

**40 CPS Assoc. LLC v CSC Serviceworks, Inc.**

2023 NY Slip Op 31921(U)

June 2, 2023

Supreme Court, New York County

Docket Number: Index No. 654732/2022

Judge: Suzanne J. Adams

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. SUZANNE J. ADAMS PART 39TR

Justice

-----X

40 CPS ASSOCIATES LLC

Plaintiff,

- v -

CSC SERVICEWORKS, INC.,

Defendant.

-----X

INDEX NO. 654732/2022

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19

were read on this motion to/for DISMISSAL

Upon the foregoing documents, it is ordered that defendant's motion is granted in part, as set forth hereinbelow. Plaintiff is the owner of the land and buildings located at 40 Central Park South and 41 West 58th Street in Manhattan, which properties include residential apartments. Defendant operates and maintains a coin- and/or card-operated laundry business. The parties entered into an agreement dated January 15, 2016, with plaintiff as lessor and defendant as lessee, pursuant to which defendant was granted a lease to install, operate, and maintain its pay-per-use laundry equipment in designated areas at the aforesaid premises. The agreement commenced on April 1, 2016, and expires on March 31, 2024. In December 2022, plaintiff commenced this action, alleging, in sum, that defendant improperly imposed certain "administrative fees" in its calculation of revenue that forms the basis for defendant's payments to plaintiff pursuant to their agreement. Defendant has moved to dismiss the action pursuant to CPLR 3211(a)(5) on res judicata grounds. Plaintiff opposes the motion.

“On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction (*see*, CPLR 3026). We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory.” *Leon v. Martinez*, 84 N.Y.2d 83, 87-88 (1994). In addition, New York “has adopted the transactional analysis approach in deciding *res judicata* issues (*Matter of Reilly v. Reid*, 45 N.Y.2d 24 [1978]). Under this address, once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy (*id.*, at pp. 29-30).” *O’Brien v. City of Syracuse*, 54 N.Y.2d 353, 357 (1981).

Underlying the instant matter is a nationwide class action settlement against defendant that arose out of a class action lawsuit regarding the “administrative fee” at issue, which was venued in Cook County, Illinois. In the Final Judgment and Order of Dismissal with Prejudice dated April 27, 2022 (Exhibit 1 to the moving papers), the Cook County Circuit Court, Chancery Division, *inter alia*, approved the Amended Stipulation of Class Action Settlement (Exhibit 2 to the moving papers), and also approved the notice procedures to the prospective settlement class members. The “Released Class Claims” as defined in ¶ 1.21 include claims that plaintiff has asserted in its Verified Complaint that arise out of defendant’s calculation of the “administrative fee.” Plaintiff maintains that it should not be bound by the class action settlement because it was never served with notice of pendency of the class action, but the Final Judgment held that the notice given to potential class action plaintiffs was reasonable and appropriate. In any event, defendant has proffered evidence that plaintiff was in fact served with notice. Thus, because plaintiff did not opt out of the class, it is bound by the terms of the Amended Stipulation. As such, it may not assert

claims in its First and Third Causes of Action that consist of “Released Class Claims” as defined in ¶ 1.21 of the Amended Stipulation.

However, plaintiff’s Second Cause of Action is not barred by the class action settlement. Plaintiff asserts a breach of contract claim arising out of defendant’s alleged failure to pay “rent,” defined in their agreement as:

“the income of the Equipment, Monthly, in arrears, having first deducted the cost of smart cards, credit/debit card fees, refunds, expenses attributable to vandalism on the Equipment, voice and data charges, all applicable fees and/or taxes, including, but not limited to, sales, use, excise, personal property or real estate taxes payable by Lessee in connection with the use and possession of the Lease Premises and the operation of the Equipment, an amount equal to: \$3500 per month or 74% of revenue, whichever is greater.”

(Exhibit A to the opposing papers) The plain meaning of this provision is that defendant is to calculate the revenue from the laundry operations by ascertaining the income received from said operations and then deducting the listed expenses, and then paying plaintiff 74% of that revenue, or \$3,500, whichever sum is greater. While plaintiff is barred by the class action settlement from challenging defendant’s definition and calculation of its “administrative fee,” defendant is still obligated to pay a minimum rent of \$3,500. Plaintiff alleges that defendant has not done so, and as such has stated a cause of action for breach of contract.

Accordingly, it is hereby

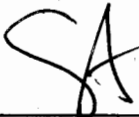
ORDERED that defendant’s motion is granted to the extent that the First and Third Causes of Action of the Verified Complaint are dismissed, with prejudice; and it is further

ORDERED that the remainder of defendant’s motion is denied; and it is further

ORDERED that defendant shall serve its answer to the Verified Complaint within 35 days of service of notice of entry of this order; and it is further

ORDERED that within 35 days of service of defendant's answer, the parties shall submit to the Part Clerk of Part 39 an agreed upon Preliminary Conference Order for the judge's review and signature, as per the Part Rules.

This constitutes the decision and order of the court.

<u>6/2/2023</u> DATE	 _____ SUZANNE J. ADAMS, J.S.C.			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE