

Spectra Photo Art, Inc. v Mendared, LLC
2022 NY Slip Op 33851(U)
November 10, 2022
Supreme Court, New York County
Docket Number: Index No. 651179/2022
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 41

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SPECTRA PHOTO ART, INC.,

Plaintiff

Index No. 651179/2022

-against-

DECISION AND ORDER

MENDARED, LLC d/b/a LE SOUK HAREM, and
MOKHLESS ANDRAWES a/k/a MARCUS ANDREWS,

Defendants

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LUCY BILLINGS, J.S.C.:

I. BACKGROUND

Defendant Andrawes has moved to dismiss the complaint against him based on lack of personal jurisdiction due to inadequate service, C.P.L.R. § 3211(a)(8), and based on failure to plead a viable claim because New York City Administrative Code § 22-1005 bars the recovery plaintiff seeks against him.

C.P.L.R. § 3211(a)(7). Andrawes also authenticates and relies on a lease between plaintiff landlord and co-defendant tenant Mendared, LLC, and a written notice by Mendared, LLC, via overnight mail to plaintiff surrendering the leased premises effective March 31, 2021, as documentary evidence supporting his defense. C.P.L.R. § 3211(a)(1). He now withdraws his motion to the extent it is based on lack of personal jurisdiction and his affirmative claim based on plaintiff landlord's harassment.

N.Y.C. Admin. Code § 22-903.

Plaintiff faults Andrawes's motion for not citing to subdivision 1 or 7 under C.P.L.R. § 3211(a). After notifying plaintiff that the court would treat Andrawes's defense premised on Administrative Code § 22-1005 as failure to plead a viable claim and his reliance on the lease and notice as a documentary defense, the court offered plaintiff the opportunity to change or supplement plaintiff's opposition, but plaintiff declined.

II. UNDISPUTED FACTS

Under C.P.L.R. § 3211(a)(1) and (7), the court considers only the complaint's allegations and the lease and notice, but not Andrawes's affidavit beyond his authentication of those two documents. Serao v. Bench-Serao, 149 A.D.3d 645, 646 (1st Dep't 2017); Calpo-Rivera v. Siroka, 144 A.D.3d 568, 568 (1st Dep't 2016); Asmar v. 20th & Seventh Assoc., LLC, 125 A.D.3d 563, 564 (1st Dep't 2015); City of New York v. VJHC Dev. Corp., 125 A.D.3d 425, 426 (1st Dep't 2015). See Nomura Home Equity Loan, Inc., Series 2006-FM2 v. Nomura Credit & Capital, Inc., 30 N.Y.3d 572, 601 (2017); Goshen v. Mutual Life Ins. Co. of N.Y., 98 N.Y.2d 314, 326 (2002). The complaint claims against Andrawes based on his guaranty of the lease between plaintiff and co-defendant Mendared, LLC. The lease was for commercial premises at 510 LaGuardia Place, New York County, where Mendared, LLC, operated a restaurant serving food and beverages for consumption on the restaurant premises. Mendared, LLC, thus was subject to the New

York State Governor's Executive Order 202.3 issued March 16, 2020, shutting down restaurants serving food and beverages for consumption on the restaurant premises. The lease expired June 30, 2020, but Mendared, LLC, remained in the premises through March 2021. On March 30, 2021, Mendared, LLC, sent written notice via overnight mail to plaintiff surrendering the leased premises effective March 31, 2021.

III. NEW YORK CITY ADMINISTRATIVE CODE § 22-1005

The complaint seeks from Andrawes (1) rent and real estate taxes under the lease from April through June 2020; (2) rent calculated under the lease for the period Mendared, LLC, retained possession of the premises after the lease expired and, as the guaranty provided, for 90 days after the tenant vacated, through June 2021; and (3) compensation for the tenant's damage to the premises. Administrative Code § 22-1005, however, eliminates Andrawes's liability for at least the first two of these claims. The statute prohibits enforcement of personal guaranties for "rent, utility expenses or taxes" and "fees and charges relating to routine building maintenance" under a tenant's lease, N.Y.C. Admin. Code § 22-1005, where the guarantor was not the tenant; the liability arose between March 7, 2020, and June 30, 2021; and the "tenant was required to cease serving patrons food or beverage for on-premises consumption . . . under executive order 202.3 issued by the governor on March 16, 2020." N.Y.C. Admin.

Code § 22-1005(1)(a). The tenant's reopening of restaurant operations to provide take-out and delivery food and bar services or for outdoor dining, as authorized by Executive Orders 202.3 and 202.38, is irrelevant to the criteria under Administrative Code § 22-1005 for eliminating a guarantor's liability.

The statute does not eliminate Andrawes's liability for the tenant's damage to the premises. Plaintiff's claim for this damage, at least on its allegations' face, is not for "fees and charges relating to routine building maintenance." N.Y.C. Admin. Code § 22-1005.

IV. CONCLUSION

Since Administrative Code § 22-1005 prohibits enforcement of the rent and real estate tax obligations that Andrawes's guaranty covers, the complaint's first and second causes of action fail to state a claim for an enforceable liability against Andrawes. The complaint's third cause of action, claiming a breach of the lease due to damage to the leased premises and seeking compensation for restoration of the premises' condition, remains viable against Andrawes. The viability of the complaint's fourth cause of action against him, for attorneys' fees under the lease, depends on whether plaintiff prevails against him on the third cause of action.

Consequently, the court grants defendant Andrawes's motion to dismiss the complaint's first and second causes of action

against Andrawes based on plaintiff's failure to plead a viable claim, N.Y.C. Admin. Code § 22-1005, but otherwise denies his motion. C.P.L.R. § 3211(a)(7). In the event that the court denied any part of the motion to dismiss the complaint against Andrawes, defendants collectively moved for permission to answer late. C.P.L.R. § 3012(d). The court also grants this motion on behalf of Mendared, LLC. Both defendants shall answer the complaint within 10 days after entry of this order. C.P.L.R. §§ 3012(d), 3211(f).

DATED: November 10, 2022



LUCY BILLINGS, J.S.C.

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