

SB Garson LLC v Luck
2024 NY Slip Op 35239(U)
May 30, 2024
Supreme Court, Westchester County
Docket Number: Index No. 60097/2022
Judge: Thomas Quiñones
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER – I.A.S. PART

PRESENT: HON. THOMAS QUIÑONES, J.S.C.

-----X
SB GARSON LLC,

Plaintiff(s)

-against-

JESSICA LUCK, JOSEPH CASTILLO,
and DANA ZARAT LUCK, Executrix for the Estate
of Edward Luck, Deceased,

Defendant(s).
-----X

DECISION AND ORDER

Index No. 60097/2022

Motion Sequence No. 3, 4

The following papers filed to the New York State Court Electronic Filing System (NYSCEF) as NYSCEF Doc. 65-84 were read and considered on (i) Motion Sequence No. 3 filed by Plaintiff requesting renewal and reargument of the Decision and Order dated October 31, 2023 and related relief; and (ii) Motion Sequence No. 4 filed by Defendants requesting dismissal of the Complaint pursuant to New York Limited Liability Company Law § 808, RPL § 238-a(2), and/or N.Y. C.P.L.R. § 3211, and related relief.

Upon the foregoing papers, the motion is determined as follows:

This is a commercial contract action arising from a “Standard Form of Apartment Lease” dated July 31, 2018 (“Lease”) (NYSCE Doc. 32). The Complaint alleges, inter alia, that the Defendants-tenants Jessica Luck and Joseph Castillo, failed to timely make monthly rental payments, thus entitling Plaintiff to rental arrears (\$7,600.00), late fees (\$200.00), and broker expenses incurred to advertise and “re-let” the apartment (\$5,940.00), totaling \$13,740.00. The Complaint asserts a separate claim against the guarantor on the subject lease, Edward Luck, for the total sum of \$13,740.00. (NYSCEF Doc. 1).

Defendants previously moved this Court (1) pursuant to CPLR §3126 to strike Plaintiff’s complaint, and for an order granting judgment on their counterclaims; (2) for an order dismissing the action against the deceased defendant Edward Luck; or in the alternative (3) for an order of judgment on liability against Plaintiff pursuant to CPLR §3126 and setting the matter for inquest; or (4) pursuant to CPLR §3124 compelling disclosure. Plaintiff opposed Defendants’ application and cross-moved for leave to amend the caption pursuant to CPLR §3025(b) to substitute the Executrix of the Estate of the deceased defendant Edward Luck, and to remediate the caption pursuant to

CPLR §§305(c) and 2001. The Decision and Order dated October 31, 2023 denied Defendants' application seeking to strike Plaintiff's complaint and partially granted Plaintiff's motion to the extent that Plaintiff sought to amend/substitute the Executrix of the Estate of the deceased defendant Edward Luck. Said decision, in essence, denied the branch of Plaintiff's motion to remediate the case caption pursuant to CPLR §§305(c) and 2001 to reflect the proper Plaintiff-entity, "S Garson LLC" (as opposed to SB Garson LLC) based, in part, on Plaintiff's failure to proffer a factual affidavit demonstrating standing. (See, NYSCEF Doc. 61).

Plaintiff's Motion Sequence No. 3:

Plaintiff's instant motion requests leave to renew and/or reargue that portion of this Court's Decision and Order dated October 31, 2023 which denied Plaintiff's cross-motion for leave to correct and amend the Plaintiff-entity named in the case caption. Counsel contends that the original Plaintiff in the caption of this matter was erroneously identified as "SB Garson LLC", whereas the proper Plaintiff in this action as indicated on the subject lease at issue is "S. Garson, LLC". Counsel states that the proposed corrected Plaintiff, S. Garson, LLC, is the owner and operator of the subject lease premises with standing to commence this action (Romano Aff.¶13). Counsel also submits the affidavit of Samantha Garson, the Managing Member of S. Garson, LLC, attesting to same. (NYSCEF Doc. 67).

Counsel further states that the addition of the erroneous "B" in the original caption was a simple and unintentional clerical error. Counsel states that, upon information and belief, SB Garson LLC does not exist, and if it does exist as a legal entity, it is not a proper party to this action and was never intended to be a party to this action. Accordingly, Plaintiff respectfully requests that the caption now be amended to correctly identify the Plaintiff as S. Garson, LLC.

Defendants' Motion Sequence No. 4:

Defendants' cross-motion requests judgment, pursuant to New York Limited Liability Company Law § 808, RPL § 238-a(2), and/or N.Y. C.P.L.R. § 3211, dismissing the Complaint and/or the Proposed First Amended Complaint with prejudice, or in the alternative without prejudice, upon the grounds that the Plaintiff does not have legal capacity to sue, the Complaint and/or the Proposed First Amended Complaint fails to state a legally cognizable cause of action, the Defendant has defenses founded upon documentary evidence, and/or there is a lack of personal jurisdiction over the Defendant. Defendants cite two property deeds, both reflecting the owner of the leased premises as "SBG Garsky Legacy LLC", an entity that is not licensed to do business in New York. Accordingly, Defendants contend that the named plaintiff SB Garson, LLC lacks the capacity to sue and the subject lease by S. Garson, LLC is a legal nullity since the property owner (SBG Garsky Legacy LLC) did not execute the subject lease.

Defendants also oppose Plaintiff's motion for renewal and reargument of the prior court decision. Lastly, Defendants request an award for their reasonable attorney's fees and costs incurred in this action; and/or permission to proceed on the Defendants' counterclaims and directing the Plaintiff to post a \$25,000 bond as security for costs pursuant to CPLR §§ 8501-8503 by virtue of the Plaintiff not being licensed to conduct business in New York.

It is noted that all other arguments raised on the motion and evidence submitted by the parties in connection thereto have been considered by this Court, notwithstanding the specific absence of reference thereto.

Decision:

First, this Court will address Motion Sequence No. 3 filed by Plaintiff requesting renewal and argument of the Decision and Order dated October 31, 2023. A motion for leave to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion" (CPLR §2221[d][2]). "Motions for reargument are addressed to the sound discretion of the court which decided the prior motion and may be granted upon a showing that the court overlooked or misapprehended the facts or law or for some [other] reason mistakenly arrived at its earlier decision." (*Weiss v Bretton Woods Condominium II*, 151 AD3d 905 [2d Dept. 2017] quoting *Mudgett v Long Island Rail Rd.*, 81 AD3d 614, 614 [2d Dept. 2011] [internal quotation marks omitted]). A motion for leave to renew "shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination." (CPLR §2221[e][2]).

In applying the aforementioned legal standard of review to the case at bar, and Plaintiff having remedied the prior motion defect identified in the Decision and Order dated October 31, 2023 by now submitting the factual affidavit of Samantha Garson, the Managing Member of S. Garson, LLC, Plaintiff has demonstrated entitlement to amend and correct the case caption in accordance with CPLR §§305(c) and 2001 to reflect the proper Plaintiff-entity as "S. Garson, LLC". Plaintiff submitted, inter alia, the factual affidavit of S. Garson, LLC's managing member and the subject lease agreement demonstrating that S. Garson, LLC is the proper plaintiff in this case.

Second, this Court will address Motion Sequence No. 4 filed by Defendants for dismissal for, inter alia, lack of standing, capacity, and personal jurisdiction over Defendants. On a motion to dismiss pursuant to CPLR §3211, the pleading is to be afforded a liberal construction. A court must accept the facts as alleged in the complaint as true, accord the plaintiff/petitioner (as the nonmoving party) 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 NY2d 83, 87–88 [1994]). Under "CPLR §3211(a)(1), a dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law" (*Id.*). In assessing a motion under CPLR §3211(a)(7), however, a court may freely consider affidavits submitted by the

plaintiff to remedy any defects in the complaint (*Id.*, citing *Rovello v Orofino Realty Co.*, *supra.* at 635) and “the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one” (*Id.*, citing *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]; *Rovello v Orofino Realty Co.*, *supra.* at 636).

A parent company can be held liable as a party to its subsidiary's contract "if the parent's conduct manifests an intent to be bound by the contract, which intent is inferable from the parent's participation in the negotiation of the contract, or if the subsidiary is a dummy for the parent, or if the subsidiary is controlled by the parent for the parent's own purposes." (*See generally, Horsehead Indus. v Metallaesellschaft AG*, 239 AD2d 171, 172 [1st Dept. 1997]; *MBIA Ins. Corp. v. Royal Bank of Canada*, 28 Misc.3d 1225[A], 2010 NY Slip Op 51490[U], at *25, 2010 WL 3294302, at *25 [Sup Ct, Westchester County 2010]. Affidavits, amongst other documentary evidence, may be considered to counter Defendant's motion for dismissal. (*MBIA Ins. Corp. v. Royal Bank of Canada*, *supra.*).

In the present case, Plaintiff has submitted the affidavit of Samantha Garson, the managing member of S. Garson LLC, related to the relationship of the various entities listed on the subject lease, deeds, and related documents that were made part of the motion record. (NYSCEF Doc. 62, 81). Samantha Garson, in pertinent part, attests to the following facts in furtherance of Plaintiff's position that the parent company S. Garson LLC's intent to be bound by the subject lease:

- (i) S. Garson LLC is the parent company (“Parent Company”) of both subsidiary companies: (a) SBG Garsky Legacy LLC (“Subsidiary 1”), and (b) SB Garson Management LLC (“Subsidiary Company 2”)(*See*, Affidavit of Samantha Garson, NYSCEF Doc. No 62).
- (ii) Subsidiary Company 1 is the recorded owner of 500A East 8761 Street (hereinafter “Subject Premises”). (*See*, Deeds filed as NYSCEF Doc. No 38).
- (iii) Parent Company, Subsidiary Company 1, and Subsidiary Company 2 along with all Defendants are parties to this lease agreement. (*See*, NYSCEF Doc. No. 32).
- (iv) The Parent Company had a clear intention to, through its conduct, be bound by the lease agreement between the parties as it was labeled as the Owner of the Subject Premises on multiple occasions. (*See*, NYSCEF Doc. No. 32 & No. 62).
- (v) The Parent Company signed the lease agreement, and the Parent Company's Subsidiary Company 2 (SB Garson Management LLC), as its managing agent, signed the Lease Rider, it being the clear intention that Parent Company be bound by the lease agreement and rider.

When affording a liberal construction of pleadings and accepting the facts as alleged by Plaintiff as true, and affording the Plaintiff (as the nonmoving party) the benefit of every possible favorable inference, Defendant's motion for dismissal is denied.

Lastly, insofar as the Parent Company (and substituted Plaintiff), S. Garson LLC, is a party to the Lease and is a registered New York State business licensed to conduct business within the

State (*see*, NYSCEF Doc. 69), the record demonstrates that the Parent Company S. Garson LLC has the right to proceed in this action without the necessity of posting a monetary undertaking bond as requested by Defendants. Based on the foregoing, it is hereby

ORDERED that, as to Motion Sequence No. 3, Plaintiff has demonstrated entitlement to amend and correct the case caption in accordance with CPLR §§305(c) and 2001 to reflect the proper Plaintiff-entity as “S. Garson, LLC”. It is further

ORDERED that, the case caption is hereby amended as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER – I.A.S. PART

-----X
S. GARSON LLC,

Plaintiff(s)

Index No. 60097/2022

-against-

JESSICA LUCK, JOSEPH CASTILLO,
and DANA ZARAT LUCK, Executrix for the Estate
of Edward Luck, Deceased,
Defendant(s).

-----X
It is further

ORDERED that, as to Motion Sequence No. 4, Defendants’ motion for dismissal and related relief is denied in its entirety. It is further

ORDERED that any other requested relief not specifically granted herein is denied. It is further

ORDERED that, Judge’s Court Clerk, Anissa Robinson, will issue a separate court notice scheduling a virtual compliance conference using Microsoft Teams.

The foregoing constitutes the Decision and Order of this Court.

Dated: May 30, 2024
White Plains, New York

ENTER:



HON. THOMAS QUIÑONES, J.S.C.

TO: *Filed to NYSCEF*