

Reed v Saint at Large, Inc.

2022 NY Slip Op 31624(U)

April 11, 2022

Supreme Court, New York County

Docket Number: Index No. 151451/2021

Judge: Alexander Tisch

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This opinion is uncorrected and not selected for official publication.

and ultimately recover [] Estate assets” which include “real estate... a[n] [] art collection, and corporate assets,” which includes the property unit at issue in this action (NYSCEF Doc. No. 17 at ¶ 8, Plaintiff’s Surrogate’s Court Petition). That petition is currently pending in the Surrogate Court.

In February of 2021, plaintiff initiated this matter for ejectment and holdover use and occupancy damages, as she believes defendant’s lease expired by its own terms on November 11, 2020, leaving defendant no basis to claim possession or occupancy of the premises. Defendant now moves to dismiss this action pursuant to CPLR 3211 (a)(1) and CPLR 3211 (a)(4); or in the alternative, staying all proceedings in this action pending the determination of the Surrogate Court in Case No. 2016-3704/A.

A motion to dismiss a complaint based upon documentary evidence pursuant to CPLR 3211 (a) (1) “may be appropriately granted where the documentary evidence utterly refutes the plaintiff’s factual allegation, conclusively establishing a defense as a matter of law” (Goshen v Mutual Life Ins. Co. of N.Y., 98 NY2d 314, 326 [2002]). While a lease may properly qualify as “documentary” evidence, the “evidence must be unambiguous and of undisputed authenticity” (Fontanetta v Doe, 73 AD3d 78, 84–85 [2d Dept 2010]). Here, it cannot be said that the lease qualifies as “documentary evidence” in light of plaintiff’s argument as to the lease’s authenticity. In any event, the parties dispute the interpretation of the purported lease provisions, presenting issues as to at least one element of a claim for ejectment,² which cannot be resolved upon a motion to dismiss.

² To state a claim for ejectment, plaintiff must allege “(1) it is the owner of an estate in tangible real property, (2) with a present or immediate right to possession thereof, and (3) the defendant is in present possession of the estate” (RPAI Pelham Manor, LLC v Two Twenty Four Enterprises, LLC, 144 AD3d 1125, 1126 [2d Dept 2016]; see Jannace v Nelson, L.P., 256 AD2d 385, 385-86 [2d Dept 1998]).

“Pursuant to CPLR 3211(a)(4), a court has broad discretion in determining whether an action should be dismissed based upon another pending action where there is a substantial identity of the parties, the two actions are sufficiently similar, and the relief sought is substantially the same” (DAIJ, Inc. v Roth, 85 AD3d 959, 959 [2d Dept 2011], citing Whitney v Whitney, 57 NY2d 731, 732 [2d 1982]). “[W]hile a complete identity of parties is not a necessity for dismissal [or otherwise] under CPLR 3211(a)(4), there must be a ‘substantial’ identity of parties, ‘which generally is present when at least one plaintiff and one defendant is common in each action’” (Mason ESC, LLC v Michael Anthony Contr. Corp., 172 AD3d 1195, 1196 [2d Dept 2019], quoting Jaber v Elayyan, 168 AD3d 693, 694 [2d Dept 2019]). A court need not dismiss the action “before it where another relevant action is pending; rather, the court ‘may make such order as justice requires,’ including staying the proceeding pending the resolution of the other relevant action” (342 W. 30th St. Corp. v Bradbury, 30 Misc 3d 132[A], 2011 NY Slip Op 50037[U], 2011 WL 135257 [App Term 1st Dept 2011]; see CPLR 2201). “[A] court has broad discretion to grant a stay in order to avoid the risk of inconsistent adjudications, application of proof and potential waste of judicial resources” (Zonghetti v Jeromack, 150 AD2d 561, 562 [2d Dept 1989]).


The identity of the parties in the two separate proceedings are substantially similar. The only difference is Stephen Pevner is individually named in the Surrogate’s Court and not this case. Additionally, the claims and relief sought in each matter are substantially the same, contrary to plaintiff’s position. In the matter before the Surrogate’s Court, plaintiff seeks retrieval of assets she believes belongs to the estate and to eject defendant from the property (see NYSCEF Doc No 17). In this matter, plaintiff seeks ejectment of the defendant based on the belief that the property is owned by the estate or herself and that she has a present right to possession, as well as holdover use and occupancy damages.

Plaintiff asserts a stay is not warranted because the matter before the Surrogate’s Court will not determine all the questions present in this action, specifically, the holdover use and occupancy damages. Nevertheless, a resolution from the Surrogate’s Court will resolve whether plaintiff is entitled to the property, which will have a direct effect on plaintiff’s claims before this Court, including what amount of use and occupancy damages plaintiff is entitled to, if at all. Further, plaintiff’s claims to the extent asserted in her individual capacity would be preserved by the stay.

Accordingly, it is hereby ORDERED that the branch of the motion seeking to dismiss the complaint pursuant to CPLR 3211 (a) (1) is denied without prejudice; and it is further

ORDERED that the branch of the motion to dismiss the complaint pursuant to CPLR 3211 (a) (4) is granted to the extent that this matter is stayed pending the resolution of the turnover petition in New York County Surrogate’s Court under file no. 2016-3704/A.³

This constitutes the decision and order of the Court.

<u>4/11/2022</u> DATE	 ALEXANDER TISCH, J.S.C.			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	DENIED
			<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT

³ Upon resolution of the Surrogate’s Court petition, the parties may submit a stipulation to the Part Clerk to restore the matter to active status, set a time for defendant to file and serve an answer, and schedule a preliminary conference, as needed.