it is prepared and maintains the ability to cure the alleged default by any means short of vacating the premises" (Graubard, supra).

Thus, a tenant seeking a Yellowstone must demonstrate that (1) it holds a commercial lease, (2) it has received from the landlord a notice of default, (3) its application for a temporary restraining order was made prior to expiration of the cure period and termination of the lease, and (4) it has the desire and ability to cure the alleged default by any means short of vacating the premises (see, Xiotis Restaurant Corp., v. LSS Leasing Ltd. Liability Co., 50 AD3d 678, 855 NYS2d 578 [2d Dept., 2008]).

The existence of the defaults are disputed by the plaintiff

as constituting defaults. Thus, the plaintiff does not assert that it unequivocally is unwilling to cure any defaults (Metropolis Westchester Lanes Inc., v. Colonial Park Homes Inc., 187 AD2d 492, 589 NYS2d 570 [2d Dept., 1992]), but rather no such defaults exist. Therefore, if such defaults are found to exist, the plaintiff states that "they can and will cure any sums actually due" (Affirmation in Support, ¶ 9) thereby curing the defaults (see, ERS Enterprises, Inc., v. Empire Holdings LLC, 286 AD2d 206, 729 NYS2d 23 [1st Dept., 2001]).

The dispute whether the plaintiff tenant owes any rent stems from a decision issued by Judge Garson on July 10, 2019 and to what extent, if any, such decision altered an earlier decision of Judge Thompson dated March 1, 2016. While it is curious the landlord or any party never sought to reargue or seek clarification of that decision the parties have not properly briefed what is essentially summary judgement regarding this issue.

Therefore, the plaintiff has satisfied all the elements necessary to obtain a Yellowstone injunction and the motion seeking such injunction is granted at this time. The parties are free to seek clarification from the Civil Court or alternatively make any further motions, with sufficient briefing, concerning the prior Civil Court decisions and to the extent those decisions can conclusively resolve the rent issue in this case.

Thus, the motion seeking a Yellowstone injunction is granted.

So ordered.

ENTER:

DATED: April 18, 2022
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC