

SMG Auto. Holdings LLC v Brooklyn Store LLC

2022 NY Slip Op 34840(U)

August 26, 2022

Supreme Court, Kings County

Docket Number: Index No. 502153/2022

Judge: Reginald A. Boddie

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At an IAS Term Commercial Part 12 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 26th day of August 2022.

P R E S E N T:

Honorable Reginald A. Boddie
Justice, Supreme Court

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SMG AUTOMOTIVE HOLDINGS LLC,

Plaintiff,

Index No. 502153/2022

-against-

Motion Sequence 1

Decision & Order

THE BROOKLYN STORE LLC,

Defendant.

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

MS #1

20-34; 40-52

The above motion having been fully briefed, the court hereby advances motion sequence one from October 27, 2022 to August 26, 2022.

Under motion sequence one, SMG Automotive Holdings LLC (hereinafter “plaintiff” or “SMG”) moves for an order dismissing portions of defendant’s First Counterclaim insofar as the counterclaim seeks: (1) a judgment declaring that SMG did not have standing to exercise the Purchase Option at the time it was delivered; (2) a judgment declaring that SMG lacks standing to bring this lawsuit; and (3) a judgment declaring the Purchase Option void due to SMG’s alleged fraudulent misrepresentations.

Background

Unless otherwise noted, the following facts are undisputed. In early 2017, SMG purchased a Chrysler/Jeep/Dodge/Ram car dealership located at 2286 Flatbush Avenue in Brooklyn, New York (hereinafter the “Property”) from nonparty Kings Automotive Holdings LLC (hereinafter “Kings”). Kings leased the Property from The Brooklyn Store LLC (hereinafter “Defendant Landlord”) pursuant to a lease dated May 9, 2012 (hereinafter the “Master Lease”). The Master Lease had an initial term of ten years, expiring on May 31, 2022, with an option to extend the term for two additional five-year terms. The Master Lease also contained an option for Kings to purchase the Property from Defendant Landlord in year 10 of the Master Lease’s original term or in year 15 of any renewal term (hereinafter the “Purchase Option”).

As part of the sale of the dealership to SMG, Kings and SMG entered into a written sublease agreement dated February 7, 2017 (hereinafter the “Sublease”) with Defendant Landlord’s knowledge and consent. The Sublease did not contain any reference to the Purchase Option or that Kings had assigned the Purchase Option to SMG. Rather, Kings and SMG executed a stand-alone agreement entitled “Assignment and Assumption of Option to Purchase Lease Agreement” dated February 7, 2017 (hereinafter the “Assignment Agreement”), which provided, in sum and substance, that for the sum of \$100,000.00, Kings assigned its right and entitlement to the Purchase Option to SMG. According to Defendant Landlord, it was not provided with a copy of the Assignment Agreement, but it “was led to believe that the Purchase Option under the Master Lease had been assigned by Kings to SMG” (NYSCEF Doc No. 9, ¶ 84).

On or around March 5, 2021, SMG and Defendant Landlord executed a Lessor Estoppel Certificate (hereinafter “Estoppel Certificate”) which included a provision that Defendant Landlord, as Lessor, acknowledged that SMG had the right to exercise the Purchase Option contained in the Master Lease. Simultaneously with execution of the Estoppel Certificate, the parties also executed a Memorandum of Lease dated March 5, 2021 (hereinafter the “Memorandum”), which also recognized that SMG could exercise the Purchase Option contained in the Master Lease.

Soon thereafter, on or about April 21, 2021, SMG delivered written notice to Defendant Landlord exercising its year 10 Purchase Option (hereinafter the “Purchase Notice”). After receipt of the Purchase Notice, the parties entered into an agreement dated July 13, 2021 wherein the parties agreed to engage in the Purchase Option valuation and sale process set forth in Section 21 of the Master Lease albeit with slight changes to scheduling of the process (hereinafter the “Purchase Option Agreement”). On October 8, 2021, the parties entered into an amendment to the Purchase Option Agreement (hereinafter the “Amendment”) to further modify dates for the valuation and sale process. The Estoppel Certificate, Memorandum, Purchase Option Agreement and Amendment were all executed by Defendant Landlord’s Managing Member, Robert A. Lee, Jr. (hereinafter “Lee”).

Thereafter, the parties commenced the valuation process, but the parties’ appraisers were unable to reach an agreement on the fair market value (“FMV”) of the Property, thus requiring the selection of a third independent appraiser in accordance with the Master Lease. Upon engaging the independent appraiser, the parties disagreed as to whether the

independent appraiser was to issue a “reasoned” or an “unreasoned” award regarding the FMV of the Property. Unable to resolve the disagreement, this action ensued.

SMG’s first cause of action seeks a declaratory judgment that Defendant Landlord is not entitled to insist upon a “reasoned award” in the valuation proceeding. SMG’s second and only other cause of action alleges that Defendant Landlord breached the operative agreements for the exercise of the Purchase Option by refusing to participate in the appraisal process until the question of a reasoned award is resolved, thus requiring SMG to continue to pay rent.

Shortly after this action’s commencement, Defendant Landlord alleges that on February 25, 2022, it received, through its legal counsel, correspondence from King’s counsel, Andrew S. Zizmor, Esq. (“Zizmor”), indicating that Kings wanted to exercise its Purchase Option pursuant to the Master Lease (hereinafter the “Kings Purchase Notice”). Defendant Landlord further alleges that Zizmor advised that the Assignment Agreement entered into with SMG was null and void because SMG failed to pay the \$100,000.00 consideration.

Defendant Landlord represents that, on March 7, 2022, it received additional correspondence from Zizmor that Kings wanted to exercise its option to purchase the Property (hereinafter “Second Kings Purchase Notice”). However, that a day later, on March 8, 2022, Zizmor called Defendant Landlord’s counsel advising that Kings was withdrawing the Kings Purchase Notice and Second Kings Purchase Notice because Kings had settled with SMG. After the phone call, Zizmor sent an email to Defendant Landlord’s counsel confirming that Kings “rescinds all previous notices to exercise the purchase option

set forth in the lease...[and] that Kings has in fact transferred and assigned all rights to the Purchase Option to the subtenant, SMG...and that accordingly Kings has no further right under the Lease to purchase or acquire the Property” (NYSCEF Doc No. 50).

Kings and SMG also entered into an agreement entitled “Ratification and Release Agreement” dated March 7, 2022 (hereinafter the “Ratification Agreement”), under which Kings agreed that its rights under the Assignment Agreement had transferred to SMG on February 7, 2017.

SMG’s Motion to Dismiss Defendant Landlord’s Counterclaim

On April 15, 2022, SMG filed the instant motion seeking to dismiss those portions of Defendant Landlord’s counterclaim seeking a declaratory judgment denying SMG’s right to exercise the Purchase Option. It is SMG’s position that based on documentary evidence, specifically, the Assignment Agreement, Estoppel Certificate, Memorandum, Purchase Option Agreement, Amendment, and Ratification Agreement, SMG had a right to exercise the Purchase Option when it did so on April 21, 2021. Accordingly, SMG argues that Defendant Landlord’s counterclaim seeking a declaratory judgment that SMG lacks standing to exercise the Purchase Option or to bring this action should be dismissed.

Additionally, SMG argues that the portion of Defendant Landlord’s counterclaim seeking a declaratory judgment that the Purchase Option Agreement and Amendment are void due to Lee being fraudulently induced to sign same should be dismissed because (1) a declaratory judgment is inappropriate where defendant can assert, directly, a claim for fraudulent inducement; (2) even if the claim were proper, defendant must plead a knowing misrepresentation of present fact intended to deceive another party which induces that party

to act, resulting in injury, which Defendant Landlord has failed to do; and (3) the alleged misrepresentation is refuted by the various agreements submitted in the instant motion and, thus, any fraudulent inducement claim to the contrary must be dismissed.

Defendant Landlord's Opposition

In opposition, Defendant Landlord argues that SMG's motion relies exclusively on documentary evidence that was procured by SMG's own fraud and misconduct. In this regard, Defendant Landlord relies on Lee's affidavit stating that he was led to believe, by SMG, that the Purchase Option under the Master Lease had been assigned by Kings to SMG in a separate agreement when SMG entered into a sublease with Kings. Lee avers that, in March of 2021, both Kings and SMG were in default under the Master Lease for their failure to pay the monthly rent and additional rent that was due and owing. As part of the negotiations with Kings and SMG to resolve the outstanding rent, Lee avers that he signed the Estoppel Certificate and Memorandum. Had he known in March of 2021 that the Purchase Option had not been assigned by Kings to SMG simultaneously when SMG and Kings entered into the Sublease, Lee claims that he would not have signed either the Estoppel Certificate or the Memorandum.

In addition, Defendant Landlord argues that it is clear that SMG did not have standing to exercise the Purchase Option when it delivered its Purchase Notice in April 2021 or when it commenced this action since SMG only reached an agreement with Kings regarding the Assignment Agreement on or about March 8, 2022. Defendant Landlord also points out that the Ratification Agreement is heavily redacted, indicating that SMG does not want the Court to know that there was litigation between SMG and Kings under several

index numbers in Kings County Supreme Court. Defendant Landlord asserts that an unredacted copy may reveal that SMG settled its dispute with Kings in exchange for the Ratification Agreement. Defendant Landlord argues that it is entitled to discovery to learn exactly what led up to the execution of the Ratification Agreement and to confirm that, at the time SMG exercised the Purchase Option on April 21, 2021, it did not have standing to do so and that it was Kings who held the Purchase Option at that time.

SMG's Reply

In reply, SMG argues that Defendant Landlord's opposition papers fail to cure the pleading defects to support a claim for fraudulent inducement since there are still no details provided as to when any misrepresentations were made, who made them, how they were intended to deceive Defendant Landlord and/or how Defendant Landlord was injured. In addition, SMG argues that the fraudulent inducement claim does not apply to the Assignment Agreement and the Ratification Agreement, which were between SMG and Kings. As for Defendant Landlord's contention that it should be entitled to discovery to determine whether SMG had standing to exercise the Purchase Option, SMG argues that the Assignment Agreement and Ratification Agreement confirms that the Purchase Option was transferred to SMG on February 7, 2017, and thus, any request to conduct discovery amounts to a "fishing expedition."

Discussion

On a motion to dismiss the complaint pursuant to CPLR 3211 [a] [7] for failure to state a cause of action, the court must afford the pleading a liberal construction, accept all facts as alleged in the pleading to be true, accord the plaintiff the benefit of every possible

inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*Hyatt v Wilmington Sav. Fund Socy., FSB*, 186 AD3d 1621, 1622 [2d Dept 2020] [citations omitted]). A motion to dismiss a complaint pursuant to CPLR 3211 [a] [1] may be granted only if the documentary evidence submitted by the moving party utterly refutes the factual allegations of the complaint, “conclusively establishing a defense as a matter of law” (*Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326, 774 NE2d 1190, 746 NYS2d 858 [2002]).

“To maintain a cause of action for fraudulent inducement of a contract, a party must show a material representation, known to be false, made with the intention of inducing reliance, upon which it actually relied, consequentially sustaining a detriment” (*Frank Crystal & Co., Inc. v Dillmann*, 84 AD3d 704, 704 [1st Dept 2011] [citations omitted]). “A present intent to deceive must be alleged and a mere misrepresentation of an intention to perform under the contract is insufficient to allege fraud” (*J.M. Bldrs. & Assoc., Inc. v Lindner*, 67 AD3d 738, 741 [2d Dept 2009] [citations omitted]). “Summary judgment is warranted if a plaintiff is unable to establish any element of the claim” (*Frank Crystal & Co., Inc. v Dillmann*, 84 AD3d at 704)

Here, Defendant Landlord’s counterclaim seeking a judgment declaring that the Purchase Option Agreement and Amendment are null and void due to SMG’s misrepresentation, which induced Defendant Landlord to sign said agreements, fails to state a claim for fraudulent inducement. Defendant Landlord fails to allege that SMG meant to deceive it when representing that it had entered into an agreement with Kings to obtain the Purchase Option. In fact, Defendant Landlord’s own pleadings and papers

indicate that SMG's representation in this regard was not false when made. In addition, Defendant Landlord fails to allege any damages suffered as a result of the purported misrepresentation. As such, this portion of Defendant Landlord's counterclaim must be dismissed.

However, SMG has not met its burden with respect to dismissal of that portion of Defendant Landlord's counterclaim seeking a judgment that SMG lacked standing to commence this lawsuit or to exercise the Purchase Option. SMG relies solely on the various agreements signed by either Defendant Landlord or Kings to prove that it had the right to exercise the Purchase Option in April 2021. But the subject agreements do not utterly refute Defendant Landlord's allegation that SMG lacked the right to the Purchase Option until after commencement of this action because SMG never paid the called-for consideration in its agreement with Kings. SMG fails to provide legal support for the proposition that Defendant Landlord's acknowledgement that SMG possessed the Purchase Option actually confers the right under the circumstances presented (i.e., where the Purchase Option was not Defendant Landlord's to give and an issue is presented as to whether SMG obtained the right from its predecessor-in-interest). Similarly, SMG fails to provide legal support for its argument that the Ratification Agreement resolves the standing issue, to the extent that it exists, *nunc pro tunc*. Thus, that portion of SMG's motion must be denied.

Conclusion

Based on the foregoing, plaintiff's motion to dismiss Defendant Landlord's counterclaim is granted to the extent that the portion of the counterclaim seeking a

judgment “declaring that the Purchase Option Agreement and Amendment are null and void and of no force and effect due to SMG’s misrepresentations, which fraudulently induced Brooklyn Store to enter into the Purchase Option Agreement and Amendment” is dismissed. The motion is otherwise denied.

ENTER:



Honorable Reginald A. Boddie
Justice, Supreme Court

**HON. REGINALD A. BODDIE
J.S.C.**