

Chef Driven Inc. v Black Brick, LLC.

2024 NY Slip Op 30150(U)

January 10, 2024

Supreme Court, New York County

Docket Number: Index No. 157500/2023

Judge: Louis L. Nock

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LOUIS L. NOCK PART 38

Justice

-----X

CHEF DRIVEN INC.,

Plaintiff,

- v -

BLACK BRICK, LLC., and JACK BOTERO,

Defendants.

-----X

INDEX NO. 157500/2023

MOTION DATE 07/27/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 10, 11, 12, 13, 14, 15, 16, and 17

were read on this motion for A MANDATORY INJUNCTION.

LOUIS L. NOCK, J.

Plaintiff moves for a mandatory injunction mirroring the ultimate primary relief sought in the complaint. The motion is denied as discussed hereinafter.

Background

Plaintiff corporation conducts business as a restaurant group. The complaint alleges that plaintiff was desirous of securing the right to operate a restaurant at Manhattan’s Bryant Park and that defendant Black Brick, LLC, through its principal, defendant Jack Botero (a licensed real estate broker), “agreed to serve as an intermediary to assist Plaintiff [to] navigate through the Bryant Park Corporation bidding process” (Complaint ¶ 6). No written agreement to that effect is in the record.

It is further alleged that “Defendants were fully appraised [sic] of the fact that Bryant Park Corporation did not engage . . . brokers, nor did it pay any broker a commission” (*id.*). Based on those allegations, the complaint goes on to allege that plaintiff “would agree to pay” defendants a \$100,000 finder’s fee if defendants succeeded in securing plaintiff’s sought-after

right to operate a Bryant-Park-based restaurant (Complaint ¶ 7). The court understands the complaint to be asserting that, by allegedly agreeing to accept plaintiff's \$100,000 finder's fee (which, at this point, there is no evidence of), defendants were agreeing to forego any broker's fee from Bryant Park Corporation should defendants succeed in securing plaintiff's sought-after right.¹ The complaint alleges that defendants' negotiations with Bryant Park Corporation included defendants' insistence on a brokerage arrangement whereby, if defendants succeeded in bringing plaintiff and Bryant Park Corporation together, defendants would be entitled to a separate commission from Bryant Park Corporation, distinct of any finder's fee to be paid by plaintiff (*see*, Complaint ¶¶ 8-9, Ex. "B"). Bryant Park Corporation notified plaintiff that it would not pay defendants any fee for this, consistent with its general policy, and further informed plaintiff that defendants warned Bryant Park Corporation that if it did a deal with plaintiff, defendants would be suing Bryant Park Corporation for a separate commission (*see*, Complaint Ex. "B"). Based on those occurrences, Bryant Park Corporation declined to do a deal with plaintiff.

No monies were ever paid to defendants. Moreover, as noted, no written contract ever existed between plaintiff and defendants as far as the current record goes. Absent such a contract, it remains unclear which defendant allegedly "agreed" to plaintiff's terms – the corporate defendant, or the individual defendant, or both? It remains an allegational mystery at this point.

The complaint alleges that defendants' refusal to engage Bryant Park Corporation on their behalf without a fee from Bryant Park Corporation constitutes "wrongful interference" by

¹ Plaintiff has not named Bryant Park Corporation as a defendant, or even a nominal defendant, in this action which, per the complaint, plays an important role in the factual and legal backdrop of this action (*see generally*, CPLR 1001 ["Necessary joinder of parties"]).

defendants with plaintiff's prospective business relationship with Bryant Park Corporation (Complaint ¶ 12; *see also*, Ex. "A" [plaintiff's counsel's letter to Botero, dated June 15, 2023, summarizing the essence of the complaint; not countersigned or acknowledged in any way by Botero]).

The complaint asserts two causes of action – one, for a mandatory injunction compelling defendants to forego any commission claim against Bryant Park Corporation so that plaintiff can get Bryant Park Corporation to agree to partner with it; and a second, sounding in “Libel and Slander.” Plaintiff now moves for the identical mandatory relief set forth in its aforementioned first cause of action.

Discussion

To establish entitlement to injunctive relief, a movant must establish: (1) likelihood of success on the merits; (2) irreparable harm absent injunctive relief; and (3) that a balancing of the equities favors the movant's position (CPLR 6301; *Nobu Next Door, LLC v Fine Arts Housing, Inc.*, 4 NY3d 839 [2005]; *Gliklad v Cherney*, 97 AD3d 401 [1st Dept 2012]; *Jones v Park Front Apartments, LLC*, 73 AD3d 612 [1st Dept 2010]).

Moreover, unlike ordinary preliminary injunctions, mandatory injunctions which compel a party to perform an act are disfavored (*Second on Second Cafe, Inc. v Hing Sing Trading, Inc.*, 66 AD3d 255 [1st Dept 2009]). Additionally, an injunction tantamount to the ultimate relief sought in the lawsuit should not to be granted (*Northern Funding, LLC v 244 Madison Realty Corp.*, 41 AD3d 182 [1st Dept 2007]).

Here, plaintiff's requested relief, couched as provisional relief, is identical to the primary injunctive relief sought in this lawsuit; to wit, an order directing defendants to forego, in a written and signed release, any commission from Bryant Park Corporation in the event of a deal

between it and plaintiff. Such relief, mirroring the primary ultimate relief in the action, is inappropriate during this interlocutory phase of the case.

In addition, no evidence of a contract between plaintiff and defendants has been submitted to the court which might evidence defendants' agreement to accept a \$100,000 finder's fee from plaintiff to the exclusion of any separate fee that defendants might wish to negotiate from Bryant Park Corporation. This adversely impacts plaintiff's likelihood of success in the action. Further, although the complaint recites that plaintiff stands to "suffer[] irreparable harm" absent an injunction (Complaint ¶ 16), that is simply not true, as any actionable business adversity caused by defendants' insistence on a separate commission from Bryant Park Corporation is compensable at law through money damages.

Consequently, no grounds exist to support plaintiff's motion for a mandatory injunction; and it is, therefore, denied.

Accordingly, it is

ORDERED that plaintiff's motion for an injunction is denied; and it is further

ORDERED that a preliminary conference will be convened on February 14, 2024, at 10:00 a.m., at the Courthouse, 111 Centre Street, Room 1166, New York, New York.

This will constitute the decision and order of the court.

ENTER:



1/10/2024

DATE

LOUIS L. NOCK, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: