

SNL Leaseholder, LLC v Oakdale Rd. Holdings LLC
2022 NY Slip Op 33271(U)
September 30, 2022
Supreme Court, Broome County
Docket Number: Index No. EFCA2021002326
Judge: Eugene D. Faughnan
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At a Motion Term of the Supreme Court of the State of New York held in and for the Sixth Judicial District at the Broome County Courthouse, Binghamton, New York, on the 10th day of June 2022.

PRESENT: HON. EUGENE D. FAUGHNAN
Justice Presiding

STATE OF NEW YORK
SUPREME COURT : COUNTY OF BROOME

SNL LEASEHOLDER, LLC,

Plaintiff,

vs.

OAKDALE ROAD HOLDINGS LLC,

Defendant.

DECISION AND ORDER

Index No. EFCA2021002326

OAKDALE ROAD HOLDINGS LLC,

Counterclaim Plaintiff,

vs.

MICHAEL H. HUMPHREY and DAVID BOLTON,

Counterclaim Defendants.

APPEARANCES:

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and proposed Counterclaim
Defendants:

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EUGENE D. FAUGHNAN, J.S.C.

This matter is before the Court to consider the motion filed on behalf of Plaintiff, SNL Leaseholder, LLC (“SNL” or “Tenant”), and Counterclaim Defendants Michael W. Humphrey (“Humphrey”) and David Bolton, Esq. (“Bolton”). The motion, pursuant to CPLR 3211 (a)(1) and (a)(7), seeks to dismiss the First, Second, Third, Fifth, Sixth and Seventh Counterclaims contained in the Verified Amended Answer with Counterclaims filed by Oakdale Road Holdings LLC (“Oakdale” or “Landlord”).¹ Humphrey is the sole member of Plaintiff SNL, and Bolton is attorney for SNL. The parties appeared for oral argument before the Court on June 10, 2022. After due deliberation, this constitutes the determination of this Court.

BACKGROUND FACTS

In a case that is distinguishing itself based on the number of motions made against the pleadings even before discovery has been undertaken, the current issue is focused on Oakdale’s counterclaims. The Court has written two prior Decisions in this case, and the underlying facts are set forth in those prior Decisions and will only be highlighted here. By Decision and Order dated March 4, 2022, the Court denied Plaintiff’s motion for default judgment, and granted Defendant’s motion to serve a late Answer. Plaintiff appealed that Decision and Order, and oral argument is scheduled on the appeal in front of the Third Department on October 12, 2022. This Court rendered a second Decision and Order on May 25, 2022, which granted Plaintiff’s motion to dismiss Oakdale’s Amended Complaint/Counterclaim, as this was not a situation where third-party practice was appropriate. The Court concluded that any cross-claims or counterclaims needed to be asserted by way of an Answer. Thus, Oakdale was limited to its Verified Amended Answer with Counterclaims dated March 16, 2022.

The underlying facts can be briefly summarized. In March 2020, SNL and Oakdale entered into a Lease agreement, whereby SNL (Tenant) leased certain commercial property from Oakdale (Landlord). Humphrey signed on behalf of SNL, and he also executed a personal guaranty. Paragraph 9 of the Lease entitled “Lessor’s Work” identified certain repairs/alterations that Oakdale would be responsible to perform, with SNL making periodic payments in

¹ All the papers filed in connection with the motion and cross motion are included in the NYSCEF electronic case file, and have been considered by the Court.

consideration of the work being done. That paragraph also stated that rent payments would be abated from the Commencement Date [March 17, 2020] until Lessor's Work was substantially completed such that SNL could use the premises for its intended purposes, including a valid Certificate of Occupancy to be obtained by Oakdale. If the Lessor's Work was not substantially completed and a Certificate of Occupancy obtained within 150 days of the Commencement Date then SNL would be entitled to terminate the Lease and obtain a refund of all rent and other monies paid. The parties subsequently entered into an amendment of the Lease (First Amendment) on October 9, 2020, which extended Oakdale's time to substantially complete Lessor's Work and obtain a Certificate of Occupancy to December 31, 2020. Disputes arose between the parties, and SNL took the position that Oakdale had not substantially performed its obligations under the contract because it had not obtained a Certificate of Occupancy. By written notice dated July 3, 2021, SNL chose to terminate the Lease and seek a refund of amounts it had already paid. SNL subsequently commenced this action to recover those amounts.

Oakdale claims that it was Plaintiff who breached the Lease by not paying rents due under the Lease. Oakdale also seeks to recover from Humphrey under the guaranty. A clause in the Lease provided that Humphrey would sign a personal guaranty that would be effective for 18-months. Although a draft of the guaranty had the 18-month duration, the guaranty that was eventually signed was only effective for 180 days.

Oakdale's Verified Amended Answer with Counterclaims sets forth seven counterclaims: 1) breach of contract against SNL, 2) declaratory judgment of the parties' rights under the Lease and Amendment to the Lease, 3) breach of contract under the guaranty against Humphrey, 4) reformation of the guaranty based on mutual mistake, 5) reformation of the guaranty based on scrivener's error, 6) reformation of the guaranty based on unilateral mistake induced by fraud committed by Bolton and Humphrey, and 7) money damages due to fraud committed by Bolton and Humphrey. SNL, Humphrey and Bolton seek dismissal of all the counterclaims except for the fourth counterclaim.²

² In their Reply Memorandum, SNL, Humphrey and Bolton withdrew a portion of their motion. That will be discussed in greater detail below.

LEGAL DISCUSSION AND ANALYSIS

“On a motion to dismiss made pursuant to CPLR 3211, a court should construe the pleadings liberally, accept the allegations as true and afford the party opposing the motion the benefit of every possible inference to determine whether the facts alleged fit within a cognizable legal theory.” *T. Lemme Mech., Inc. v. Schalmont Cent. School Dist.*, 52 AD3d 1006, 1008 (3rd Dept. 2008) (citations omitted); *see, EBC I, Inc. v. Goldman Sachs & Co.*, 5 NY3d 11, 19 (2005); *Leon v. Martinez*, 84 NY2d 83, 87 (1994); *Kreamer v. Town of Oxford*, 91 AD3d 1157 (3rd Dept. 2012); *Stainless Broad. Co. v. Clear Channel Broad. Licenses, L.P.*, 58 AD3d 1010 (3rd Dept. 2009). The “ultimate criterion is whether the proponent of the pleading has a cause of action, not whether he [or she] has stated one.” *Schmidt & Schmidt, Inc. v. Town of Charlton*, 68 AD3d 1314, 1315 (3rd Dept. 2009), *quoting Leon v. Martinez*, 84 NY2d at 88. The court should not make factual determinations on a motion to dismiss. *See, Niagara Mohawk Power Corp. v. State*, 300 AD2d 949 (3rd Dept. 2002). “Notwithstanding the broad pleading standard, bare legal conclusions with no factual specificity do not suffice to withstand a motion to dismiss ...[and] ‘[d]ismissal ... is warranted if the [pleading] fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery.’” *Mid-Hudson Valley Fed. Credit Union v. Quartararo & Lois, PLLC*, 155 AD3d 1218, 1219 (3rd Dept. 2017) [internal citations omitted] *quoting Connaughton v. Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 (2017).

“A motion to dismiss pursuant to CPLR 3211 (a) (1) will be granted only if the ‘documentary evidence resolves all factual issues as a matter of law, and conclusively disposes of the ... claim.’” *Fontanetta v. John Doe 1*, 73 AD3d 78, 83-84 (2nd Dept. 2010), *quoting Fortis Fin. Servs., LLC v. Fimat Futures USA*, 290 AD2d 383, 383 (1st Dept. 2002); *see, Leon v. Martinez*, 84 NY2d 83; *Jenkins v. Jenkins*, 145 AD3d 1231 (3rd Dept. 2016); *Haire v. Bonelli*, 57 AD3d 1354 (3rd Dept. 2008). “[I]t is clear that judicial records, as well as documents reflecting out-of-court transactions such as mortgages, deeds, contracts, and any other papers, the contents of which are ‘essentially undeniable,’ would qualify as ‘documentary evidence’ in the proper case.” *Fontanetta v. John Doe 1*, 73 AD3d at 84-85; *see Koziatsek v. SJB Dev. Inc.*, 172 AD3d 1486 (3rd Dept. 2019). Furthermore, dismissal may also be warranted where the “factual claims

... are flatly contradicted by documentary evidence or are inherently incredible.” *Hyman v. Schwartz*, 127 AD3d 1281, 1283 (3rd Dept. 2015) quoting *DerOhannesian v. City of Albany*, 110 AD3d 1288, 1289 (3rd Dept. 2013); *Ozdemir v. Caithness Corp.*, 285 AD2d 961, 963 (3rd Dept. 2001) (“a court need not accept as true legal conclusions or factual allegations that are either inherently incredible or flatly contradicted by documentary evidence.”). The Lease and amendment to the Lease are contracts, and are the type of “documentary evidence” referred to in CPLR 3211 (a)(1). See, *150 Broadway N.Y. Assocs., L.P. v. Bodner*, 14 AD3d 1 (1st Dept. 2004); *Ozdemir v. Caithness Corp.*, 285 AD2d 961.

“The grounds for dismissal under CPLR 3211 (a) (7) are ... strictly limited; the court is not allowed to render a determination upon a thorough review of the relevant facts adduced by both parties, but rather is substantially more constrained in its review, examining only the plaintiff’s pleadings and affidavits.” *Carr v. Wegmans Food Mkts., Inc.*, 182 AD3d 667, 668 (3rd Dept. 2020) citing *Rovello v. Orofino Realty Co.*, 40 NY2d 633, 635, (1976); *Sokol v. Leader*, 74 AD3d 1180, 1181 (2nd Dept. 2010). “The ‘sole criterion’ under a motion to dismiss for failure to state a cause of action pursuant to CPLR 3211 (a) (7) is whether, ‘from [the pleading’s] four corners[,] factual allegations are discerned which taken together manifest any cause of action cognizable at law’” *Doller v. Prescott*, 167 AD3d 1298, 1299 (3rd Dept. 2018), quoting *People v. Coventry First LLC*, 13 NY3d 108, 115 (2009).

Defendant’s first and second counterclaims seek to recover damages for breach of the Lease as well as unpaid rent to the end of the lease. The third counterclaim asserts that Humphrey is liable under the guaranty for SNL’s breach of the Lease. Movants contended on this motion that Oakdale’s counterclaims do not allege that the Lease has been terminated, and that Oakdale can only recover rents which accrued prior to the date that the Answer with Counterclaims was interposed. In other words, the Lease was not accelerated, so Oakdale cannot recover future rents. In opposition, Oakdale argued that it is not required to plead a condition precedent. In their reply papers, movants now seem to agree that notice of acceleration is a “condition precedent” and that Oakdale was not required to plead that. The reply papers state that “[m]ovants withdraw that portion of this motion which seeks to dismiss the First and Third counterclaims to the extent that such counterclaims seek to recover future rent based on acceleration.” The Court is not entirely sure what that means, and whether the movants are entirely withdrawing their motion to dismiss the first and third counterclaims, or whether there is

still some component of the first and third counterclaims that they believe should be dismissed. It certainly seems that they are withdrawing any challenge to the first and third counterclaims, because their initial argument to those counterclaims was primarily addressed to the acceleration issue, and it appears that movants now concede that the claim for future rent based on acceleration is valid.

However, in the event that SNL, Humphrey and Bolton are not withdrawing the motion to dismiss the first and third counterclaims, the Court denies dismissal of those counterclaims in any event. Both the first and third causes of action allege a breach of the Lease. The elements for a breach of contract claim are “formation of a contract, performance by the [Counterclaim Plaintiff], breach and ‘resulting damage.’” *McCormick v. Favreau*, 82 AD3d 1537, 1541 (3rd Dept. 2011), *citing Clearmont Prop., LLC v. Eisner*, 58 AD3d 1052 (3rd Dept. 2009). A lease is a contract (*Genovese Drug Stores, Inc. v. William Floyd Plaza, LLC*, 63 AD3d 1102 [2nd Dept. 2009]), and breach of a guaranty is also a type of breach of contract. *Park Towers S. Co., LLC v. Columbus Circle Parking, LLC*, 2021 NY Misc LEXIS 906 (Sup. Ct., New York County 2021). The counterclaims clearly set forth the contract (Lease), Oakdale’s performance under the Lease, the alleged breach by SNL and Oakdale’s damages. At this point, the allegations in the counterclaims with respect to the breach of Lease are sufficient to defeat a motion to dismiss the first and third counterclaims.

In the original motion papers, SNL, Humphrey and Bolton also sought dismissal of the second counterclaim setting forth the same argument they advanced for the first and third counterclaims—that Oakdale could not recover for rents that became due after the counterclaims were made. Thus, it would appear that by withdrawing the motion to dismiss the first and third counterclaims, that the motion to dismiss the second counterclaim should also be withdrawn. However, in their Reply Memorandum, movants maintain that the second counterclaim for declaratory judgment should be dismissed, on the basis that the second counterclaim is duplicative of the first counterclaim. Both the first and second counterclaims seek a money judgment and are based on the same facts. However, this is not the theory upon which the motion was originally brought. Movants cannot change the basis for seeking dismissal in their reply papers. *See, Gullede v. Jefferson County*, 194 AD3d 1155 (3rd Dept. 2021). Oakdale did not have any opportunity to respond to the new argument and there is no reason it could not have

been raised earlier. Even if the first and second counterclaims are duplicative, that argument was not raised in the initial motion and will not be considered now.

The fourth counterclaim is for reformation based on mutual mistake and movants do not seek dismissal of that counterclaim. “The party seeking reformation bears the burden to show by clear and convincing evidence, that the writing in question was executed under mutual mistake or unilateral mistake coupled with fraud and to demonstrate in no uncertain terms, not only that mistake or fraud exists, but exactly what was really agreed upon between the parties ... In a case of mutual mistake, the parties have reached an oral agreement and, unknown to either, the signed writing does not express that agreement.” *Hilgreen v. Pollard Excavating, Inc.*, 193 AD3d 1134, 1137 (3rd Dept. 2021) (internal and end quotation marks and citations omitted). Oakdale has raised both possibilities for reformation by alleging mutual mistake and fraud.

The Court next turns to the motions to dismiss the fifth and sixth counterclaims, which also seek reformation. The motion seeks dismissal of the fifth counterclaim (reformation of guaranty based on scrivener’s error) on the grounds that it is a duplicate of the fourth counterclaim (reformation based on mutual mistake). Although both counterclaims rely on the same facts, and seek the same relief of reformation of the guaranty, they are distinct claims. “Reformation based upon a scrivener’s error requires proof of a prior agreement between [the] parties, which when subsequently reduced to writing fails to accurately reflect the prior agreement.” *US Bank N.A. v. Lieberman*, 98 AD3d 422, 424 (1st Dept 2012) (citation omitted). That is quite similar to the mutual mistake basis for reformation. The Court of Appeals has recognized that the two claims are closely akin (*Nash v. Kornblum*, 12 NY2d 42, 48 [1962]). However, a party is also allowed to plead theories in the alternative. (CPLR 3014, 3017). Despite the fact that the counterclaims are very closely related, the Court finds no benefit or basis to dismiss the fifth cause of action on the issue of duplication, prior to even conducting discovery. That determination is without prejudice to a future request should the facts warrant.

SNL and the Counterclaim Defendants also seek dismissal of Oakdale’s sixth counterclaim (reformation of guaranty based on unilateral mistake induced by fraud committed by Bolton and Humphrey) and the seventh cause of action (fraud by Bolton and Humphrey). They argue that “reasonable reliance” is an essential element of a fraud claim and that Oakdale cannot show “reasonable reliance.” Oakdale had the opportunity to review the draft of the guaranty which showed the changes in red print, and Oakdale had the chance to read the

guaranty before initialing and signing it. Thus, per the movants, Oakdale cannot show that it reasonably relied on any statements from the movants.

The elements of a fraud claim are: “(1) defendant made a representation as to a material fact; (2) such representation was false; (3) defendant[] intended to deceive plaintiff; (4) plaintiff believed and justifiably relied upon the statement and was induced by it to engage in a certain course of conduct; and (5) as a result of such reliance plaintiff sustained pecuniary loss.” *Ross v. Louise Wise Servs., Inc.*, 8 NY3d 478, 488 (2007) (citation omitted). Oakdale alleges that the parties agreed that the guaranty was supposed to be for 18 months, but that the guaranty which was actually signed was only for 180 days, and that the actions of Bolton and Humphrey constitute fraud. SNL, Humphrey and Bolton claim that there was no fraud, because Oakdale had a chance to review the documents before signing them. “Whether the negligence of the signer bars relief as against the perpetrator of the fraud is not clear.” New York Pattern Jury Instructions, Civil (3rd ed. 2022), PJI 4:10 at p.193. Some cases hold that failure to read the final document before signing is a failure to exercise due diligence precluding reformation. *See, e.g. U.S. Legal Support, Inc. v. Eldad Prime, LLC*, 125 AD3d 486 (1st Dept. 2015); *737 Park Ave. Acquisition LLC v. Shalov*, 106 AD3d 513 (1st Dept. 2013); *Stuart Silver Assocs. v. Baco Dev. Corp.*, 245 AD2d 96 (1st Dept. 1997). However, other cases hold that reformation can be maintained even where the party did not read the agreement. *See, L. Lewitt & Co. v. Jewelers’ Safety Fund Soc.*, 249 NY 217 (1928); *Imrie v. Ratto*, 187 AD3d 1344 (3rd Dept. 2020).

In this case, Oakdale is required to set forth allegations that could establish fraud. Oakdale has alleged that the lease correctly noted that the guaranty was for 18 months, and that Bolton intentionally misrepresented in an email that he had modified the guaranty to be consistent with the lease, when in fact, it was knowingly false because the guaranty was revised to 180 days; further that Bolton knew it was false and intended that Oakdale would rely upon that assurance; and that Oakdale did justifiably rely on that misrepresentation. Those factors are specific and could support fraud. It would then be up to SNL, Humphrey and Bolton to show that Oakdale could, and should, have read the guaranty and understood the terms, such that the conduct is not fraud and/or that reformation should not be granted.

The question of fraud is fact intensive and not suitable for dismissal at this point in light of the liberal pleading standard. The Court concludes that Oakdale’s allegations are sufficient to state a cause of action based on fraud. This conclusion encompasses the counterclaim for

reformation based on the fraud, as well as the independent claim of fraud against Humphrey and Bolton.

The Court also observes, as it has mentioned to the parties previously, that it should be a fairly simple matter to determine if SNL agrees that there was some mistake made when the 180 days was placed in the guaranty. If SNL conceded that fact, then the fraud and reformation issues would disappear. The case could then move forward on the issues of breach of the lease and damages. However, no response has ever been provided by SNL to that question. Yet, the case has been the subject of numerous motions, an appeal, and even a separate action filed in Nassau County against Oakdale's attorneys. If reformation is appropriate, it should have been accomplished before all these other legal proceedings.

CONCLUSION

Based upon all the foregoing, it is hereby

ORDERED, that the motion to dismiss the first, second, third, fifth, sixth and seventh counterclaims is DENIED.

THIS CONSTITUTES THE DECISION AND ORDER OF THIS COURT.

Dated: September 30, 2022
Binghamton, New York



HON. EUGENE D. FAUGHNAN
Supreme Court Justice