

Christy v 380 Broadway LLC

2024 NY Slip Op 32147(U)

June 24, 2024

Supreme Court, New York County

Docket Number: Index No. 653987/2023

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 38M

Justice

-----X

JACQUELINE CHRISTY,

Plaintiff,

- v -

380 BROADWAY LLC,

Defendant.

-----X

INDEX NO. 653987/2023

MOTION DATE 09/22/2023,
11/13/2023

MOTION SEQ. NO. 001 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 34, 35, 36, and 37

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document numbers (Motion 002) 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, and 66

were read on this motion to DISMISS.

LOUIS L. NOCK, J.S.C.

The instant action arises from a dispute as to whether, pursuant to certain stipulations entered into in prior litigations involving the parties herein, plaintiff Jacqueline Christy (“Plaintiff”) is entitled to be a tenant under a lease between defendant as owner, and nonparty Access Theater, Inc. (“Access Theater”), in her own right. Defendant 380 Broadway LLC (“380 Broadway”) moved to dismiss the original complaint (NYSCEF Doc. No. 9) (Mot. Seq. No. 001), and plaintiff filed an amended complaint as of right (NYSCEF Doc. No. 27). Defendant then moved to dismiss the amended complaint (NYSCEF Doc. No. 38) (Mot. Seq. No. 002), which motion is presently before the court.

Upon the foregoing documents, Motion Seq. No. 001 is dismissed as moot following the filing of the amended complaint and defendant’s subsequent motion to dismiss the amended complaint. Motion Seq. No. 002 is resolved pursuant to the following memorandum decision.

Background

Defendant's predecessors in interest commenced an action in this court, before the Hon. Sherry Klein Heitler, captioned *380 Broadway LLC v Amerasian Realty Corp., et al.*, bearing index No. 113899/1994 (the "1994 litigation"), to foreclose on a first mortgage lien and various leasehold interests of defendants therein in the building located at 380-82 Broadway, New York, New York (the "premises"). Plaintiff was not a party to that action, but Access Theater was one of the defendants. On September 20, 1999, the parties to the 1994 litigation entered into a stipulation of settlement and consent judgment (the "1999 stipulation") to resolve 380 Broadway's foreclosure action against the tenant defendants, and said defendants' counterclaims against 380 Broadway. As relevant to this action, the 1999 stipulation provides that Access Theater and plaintiff herein were occupying the fourth floor of the premises at the time of the 1994 litigation (1999 stipulation, NYSCEF Doc. No. 2, ¶ 3). 380 Broadway agreed to obtain a zoning variance and certificate of occupancy for the premises to allow the individual tenants to legally remain in the units they were living in (*id.*, ¶ 5). While that process was ongoing, the tenants would be allowed to remain in their units, and the parties agreed to a rent payment schedule (*id.*, ¶¶ 9-11). Should 380 Broadway be able to obtain a certificate of occupancy allowing residential use of the premises, it would offer leases to each of the tenants under certain terms set forth in the 1999 stipulation (*id.*, ¶ 18). Tenants would have the annual right to renew their leases, and, for the fourth floor, both Access Theater and Jacqueline Christy would be entitled to renewal (*id.*, ¶ 18 [b]). If Access Theater opted to enter into the lease under its own name, it would "have the same annual right to renew the lease[] as . . . Jacqueline Christy would have if [she] entered into [a] lease[] in [her] individual capacity" (*id.*). Justice Heitler retained

jurisdiction “for purposes of implementing, enforcing, and/or effectuating the terms of [the 1999 stipulation]” (*id.*, ¶ 41).

Following the resolution of the 1994 litigation, disputes arose among the parties to the 1999 stipulation regarding their respective rights and obligations thereunder. Thus, tenants, including Access Theater and plaintiff herein, commenced an action against 380 Broadway LLC captioned *Access Theater, Inc., et al. v 380 Broadway LLC*, index No. 116759/2010, before the Hon. Manuel J. Mendez (the “2010 litigation”). The 2010 litigation was ultimately resolved by a stipulation and settlement agreement among the parties (the “2013 stipulation”), dated July 18, 2013. Relevant to the instant action, the 2013 stipulation provides that “[i]n the event a final, permanent Certificate of Occupancy is issued for the Building by the City of New York, [380 Broadway] shall offer [the tenants] leases in accordance with and subject to the provisions of this Stipulation and the 1999 Stipulation” (2013 stipulation, NYSCEF Doc. No. 3, ¶ 7). “Until the point at which the leases shall govern the Parties’ relationship, the rights and responsibilities of the Parties shall continue to be governed by the 1999 Stipulation and [the 2013] Stipulation” (*id.*, ¶ 8).

Following 380 Broadway’s acquisition of a certificate of occupancy, on January 31, 2014, 380 Broadway and Access Theater entered into a lease for the fourth floor of the premises (lease, NYSCEF Doc. No. 7). Plaintiff was not listed as a tenant. Indeed, plaintiff alleges that she was not offered a lease in her personal capacity (amended complaint, NYSCEF Doc. No. 27, ¶ 27).

Plaintiff alleges that on September 13, 2022, she asked to be added to the lease for the premises (*see*, letter dated September 29, 2022, NYSCEF Doc. No. 5; amended complaint, ¶ 32). Defendant denied that request, stating that the only tenant of the premises is Access Theater, and

defendant would not modify the lease to add plaintiff's name (letter dated September 29, 2022, NYSCEF Doc. No. 5).

Procedural History

Plaintiff commenced this action by summons and complaint dated August 17, 2023 (NYSCEF Doc. No. 1), alleging causes of action for breach of contract and declaratory judgment, arising out of defendant's failure to offer her a lease in her personal capacity in breach of the 2013 stipulation (*id.*, ¶¶ 17-29). Defendant moved to dismiss the complaint, arguing that any breach for failure to offer plaintiff a lease in her personal capacity was time-barred and failed to state a cause of action. In addition, as plaintiff failed to name Access Theater as a party, the complaint should be dismissed for failure to name an indispensable party. Finally, defendant asserted that plaintiff should have brought an action for breach of either the 1999 or 2013 stipulations before the courts that signed those stipulations.

Rather than oppose the motion, plaintiff instead amended her complaint, continuing to assert claims for breach of contract and a declaratory judgment. The claim for a declaratory judgment is identical in both pleadings. Plaintiff now claims, however, that she "is entitled to a lease in her personal capacity at any time she so requests" (amended complaint, NYSCEF Doc. No. 27, ¶ 31). Thus, the operative breach is now alleged to be defendant's failure to add plaintiff to the lease when she requested to be added in September 2022 (*id.*, ¶ 32). Defendant again moved to dismiss, raising the same arguments.

Standard of Review

"On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction" (*Leon v Martinez*, 84 NY2d 83, 87 [1994]). "[The court] accept[s] the facts as alleged in the [pleading] as true, accord[ing the nonmovant] the benefit of every possible

favorable inference, and determin[ing] only whether the facts as alleged fit within any cognizable legal theory” (*id.* at 87-88). Ambiguous allegations must be resolved in the nonmovant’s favor (*JF Capital Advisors, LLC v Lightstone Group, LLC*, 25 NY3d 759, 764 [2015]). “The motion must be denied if from the pleadings’ four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law” (*511 West 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 152 [2002] [internal citations omitted]). “[W]here ... the allegations consist of bare legal conclusions, as well as factual claims either inherently incredible or flatly contradicted by documentary evidence, they are not entitled to such consideration” (*Ullmann v Norma Kamali, Inc.*, 207 AD2d 691, 692 [1st Dept 1994]).

Discussion

As an initial matter, defendant’s asserts its argument that plaintiff should have asserted her claims for breach of the 1999 and 2013 stipulations in the 1994 or 2011 litigations, respectively, without any authority supporting it. As a general matter, a stipulation of settlement is a contract, and may be enforced as such (*e.g. Guzman v 188-190 HDFC*, 37 AD3d 295, 297 [1st Dept 2007]). A court may not, under the guise of interpretation, add new terms to a contract (*Vermont Teddy Bear Co., Inc. v 538 Madison Realty Co.*, 1 NY3d 470, 475 [2004]). Neither stipulation requires that it be enforceable only before the court that signed it initially.

Defendant’s argument that plaintiff has failed to join a necessary party pursuant to CPLR 3211 (a) (10) is also unavailing. The court assumes, for purposes of deciding the motion, that Access Theater is a necessary party. Where a necessary party was not joined initially, and is subject to the jurisdiction of the court, “the court shall order [the party] summoned” (CPLR 1001 [b]). Thus, the proper remedy for the exclusion of Access Theater is not dismissal, but rather for Access Theater to be summoned and made a party to the action.

Having addressed these arguments, however, the court agrees with defendant that, depending on which breach of contract plaintiff claims, plaintiff is either time-barred or has failed to state a cause of action. In her initial complaint, plaintiff asserted that defendant had failed to offer her a lease in her personal capacity sometime between the issuance of the certificate of occupancy in 2013, and Access Theater signing the initial lease on January 31, 2014 (lease, NYSCEF Doc. No. 7 at 1). The statute of limitations on a claim for breach of contract is six years (CPLR 213 [2]). Giving plaintiff the benefit of the most favorable reading of her complaint and assuming that the statute of limitations began to run on January 31, 2014, the statute of limitations expired on January 31, 2020, more than three years prior to the commencement of this action.

In the amended complaint, plaintiff now alleges that defendant breached the stipulations by failing to add her as a tenant to the lease originally signed by Access Theater. Somewhat differently, in her opposition to the motion, plaintiff also argues that she had the right to enter into a lease in her personal capacity at any time. Having considered the two stipulations, the court does not find that they provide either right to plaintiff. As the Court of Appeals has summarized, the basic principles of contract interpretation are as follows:

It is fundamental that, when parties set down their agreement in a clear, complete document, their writing should as a rule be enforced according to its terms, and that courts should read a contract as a harmonious and integrated whole. Courts may not, through their interpretation of a contract, add or excise terms or distort the meaning of any particular words or phrases, thereby creating a new contract under the guise of interpreting the parties' own agreements. In that regard, a contract must be construed in a manner which gives effect to each and every part, so as not to render any provision meaningless or without force or effect.

(Nomura Home Equity Loan, Inc., Series 2006-FM2, by HSBC Bank USA, N.A. v Nomura Credit & Capital, Inc., 30 NY3d 572, 581 [2017] [internal quotation marks and citations omitted].)

The 2013 stipulation provides that upon the issuance of a certificate of occupancy, defendant would offer the plaintiffs in the 2011 litigation, including plaintiff herein and Access Theater, “leases in accordance with and subject to the provisions of this Stipulation and the 1999 Stipulation” (2013 stipulation, NYSCEF Doc. No. 3, ¶ 7). The 1999 Stipulation provides that defendant would offer leases to Access Theater and plaintiff, and that each would have the right to renew the lease. Specifically, if Access Theater entered into the lease under its own name, it would “have the same annual right to renew the lease[] as . . . Jacqueline Christy would have if [she] entered into [a] lease[] in [her] individual capacity” (1999 stipulation, NYSCEF Doc. No. 2, ¶ 18 [b]). The parties offer differing interpretation of these provisions.

Plaintiff argues that both she and Access Theater had essentially an unfettered right to become tenants of the premises at any time following issuance of the certificate of occupancy. Defendant, by contrast, argues that at the time the lease was offered, both plaintiff and Access Theater could have become tenants. Having settled on a lease with only Access Theater, however, plaintiff did not have the right to either be added as a tenant later, or to enter into a separate lease herself. The more natural reading of the stipulations supports defendants’ interpretation. Perhaps the strongest point in defendant’s favor is that neither stipulation contains language supporting plaintiff’s right to join an existing lease or enter a separate lease in perpetuity. The lease, it should be noted, provides that only Access Theater may renew it (lease, NYSCEF Doc. No. 7 at 1 [“You, the Tenant, ACCESS THEATER INC.”]; ¶ 1 [“You shall have the annual right to renew this Lease”]). As she was not a tenant under the original lease, plaintiff does not have the right to renew it in her personal capacity (*Fox v 12 E. 88th LLC*, 160 AD3d 401, 402 [1st Dept 2018]). The certificate of occupancy lists one individual space for the fourth floor of the premises, and reading the stipulations to imply that defendant could sign multiple

separate leases for the same space at the same time is the sort of absurd result that courts are instructed to avoid (*Rubin v Baumann*, 148 AD3d 556, 556 [1st Dept 2017]).

Plaintiff also relies on the provision of the 2013 stipulation that provides that “[u]ntil the point at which the leases shall govern the Parties’ relationship, the rights and responsibilities of the Parties shall continue to be governed by the 1999 Stipulation and this Stipulation” (2013 stipulation, NYSCEF Doc. No. 3, ¶ 8). Plaintiff urges the court to find that, in the absence of a lease, defendant remains subject to the requirements of the stipulations and therefore must offer her a lease. A more sensible reading of the stipulations, however, suggests that this provision refers to the “Interim Period” first set forth in the 1999 stipulation.

In summary, the 1999 stipulation provides for the payment schedule for each unit in the premises between the signing of the stipulation and the issuance of an updated certificate of occupancy, as well as the procedure if any tenant failed to pay the rent during the Interim Period (1999 stipulation, NYSCEF Doc. No. 2, ¶¶ 9-13). Similarly, the 2013 stipulation begins by stating that the Interim Period remained in effect pending the issuance of a certificate of occupancy (2013 stipulation, NYSCEF Doc. No. 3, ¶ 1 [a]). This is consistent with the overall purpose of both stipulations, which is to regularize and legalize the tenants’ occupation of the premises by updating the certificate of occupancy and transitioning the tenants onto leases with defendant rather than continual litigation over the status of the building (1999 stipulation, NYSCEF Doc. No. 2 at 2 [“WHEREAS, the parties want to resolve the outstanding issues in the Severed Action and fix their respective rights and obligations to each other in connection with the Premises from this day forward”]; 2013 stipulation, NYSCEF Doc. No. 3 at 2 [“WHEREAS, the Parties wish to amend the 1999 Stipulation and to resolve their disputes in accordance with the terms set forth herein”]). Reading the 2013 stipulation to provide that any tenant who did not

enter a lease remains governed by the stipulations based upon the above quoted language from the 2013 stipulation is contrary to the careful scheduling of the parties' relationship at various points during the process of legalizing the tenants' occupation of the premises. As the court is directed to "read a contract as a harmonious and integrated whole" (*Nomura Home Equity Loan, Inc.*, 30 NY3d at 581), the court cannot read the stipulations as plaintiff desires.

Because plaintiff cannot show a breach of the stipulations, plaintiff has failed to state a claim for breach of contract (*Harris v Seward Park Housing Corp.*, 79 AD3d 425, 426 [1st Dept 2010]), to the extent such a claim was not already time-barred, as set forth above. Because plaintiff has no claim, there is no justiciable controversy between the parties (CPLR 3001) and the cause of action for declaratory judgment must also be dismissed.

Accordingly, it is hereby

ORDERED that defendant's motion to dismiss the amended complaint is granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of defendant dismissing the case against it, with costs and disbursements to defendant as taxed by the Clerk upon submission of an appropriate bill of costs.

This constitutes the decision and order of the court.

ENTER:



<u>6/24/2024</u>			<u>LOUIS L. NOCK, J.S.C.</u>
DATE			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>
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			<input type="checkbox"/> NON-FINAL DISPOSITION
			<input type="checkbox"/> GRANTED IN PART
			<input type="checkbox"/> OTHER
			<input type="checkbox"/> SUBMIT ORDER
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