

Hildreth Real Estate Advisors, LLC v Learned Hands Ct., LLC
2024 NY Slip Op 35470(U)
May 7, 2024
Supreme Court, Suffolk County
Docket Number: Index No. 606339/2022
Judge: James Hudson
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.

Supreme Court of the State of New York
County of Suffolk
Commercial Division Part XLVI
Memorandum Decision

PRESENT:HON. JAMES HUDSON

Acting Justice of the Supreme Court

ORIG. MOTION DATE: 11/16/23FINAL SUBMIT DATE: 3/13/24Mot. Seq. #: **003 - MD**-----X
HILDRETH REAL ESTATE ADVISORS, LLC,

Plaintiff,

MELTZER, LIPPE, GOLDSTEIN &
BREITSTONE, LLP

Attorneys for the Plaintiff

190 Willis Avenue

Mineola, NY 11501

-against-

ROSENBERG, CALICA & BIRNEY, LLP
Attorneys for Defendant Trunzo General
Contracting Corp.

100 Garden City Plaza, Suite 408

Garden City, NY 11530

LEARNED HANDS COURT, LLC and TRUNZO
GENERAL CONTRACTING CORP.,

Defendants.

MATTHEWS, KIRST & COOLEY, PLLC
Attorneys for Defendant Learned Hands
Court LLC

241 Pantigo Road

East Hampton, NY 11937

Trunzo General Contracting Corp. requests an order, pursuant to **CPLR 3211 (a)**
(3), (5), (7), dismissing the allegations made against it in the amended verified complaint.

This is an action alleging breach of contract related to the purchase of commercial
real property which address is 3 Learned Hands Court, East Hampton, NY 11937

Hildreth Real Estate v Learned Hands

606339/2022

("Premises"). Michael Trunzo is the principal of property owner Learned Hands Court, LLC ("Learned Hands"). Pasquale J. Trunzo III is president of Trunzo General Contracting Corp. ("Trunzo Corp."). Michael and Pasquale Trunzo are brothers. Trunzo Corp. leases a building on the premises from lessor Learned Hands Court, LLC at an advantageous monthly rent. The lease contains a right of first refusal by the tenant should the owner/lessor decide to sell the premises.

On October 5th, 2016 Trunzo Corp. entered into a commercial lease with Learned Hands whereby it leased the building designated as No. 3 Learned Hands Court. The lease term optionally terminated on the latest to occur of the last day of the month following the fifth year of October 5th, 2016; or on the date the premises were sold to Trunzo Corp.; or two months following the closing of sale to a third-party purchaser. Lease paragraph 43 is entitled "Tenant's Right of First Refusal". That right is contingent upon Trunzo Corp. acceding to the identical terms and conditions as the third-party offer. On October 26th, 2020, Learned Hands entered into a contract to sell the premises to Hildreth Real Estate Advisors, LLC ("Hildreth"). Hildreth paid \$300,000. into attorney escrow as the down payment. Contract rider paragraph 36 provided a right of first refusal to Trunzo Corp. On April 30th, 2021 Learned Hands and Hildreth executed an amendment to the contract of sale. On June 7th, 2021, Trunzo Corp. sent notice of its intention to exercise the right of first refusal. Trunzo Corp. also sent a contract to Learned Hands which terms and conditions differed from those agreed to by Hildreth. Learned Hands presented a contract to Trunzo Corp. which contained terms identical to those which Hildreth had executed. Trunzo Corp. did not sign that contract. On July 28th, 2021, Hildreth and Learned Hands

Hildreth Real Estate v Learned Hands

606339/2022

executed a second contract for the purchase of the premises. Contract terms included the payment by Hildreth of an additional \$700,000.; which was placed into escrow, along with the \$300,000. already held pursuant to the first contract. Trunzo Corp. again noticed its intention to exercise the right of first refusal. It then filed an action entitled, *Trunzo General Contracting Corp. v. Learned Hands Court, LLC*, Index no. 612823/2021. That action alleges that the terms of the second contract purposely provide an unreasonably short period of fifteen days to close, in an attempt to thwart Trunzo Corp. being able to exercise its right of first refusal. In that case, plaintiff demands specific performance of the second contract on terms consistent with its rights under the lease. That case is pending before the Court.

On April 4th, 2022 Hildreth filed the instant action which complaint demanded specific performance of the July 28th, 2021 second contract. The third and fourth causes of action were alleged against Trunzo Corp. The third cause of action requested a declaratory judgment that Trunzo Corp. did not comply with the terms of the right of first refusal to purchase the premises. The fourth cause of action sought money damages for costs due to delay suffered through Trunzo bringing its 2021 action against Learned Hands and for it having improperly filed a notice of pendency against the premises, preventing consummation of the sale.

Trunzo Corp. filed a motion (seq. no. 001) requesting dismissal of the complaint. Judge Emerson ordered the third and fourth causes of action dismissed (NYSCEF Doc. No. 89). Judge Emerson found that Hildreth lacked standing to assert the third cause of action because the right of first refusal in the lease does not expressly name Hildreth as an

Hildreth Real Estate v Learned Hands

606339/2022

intended third-party beneficiary; nor does it authorize Hildreth to seek its enforcement. The Court ordered the third cause of action dismissed. The Court dismissed the fourth cause of action for not alleging that Trunzo Corp. had tortiously interfered with contractual relations.

Thereafter, by so-ordered stipulation, the parties agreed to Hildreth filing an amended complaint. The first cause of action of the amended complaint alleges tortious interference with the contract by Trunzo General Contracting Corp. (NYSCEF Doc. 101). Defendant Trunzo Corp. now moves (seq. no. 003) to dismiss those allegations.

For the purposes of this dismissal motion the Court must accept the allegations made in the amended complaint as true, accord them the benefit of every reasonable inference, and determine only whether the allegations support any cognizable legal theory (*Connlooy v. Long Island Power Authority*, 30 NY3d 719, 728, 70 NYS3d 909, 94 NE3d 471 [2018]). The criterion is whether Hildreth has a cause of action; not whether one has been stated (*Maddicks v. Big City Properties, LLC*, 34 NY3d 116, 123, 114 NYS3d 1, 137 NE3d 459 [2019]; *Leon v. Martinez*, 84 NY2d 83, 88, 614 NYS2d 972, 638 NE2d 511 [1994]). The Court will also consider whether Hildreth can succeed upon any reasonable view of the stated facts (*Aristy-Farar v. State*, 29 NY3d 501, 509, 59 NYS3d 877, 81 NE3d 360 [2017]). Dismissal will only be warranted if an asserted material fact is clearly nonexistent, and no significant dispute exists regarding that assertion (*Houtenbos v. Fordune Association, Inc.* 200 AD3d 661, 160 NYS3d 57 [2d Dept 2022]). In opposing the motion, Hildreth has no obligation to demonstrate evidentiary facts to support the complaint (*Stuart Realty Co. v. Rye Country Store, Inc.*, 296 AD2d 455, 456, 745 NYS2d 72 [2d Dept

Hildreth Real Estate v Learned Hands

606339/2022

2022)). The Court will not consider whether the amended complaint will survive a summary judgment motion or whether Hildreth will be able to prove its claims (*Redwood Property Holdings, LLC v. Christopher*, 211 AD3d 758, 177 NYS3d 895 [2d Dept 2022]).

Trunzo Corp. first requests dismissal of the amended complaint pursuant to **CPLR 3211 (a) (3)**; due to Hildreth's lack of standing to allege tortious interference against Trunzo Corp. That subsection addresses the lack of capacity to sue; not standing. The former concerns justiciability, the latter concerns a litigant's power to appear and bring the grievance before the Court (*Community Board 7 of the Borough of Manhattan v. Schaffer*, 84 NY2d 148, 155, 615 NYS2d 644, 639 NE2d 1 [1994]). Standing relates to an assurance that the party seeking relief has a sufficiently cognizable stake in the outcome so as to cast the dispute in a form traditionally capable of judicial determination (*Society of Plastics Indus. v. County of Suffolk*, 77 NY2d 761, 772-773, 570 NYS2d 553, 655 NE2d 649 [1995]). The allegations by Hildreth against Trunzo Corp. will not be dismissed pursuant to **CPLR 3211 (a) (3)**.

Trunzo Corp. next requests dismissal of the allegations made against it pursuant to **CPLR 3211 (a) (5)**. Counsel argues in reliance upon what he states as law of the case; that the Court has already found that Hildreth lacks standing to bring claims challenging Trunzo Corp. exercising its right of first refusal. Among several other grounds, the statute cites collateral estoppel as a basis for dismissal. It is a strict legal doctrine concerning preclusion after judgment; not the potentially preclusive effect of judicial determinations made in the course of litigation (*People v. Evans*, 94 NY2d 499, 502, 706 NYS2d 678, 727 NE2d 1232 [2000]). Collateral estoppel precludes relitigating an issue decided in a prior action (*see*

Hildreth Real Estate v Learned Hands

606339/2022

Continental Cas. Co. v. Rapid-American Corp., 80 NY2d 640, 649, 593 NYS2d 966, 609 NE2d 506 [1993]). “The law of the case doctrine is found in no New York statute” (*Evans, supra.* at 681). The allegations by Hildreth against Trunzo Corp. will not be dismissed pursuant to **CPLR 3211 (a) (5)**.

Finally, Trunzo Corp. requests dismissal of the allegations contained within the amended complaint pursuant to **CPLR 3211 (a) (7)**. As previously stated, the allegations against Trunzo Corp. concern tortious interference with the contract between Hildreth and Learned Hands. The elements of tortious interference with contractual relations are: 1) the existence of a contract between the plaintiff and a third-party; 2) the defendant’s knowledge of the contract; 3) the defendant’s intentional inducement of the third party to breach or otherwise render performance impossible; and 4) damages to the plaintiff (*Anesthesia Associates of Mount Kisco, LLP v. Northern Westchester Hosp. Center*, 59 AD3d 473, 476, 873 NYS2d 679 [2d Dept 2009]).

The first cause of action of the amended complaint alleges by incorporation the existence of a contract between Hildreth and Learned Hands. It further alleges that Trunzo Corp. was aware of the contract. Hildreth alleges that Trunzo Corp., by filing notice under its right of first refusal and non-compliant contract offers, and by filing notice of pendency, rendered performance impossible, which resulted in Hildreth incurring damages of not less than \$6.3 million dollars. The first cause of action is sufficiently plead against Trunzo Corp. and will not be dismissed.

Hildreth Real Estate v Learned Hands

606339/2022

Accordingly, it is

ORDERED, that the motion (seq. no. 003) by Trunzo General Contracting Corp., which requests, pursuant to **CPLR 3211 (a) (3), (5), (7)** that the allegations made against it in the amended verified complaint be dismissed, is denied in its entirety.

This memorandum also constitutes the Order of the Court.

Dated: May 7th, 2024
Riverhead, NY



HON. JAMES HUDSON
Acting Justice of the Supreme Court