

1616 President St. Assoc. LLC v Fraser
2024 NY Slip Op 35275(U)
March 11, 2024
Supreme Court, Nassau County
Docket Number: Index No. 607313/2023
Judge: Conrad D. Singer
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

P R E S E N T : HON. CONRAD D. SINGER,

Justice

TRIAL PART: 20

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1616 PRESIDENT STREET ASSOCIATES LLC,

Plaintiff,

Index No.: 607313/2023

Motion Seq. No.: 001

Motion Submitted: 12/20/2023

-against-

DECISION AND ORDER ON
MOTION

GLENDON FRASER,

Defendants.

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The following papers were read on this motion:

Notice of Motion and Supporting Papers [Seq. 001].....X

Affirmation in Opposition to Motion and Supporting Papers [Seq. 001].....X

Memorandum of Law in Reply [Seq. 001].....X

Upon the foregoing e-filed papers, the motion filed by the Defendant, Glendon Fraser [“Defendant”], for an Order pursuant to CPLR § 3211(a)(1) and (a)(7), dismissing the Plaintiff’s Complaint; or, alternatively, pursuant to CPLR § 510, transferring this action to a proper venue; or, alternatively, pursuant to CPLR § 2201, staying all proceedings in this action upon such terms as may be just, is determined as hereinafter follows:

The Plaintiff, 1616 President Street Associates LLC [“Plaintiff”], commenced this action on May 8, 2023, by filing a Summons and Complaint. The Defendant filed his motion to dismiss in lieu of an Answer. The Plaintiff commenced this action to recover on an “absolute and unconditional” personal guaranty executed by the Defendant. According to the Plaintiff’s Complaint, in or about May of 2019, non-party Vincia Barber [“Barber”] signed a Lease Agreement [the “Lease”] for the premises located at and known as 1616 President Street, Apartment A6, Brooklyn, NY [the “Premises”], and rented the Premises from the Plaintiff’s predecessor in interest. Additionally, on or about May 1, 2019, the Defendant, in order to induce the Plaintiff’s predecessor in interest to execute the lease, executed a Guaranty of Payment which

guaranteed Barber's obligations under the lease and any renewals thereof. The Plaintiff purchased the Premises in September of 2021.

The Plaintiff alleges that the subject Lease required Barber to make monthly rent payments in the sum of \$1,850.00, and that commencing in April of 2020 through April of 2023, Barba failed to make the rental payments except for 32 payments totaling \$4,432.00. The Plaintiff alleges that therefore, Barber is in default of the lease in the sum of \$64,295.00, and as a result of the Guaranty, the Defendant is indebted to the Plaintiff in the sum of \$64,295.00.

The Defendant argues that the case should be dismissed because the Plaintiff's predecessor in interest terminated the subject Lease by notice of termination dated October 12, 2020, with an effective termination date of October 31, 2020, and once a lease ends, the guaranty ends with it.

The Defendant has submitted proof that the Plaintiff's predecessor in interest subsequently commenced a holdover case on or about November 5, 2020, predicated upon that termination of the lease [the "Holdover litigation"]. The Holdover litigation has yet to be resolved and remains pending in Kings County housing court. The Defendants further argue that even if the prior owner had not terminated the lease, the principal lease would have expired on its own terms on April 31, 2021, five months before the Plaintiff purchased the subject Premises from its predecessor in interest.

On a motion to dismiss pursuant to CPLR § 3211, the Court is to "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 NY2d 83, 87-88, [1994][citations omitted]). "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...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... and 'the criterion is whether the proponent of the

pleading has a cause of action, not whether he has stated one”’. (*Id.*, internal citations omitted, citations omitted).

“Where evidentiary material is submitted and considered on a motion to dismiss a complaint pursuant to CPLR § 3211(a)(7), and the motion is not converted into one for summary judgment, the question becomes whether the plaintiff has a cause of action, not whether the plaintiff has stated one and, unless it has been shown that a material fact as claimed by the plaintiff to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it, dismissal should not eventuate”...Evidence submitted by a defendant in support of a motion pursuant to CPLR § 3211(a)(7) does not warrant dismissal unless it ‘conclusively’ establishes that the plaintiff has no cause of action”. (*Young v Campbell*, 87 AD3d 692, 693-94 [2d Dept 2011][internal citations omitted, citations omitted]).

To prevail on a personal guaranty cause of action, a Plaintiff must establish “the existence of the guaranty, the underlying debt, and the guarantor’s failure to perform under the guaranty”. (*Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A. v Navarro*, 25 NY3d 485, 492 [2015] [internal quotations omitted, citations omitted]).

In this case, accepting the facts as alleged in the Complaint as true, and affording the Plaintiff every favorable inference, and after considering the Plaintiff’s affidavit submitted in opposition to the Defendant’s motion and after reviewing the broad language of the Defendant’s “absolute and unconditional” guaranty, the Court finds that the Complaint states a cause of action for guaranty against the Defendant.

The Defendant argues that the termination of the subject Lease on April 31, 2021 [if not sooner based on the Notice of Termination dated October 12, 2020], means that the guaranty of the Defendant cannot encompass the period of time alleged in the Plaintiff’s Complaint [i.e., April of 2020 to April of 2023]. However, the Defendant fails to acknowledge that the terms of the subject guaranty are broad and encompassing. Specifically, the Defendant guaranteed Ms. Barber’s “full performance of the lease” and the guaranty expressly provides that it is “absolute and without any condition”. Pursuant thereto, the

guaranty “includes, but is not limited to, the payment of rent and other money charges”. Additionally, the Guaranty further provides that it “will not be affected by any change in the lease, whatsoever. This includes, but is not limited to, any extension of time or renewals”, and the Defendant agreed to be bound “even if I am not a party to these changes”. The Defendant waived notice of any failure of performance by the tenant, and also agreed that if the tenant failed to perform under the lease, the landlord “may require [Defendant] to perform without first demanding that the tenant perform”.

In light of the liberality with which the Court is to construe the pleadings on a motion to dismiss, and in consideration of the broad terms of the subject Guaranty, the Court finds that the Defendant has failed to establish conclusively that his obligations as guarantor did not survive the expiration of the lease term, including while the Plaintiff’s predecessor continues to pursue its claims against Ms. Barber in the holdover proceedings and Ms. Barber remains in possession of the subject Premises. (*Compare, PRG Assoc. Ltd. Partnership v Planet Organic Holding Corp.*, 205 AD3d 1058, 1059-60 [2d Dept 2022]).

Moreover, accepting the facts as alleged in the Complaint as true, and affording the Plaintiff with the benefit of every favorable inference, after considering the supporting affidavit from Robert Raphael, a member of the Plaintiff association, together with the language of the subject Guaranty, the Court finds that the Complaint states a cause of action for guaranty and the portion of the motion which seeks dismissal of the Complaint shall be **DENIED**.

The Defendant moves in the alternative for an Order pursuant to CPLR § 510, transferring this action to a proper venue. However, the Defendant failed to comply with CPLR § 511, which requires that before moving to change the place of trial due to improper venue, the Defendant serve the Plaintiff with a written demand that the action be tried in a specified proper county. The Defendant’s failure to comply with CPLR § 511 requires the Court to deny the Defendant’s motion to change venue. (*See Coluck Inc. v SEM Sec. Sys., Inc.*, 175 AD3d 593, 594 [2d Dept 2019]). “While in certain limited circumstances” a court may grant an untimely motion to change venue, the Defendant in this case has failed to demonstrate any circumstances

that would support such an exercise of discretion by the Court. (*See, id.; compare to Accardi v Kaufmann*, 82 AD3d 803, 803-04 (Mem)-372 [2d Dept 2011]).

Likewise, the Defendant has failed to proffer the information required to prevail on a motion to change venue under CPLR § 510[3], that is, based on the convenience of material witnesses and the ends of justice. (*See Coluck*, 175 AD3d at 594-595). Therefore, the portion of the Defendant's motion which seeks a change of venue is **DENIED**.

The Defendant also seeks in the alternative an Order pursuant to CPLR § 2201, staying this proceeding pending the outcome of the holdover proceeding being litigated in Kings County Housing Court. CLPR § 2201 states: "Except where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just." "[A] court has broad discretion to grant a stay in order to avoid the risk of inconsistent adjudications, application of proof and potential waste of judicial resources". (*Matter of Hersh*, 198 AD3d 773, 775 [2d Dept 2021])[citations omitted]).

In this case, the Court finds that the Defendant has established a basis to stay the instant proceedings pending the determination of the holdover proceeding brought by the Plaintiff's predecessor against the non-party tenant Ms. Barber. As the holdover proceeding brought against Barber seeks, *inter alia*, "a judgment of arrears and fair value of use and occupancy", and in this case, the Plaintiff seeks the Defendant's payment of the "rent and other money" which he "absolutely and unconditionally" guaranteed, there is substantial overlapping of issues. Additionally, a determination in the holdover proceeding regarding what amounts, if any, Ms. Barber owes for arrears and use and occupancy, may have a collateral estoppel effect in this action. (*See APF 286 Mad LLC v Chittur & Assoc. P.C.*, 132 AD3d 610 [1st Dept 2015]). Therefore, the Court finds that the circumstances warrant staying this action pending a resolution of the proceeding that is pending in Kings County Housing Court, entitled *1616 President Street Realty*,

LLC v. Vincia Barber, under Index No. LT-306296-20/KI. The portion of the Defendant's motion which seeks a stay of this action is therefore **GRANTED**.

Accordingly, it is hereby,

ORDERED, that the portion of the Defendant's motion [Seq. 001] which seeks an Order pursuant to CPLR § 2201 staying this matter until the resolution of the action that is pending in Kings County Housing Court, entitled *1616 President Street Realty, LLC v. Vincia Barber*, under Index No. LT-306296-20/KI, is **GRANTED**, and this action is hereby **STAYED**; and it is further,

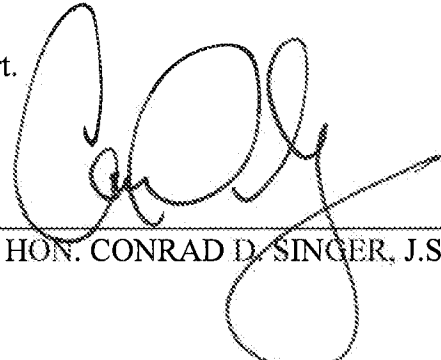
ORDERED, that the Defendant's motion is otherwise **DENIED**; and it is further,

ORDERED, that either party may apply to the Court to lift the stay of this action by submitting proof of the resolution of the Kings County Housing Court proceeding, and emailing such proof to judgesingerremote@nycourts.gov, with adversary counsel copied, as well as e-filing a copy of such proof; and it is further,

ORDERED, that all other requests for relief not specifically addressed herein shall be deemed **DENIED**.

This constitutes the Decision and Order of this Court.

Dated: March 11, 2024
Mineola, New York



HON. CONRAD D. SINGER, J.S.C.

ENTERED

Mar 14 2024

NASSAU COUNTY
COUNTY CLERK'S OFFICE