

MSK Props., LLC v 62-08 Realty LLC

2023 NY Slip Op 31597(U)

May 9, 2023

Supreme Court, Kings County

Docket Number: Index No. 504784/2023

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

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

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MSK PROPERTIES, LLC, RMDS REALTY
ASSOCIATES LLC, 745 64TH REALTY
ASSOCIATES, LLC, 6405 SEVENTH AVENUE,
LLC, MSK PROPERTIES OF BROOKLYN, LLC,
Plaintiff,

Decision and order

- against -

Index No. 504784/2023

62-08 REALTY LLC, 37-19 REALTY INC., WLGT
HOLDINGS LLC, EA 8TH AVE LLC, AA 8TH
AVE LLC, EIGHTH AVE VA, LLC,
Defendant,

May 9, 2023

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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #1 & #2

The plaintiffs have moved seeking a Yellowstone injunction. The defendants have cross-moved seeking to dismiss the action on the grounds the parties have agreed to arbitrate the matter. The motions have been opposed respectively. Papers were submitted by the parties and arguments held. After reviewing all the arguments, this court now makes the following determination.

On May 21, 2014 the plaintiffs, tenants entered into a master lease with the defendants, landlords concerning property located in Kings County. A supplemental lease was entered into between the parties and after October 31, 2015 would operate as a month to month tenancy. Further, a development agreement was entered into between the parties which reiterated the property is encumbered by the two leases as well as three off-site parking restrictive declarations. The leases required the plaintiffs to maintain certain insurance. On March 3, 2023 the defendants served a notice of termination on the plaintiffs for their

[* 1]

failure to maintain adequate insurance. The plaintiffs instituted this action and now move seeking a Yellowstone injunction. The defendants have opposed the motion and have cross-moved seeking to dismiss the lawsuit on the grounds the parties must settle this matter in arbitration.

Conclusions of Law

"It is firmly established that the public policy of New York State favors and encourages arbitration and alternative dispute resolutions" (Westinghouse Elec. Corp. v. New York City Tr. Auth., 82 NY2d 47, 603 NYS2d 404 [1993], citing, Nationwide Gen. Ins. Co. v. Investors Ins. Co. of Am., 37 NY2d 91 [1975]). It is well settled that a party cannot be subject to arbitration absent a clear and unequivocal agreement to arbitrate (see, Waldron v. Goddess, 61 NY2d 181, 473 NYS2d 136 [1984]). Thus, where an arbitration clause encompasses all disputes between the parties and is unambiguous such arbitration clause will be enforced (Stoll America Knitting Machinery Inc., v. Creative Knitwear Corp., 5 AD3d 586, 772 NYS2d 863 [2d Dept., 2004]). In contrast, a clause will be held ambiguous if key terms are not defined in the agreement (Spataro v. Hirschhorn, 40 AD3d 1070, 837 NYS2d 258 [2d Dept., 2007]).

Article 11(e) of the development agreement states that "in the event of any dispute, claim or controversy among the parties

arising out of or relating to this Agreement...that cannot be resolved by the parties, such dispute shall be resolved by and through an arbitration proceeding conducted under the auspices of the American Arbitration Association" (see, Development Agreement, ¶ 11(e) {NYSCEF Doc. No. 13}). The development agreement further states that "this Agreement constitutes a part Of, and an amendment to, the Parking Declarations, the Master Lease and the Parking Leases and the terms hereof are deemed incorporated by referenced into such documents (and the terms of such documents are deemed incorporated by reference herein) (and in the event of any conflict between any term hereof and any terms of such other documents, the terms hereof shall govern and control)" (see, Development Agreement, ¶ 4 {NYSCEF Doc. No. 13}). Thus, the arbitration clause contained in the development agreement flows to the leases as well. The plaintiffs dispute that proposition and assert the only matters that are subject to arbitration are those contained in the development agreement and not the leases.

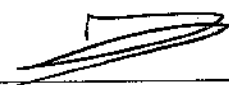
There are clearly questions of fact whether the matter is subject to arbitration. Whether the matter is subject to arbitration should be determined by the arbitration panel. Therefore, the parties are directed to proceed to arbitration to determine whether arbitration is even required. If the arbitrators determine they maintain jurisdiction then the

litigation will continue in that venue. If the arbitrators determine the matter should not be arbitrated then the parties shall notify the court and the Yellowstone injunction request will be examined at that time. They stay remains in effect pending the determination of the arbitration panel.

So ordered.

ENTER:

DATED: May 9, 2023
Brooklyn, N.Y.



Hon. Leon Ruchelsman
JSC