

Rohan 573 W 161 St LLC v Feldman

2024 NY Slip Op 32957(U)

August 19, 2024

Supreme Court, New York County

Docket Number: Index No. 653381/2020

Judge: Emily Morales-Minerva

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

PRESENT: HON. EMILY MORALES-MINERVA PART 42M

Justice

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ROHAN 573 W 161 ST LLC,

Plaintiff,

- v -

YAN FELDMAN, IGOR SPIVAKOV, FAMILY HEALTH
MANAGEMENT LLC, HISPANIC MEDICAL HEALTH, P.C.,
577 W 161 STREET CORPORATION

Defendants.

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INDEX NO. 653381/2020

MOTION DATE 02/09/2024

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 101, 102, 103, 104, 105, 106, 107, 108, 109

were read on this motion to/for DISMISSAL

APPEARANCES:

Graff Dispute Resolution, New York, New York (Michael Peter Graff, Esq., of counsel) for plaintiff.

The Esses Law Group, LLC, New York, New York (Leo L. Esses, Esq., of counsel) for defendants.

HON. EMILY MORALES-MINERVA:

In this breach of contract action to recover unpaid rent and additional rent due under a commercial lease, defendants 577 W 161 STREET CORPORATION ("defendant tenant"), YAN FELDMAN, IGOR SPIVAKOV, FAMILY HEALTH MANAGEMENT LLC, and HISPANIC MEDICAL HEALTH, P.C. ("defendant guarantors", together with defendant tenant, "defendants") move to dismiss the third cause of action in ROHAN 573 W 161 ST LLC's ("plaintiff") amended complaint. Defendants reason that the third cause of action lacks merit as it

does not constitute a separate cause of action, and that it lacks the specificity necessary to demonstrate fraud.

Plaintiff submits opposition, arguing, among other things, that defendants' arguments in the subject motion (seq. no. 003) mirror those submitted in opposition to plaintiff's motion to amend the complaint (seq. no. 002), which was granted over defendants' objection. Plaintiff contends that defendants are not entitled to re-litigate the substantive determinations of the court (N. Bannon, J.S.C.) in the context of the subject motion to dismiss. Defendants submit a reply.

For the reasons set forth below, defendants' motion to dismiss the third cause of action in the amended complaint (seq. no. 003) is denied entirely.

BACKGROUND

Plaintiff, owner of commercial property at 573 West 161 Street in New York City, leased a medical office within the subject property to defendant tenant 577 W 161 STREET CORPORATION pursuant to a lease agreement dated December 10, 2019 (NY St Ct Elec Filing [NYSCEF] Doc. No. 29, Lease Agreement). Defendant guarantors FELDMAN and SPIVAKOV executed a guaranty of the lease, and defendant guarantors FAMILY HEALTH MANAGEMENT LLC and HISPANIC MEDICAL HEALTH, P.C. signed a separate guaranty, which were both incorporated into the December 10, 2019, lease agreement (id.).

Approximately one-month later, plaintiff sent a notice of default to defendants, indicating that defendant tenant was delinquent in its January rent obligation, and demanded payment of the "entire unpaid sum of \$136,960.65," less installments already paid, with interest thereon (NYSCEF Doc. No. 004, Notice of Default, dated January 20, 2020).

On July 27, 2020, plaintiff commenced this action, asserting two causes of action for (1) breach of the lease agreement as against defendant tenant; and (2) breach of the guaranties of payment as against defendant guarantors. The gravamen of plaintiff's complaint is that defendant tenant vacated the premises without notice to plaintiff and in violation of the lease; personal possessions and business fixtures of defendant tenant remained on the premises despite defendant tenant's vacatur; and defendants defaulted in their rent obligations pursuant to the lease agreement.

After the defendants answered on August 17, 2020, the parties engaged in discovery for approximately two years, and amid such, defendant tenant sent plaintiff a notice of their intent to vacate the premises in six-months (NYSCEF Doc. No. 45, Notice of Intention to Vacate dated August 6, 2021). Plaintiff filed a Note of Issue on August 31, 2022.

On September 26, 2022, plaintiff filed a motion (seq. no. 001) seeking summary judgment on its two causes of action, and

dismissal of defendants' ten affirmative defenses. Defendants opposed the motion and filed a cross-motion for leave to file an amended answer.

While the motion for summary judgment and cross-motion were pending, plaintiff filed a second motion (seq. no. 002), seeking leave to amend its complaint to add a third cause of action to pierce the corporate veil of defendant tenant, and to hold defendant guarantors liable for defendant tenant's breach of the lease agreement. In support of its motion, plaintiff cited to evidence obtained during discovery. Defendants opposed the motion as untimely, as well as on the basis that "the proposed amendment makes no sense" (NYSCEF Doc. No. 84, Defendants' Affirmation in Opposition).

On January 11, 2024, the court (N. Bannon, J.S.C.) issued a combined decision and order, marking plaintiff's motion for summary judgment (seq. no. 001) as withdrawn, granting defendants' cross-motion for leave to file an amended answer, and granting plaintiff's motion for leave to file an amended complaint (seq. no. 002).

With respect to plaintiff's motion to amend the complaint (seq. no. 002), the court held that while the proposed third cause of action -- to pierce the corporate veil -- could not stand alone, the additional proposed allegations were "not palpably insufficient to the extent they supplement the breach of contract

and breach of guaranty causes of action. Plaintiff adds allegations to show that [defendant guarantors] 'exercised complete domination of' [defendant tenant] and that 'such domination was used to commit fraud or wrong against plaintiff which resulted in plaintiff's injury'" (NYSCEF Doc. No. 95, Decision and Order, N. Bannon, J.S.C.). Accordingly, the amended complaint was deemed served on the defendants (id.).

The Court explicitly granted defendants' cross-motion for leave to amend their answer only "to the extent that they may file an amended answer to the amended complaint within 30 days of the date of th[e] order," dated January 11, 2024 (id.).

However, defendants did not file an amended answer within the court-prescribed time (or otherwise) and did not appeal said order. Instead, defendants timely filed the subject motion to dismiss (seq. no. 003) the third cause of action in the amended complaint.

Defendants argue that the third cause of action -- to pierce the corporate veil -- must be dismissed because it (1) lacks merit as it does not constitute a separate cause of action; and (2) lacks the necessary specificity to demonstrate fraud, which is an essential element to piercing the corporate veil (NYSCEF Doc. No. 106, Affirmation in Support of Motion to Dismiss).

In opposition, plaintiff argues that defendants' motion raises the exact points considered and rejected by the court in motion sequence 002, and, in the event this court considers

defendants' motion, that the third cause of action is sufficiently pled to survive a motion to dismiss.

ANALYSIS

Law of the Case

The doctrine of the law of the case applies to legal determinations that were necessarily revolved on the merits in a prior decision, and to the same questions presented in the same case (Chanice v Fed. Exp. Corp., 118 AD3d 634 [1st Dept 2014]); see Ruiz v Anderson, 96 AD3d 691 [1st Dept 2012]). "The doctrine of law of the case contemplates that the parties had a full and fair opportunity to litigate when the initial determination was made" (Chanice, 118 AD3d at 635; People v Evans, 94 NY2d 499 [2000]).

Defendants' arguments that the Court should dismiss the third cause of action of the amended complaint because it lacks merit and lacks specificity is unavailing and seeks to circumvent the Court's prior ruling on these issues. While defendants, perhaps strategically, do not identify the section of the CPLR relied upon in the instant motion to dismiss (seq. no. 003), based on the arguments presented therein, it is evident that defendants move to dismiss pursuant to CPLR § 3211 (a)(7).

Defendants had a full and fair opportunity to litigate the merits of the proposed amended complaint, and the defendants' arguments in the instant motion are duplicative of the arguments presented in its opposition to plaintiff's motion to amend the complaint. The court (N. Bannon, J.S.C.) explicitly held that the third cause of action in plaintiff's amended complaint was sufficiently pled and did not stand alone as its own cause of action (NYSCEF Doc. No. 95, Decision and Order, dated January 11, 2024). This substantive determination regarding the sufficiency of the allegations cannot be relitigated in the context of this motion, and it is the law of the case (see Lee v Chan Ka Luk, 127 AD3d 612 [1st Dept 2015]).

Accordingly, it is

ORDERED that defendants' motion to dismiss (seq. no. 003) is denied.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

8/19/2024
DATE

Emily Morales-Minerva
EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input 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