

One Hanson LLC v Ashland G.U. LLC

2025 NY Slip Op 31872(U)

May 19, 2025

Supreme Court, Kings County

Docket Number: Index No. 512933/2021

Judge: Carolyn E. Wade

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At an IAS Term, Part 84 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Borough of Brooklyn, City and State of New York, on the 19th day of May, 2025.

PRESENT:

HON. CAROLYN E. WADE,

Justice.

-----X
ONE HANSON LLC,

Plaintiff,

-against-

ASHLAND G.U. LLC,

Defendant.
-----X

Index No. 512933/2021

DECISION AND ORDER

Recitation, as required by CPLR § 2219(a), of the following electronic papers considered in the review of the motions and cross-motions: NYSCEF Document Nos. 18 to 86.

Upon the forgoing papers, and after oral argument, Plaintiff One Hanson LLC ("Plaintiff") moves by an omnibus motion for leave to file a Second Amended Complaint, amend the caption, dismiss Defendant's affirmative defenses and counterclaims, impose sanctions, and enter a default judgment against the Defendant (Mot. Seq. 1). Plaintiff further moves under a separate motion for summary judgment (Mot. Seq. 2). Defendant Ashland G.U. LLC ("Defendant") cross-moves to deny Plaintiff's omnibus motion and to disqualify Plaintiff's counsel, Stephen Harnik, Esq. (Mot. Seq. 3). Defendant further cross-moves to deny Plaintiff's motion for summary judgment and for sanctions and costs against Plaintiff (Mot. Seq. 4). The motions and cross-motions are decided as follows:

ALLEGATIONS

Plaintiff commenced this action in May of 2021 for damages from Defendant's breach of the Lease and for attorney's fees. Defendant cured its default by paying the outstanding use and occupancy fees. Thereafter, Plaintiff did not further pursue nor dismiss the action.

In June of 2021, after a flood rendered Unit 301 ("premises" or "original premises") unusable, both parties agreed to a second lease amendment, allowing Defendant to temporarily relocate to Unit 701. Defendant was to pay a per diem rent rate of fifty percent of the base rent during the time Plaintiff made repairs to the premises.

Plaintiff contends that the repairs were completed in August 2023. Thus, Defendant was required to resume occupancy of the original premises and pay the full rent rate as of August 2023. In contrast, Defendant contends that Plaintiff never completed the repairs. Rather, Plaintiff falsely represented that the repairs had been completed to prematurely induce Defendant to resume occupancy of the original premises and recommence payment at the full rate of rent sooner than would otherwise be required.

In December of 2023, Plaintiff served its First Amended Complaint, as of Right, to amend its breach of the Lease cause of action against Defendant and to add an injunctive relief for Defendant to vacate and return to the original premises. Defendant claimed that the parties, through their respective counsel, entered into a settlement agreement with the Plaintiff regarding the state of the repairs to the original premises. The settlement agreement provides that the Defendant would resume occupancy of the original premises in March 2024, but pay the full rate of rent as of December 2023. Furthermore, the settlement agreement provides that the Plaintiff would complete certain "punch list" repairs before Defendant resumed occupancy and provided for mutual releases.

In contrast, Plaintiff claims that no settlement agreement was ever reached because Plaintiff never signed the negotiated settlement agreement.

On April 1, 2024, Defendant filed its Answer, including affirmative defenses and counterclaims. Subsequently, on April 22, 2024, Plaintiff filed its Supplemental Summons and Second Amended Complaint, without leave of court, to amend the first cause of action to eject and remove Defendant from legal possession of Unit 301, to amend the second cause action for breach of lease and rent arrears against Defendant and the purported Guarantor, Dr. David Sussman, and to add a third cause of action for accelerated rent.

ANALYSIS

a. Plaintiff's Motion to Amend

CPLR § 3025(b) provides that leave to amend shall be freely given. “In the absence of prejudice or surprise to the opposing party, leave to amend a pleading should be freely granted unless the proposed amendment is palpably insufficient or patently devoid of merit.” (*RCLA, LLC v. 50-09 Realty, LLC*, 48 A.D.3d 538, 538 [2d Dept 2008]).

In the instant action, Defendant failed to demonstrate prejudice or surprise by amending the Complaint to add Dr. David Sussman (“Sussman”), the purported guarantor, as a direct defendant. Furthermore, Defendant failed to establish that they will be hindered in the preparation of this matter or prevent it from taking measure(s) to support its position. In addition, the Court finds that the first, second, and fourth causes of action in the “[S]econd [A]mended [C]omplaint assert[ed] amended versions of the [first, second, and third] causes of action” in Plaintiff’s First Amended Complaint. (*Mawere v. Landau*, 170 AD3d 826, 827 [2d Dept 2019]). The Plaintiff’s third cause of action for accelerating the rent is unnecessary since Plaintiff already asserted a claim for rent arrears in its proposed Second Amended Complaint.

As such, the branch of Plaintiff's motion to amend the Complaint is granted to the extent and the proposed third cause of action for accelerated rent is dismissed.

b. Plaintiff's Motion to Dismiss Certain Counterclaims and Affirmative Defenses Alleged by Defendant

Plaintiff also seeks dismissal of Defendant's sixth affirmative defense and its four counterclaims pursuant to CPLR 3211 [a][1] on the grounds that it has a defense based upon documentary evidence and, pursuant to CPLR 3211[a][7], for failure to state a cause of action. "Upon a motion to dismiss a complaint, a plaintiff must be given the benefit of every possible favorable inference. (*Rovello v. Orofino Realty Co.*, 40 NY2d 633, 634 [1976]). In addition, the complaint should not be dismissed if "upon examination of the four corners of the pleading the factual allegations contained therein indicate the existence of a cause of action." (*Fleming v. Allstate Ins. Co.*, 106 AD2d 426, 426 [2d Dept 1984], *aff'd* 66 NY2d 838 [1985]. See also *Guggenheimer v. Ginzburg*, 43 NY2d 268, 275 [1977]).

In the instant action, Defendant adequately pled its first counterclaim for breach of the Lease, which includes allegations that Plaintiff was to complete the repairs to the original premises within a reasonable amount of time. Furthermore, the second lease amendment is silent as to the timing of the repairs and, as such, parol evidence may be admissible to explain ambiguities in a lease agreement. (*Bakas Rest., Inc. v. Charos*, 111 AD2d 360, 363 [2d Dept 1985]).

The Court further finds that Defendant adequately pled its second and third counterclaims for breach of the settlement agreement and unjust enrichment. Defendant established that Plaintiff accepted Defendant's signature page to the negotiated settlement agreement, which includes a "punch list" of repairs to be completed. Although the Plaintiff argues that the "out-of-court settlement agreement must be in writing and subscribed by the parties (*see* CPLR § 2104), 'the courts will refuse to permit the use of this rule against a party who has been misled or deceived by

the oral agreement to his [or her] detriment or who has relied upon it” (*Lowe v Steinman*, 284 AD2d 506, 507 [2d Dept 2001], quoting *Smith v Lefrak Org., Inc.*, 142 AD2d 725, 725 [2d Dept 1988]). In addition, “the existence of the contract is in dispute, the [party] may allege causes of action to recover for unjust enrichment and in quantum meruit as alternatives to a cause of action alleging breach of contract.” (*Thompson Bros. Pile Corp. v Rosenblum*, 121 AD3d 672, 674 [2d Dept 2014]; *El-Nahal v FA Mgt., Inc.*, 126 AD3d 667, 668 [2d Dept 2015]).

Lastly, Defendant has adequately pled its fourth counterclaim for fraud and its related sixth affirmative defense for Plaintiff’s bad faith fraudulent inducement. “To state a [cause of action to recover damages] for fraudulent inducement, there must be a knowing misrepresentation of material present fact, which is intended to deceive another party and induce that party to act on it, resulting in injury.” (*Isinias Enterprises Ltd. v Taza Grocery, Inc.*, 172 AD3d 1271, 1273 [2d Dept 2019]). Defendant suggests that Plaintiff made false representations regarding the timing and status of the repairs for the purpose of inducing Defendant to move back to the premises prematurely and pay the full rate of rent. As a result, Defendant reasonably relied on Plaintiff’s misrepresentations of the repairs and allegedly sustained damages suffered as a result of paying excess rent with incomplete repairs.

As such, the branch of Plaintiff’s motion seeking dismissal of Defendant’s four counterclaims and its sixth affirmative defenses is **denied**.

c. Plaintiff’s Motion for Summary Judgment, Plaintiff’s Application for Default Judgment, and Defendant’s Request for Costs

“[T]he proponent of a summary judgment motion must make a prima-facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact.” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

“In order to avoid the entry of a default judgment, a defendant who has failed to appear or answer the complaint must provide a reasonable excuse for the default and demonstrate a potentially meritorious defense to the action.” (*Yuxi Li v Caruso*, 161 AD3d 1132, 1133 [2d Dept 2018] quoting *Kim v Strippoli*, 144 AD3d 982, 983 [2d Dept 2016]).

In the instant action, Plaintiff has not demonstrated prima facie showing of entitlement to summary judgment. Defendant has established that multiple issues of fact remain open in this matter, including the timing and sufficiency of repairs to the original premises at issue. Furthermore, the Plaintiff’s application for a default judgment is premature and there no prejudice in allowing Defendant and Dr. Sussman the opportunity to timely file their answer. As such, the Plaintiff’s motion for summary judgment and default judgment is **denied**.

d. Defendant’s Motion to Disqualify

Defendant moves to disqualify Plaintiff’s attorney Stephen Harnik, Esq. and his law firm on the grounds that Mr. Harnik is a material witness in this case. “Disqualification [of an attorney] may be required only when it is likely that the testimony to be given by the witness is [necessary, and] [a]ny doubts should be resolved in favor of [disqualification].” (*108th St. Owners Corp. v Overseas Commodities Ltd.*, 238 AD2d 324, 326 [2d Dept 1997] [internal quotations omitted]).

Here, Defendant demonstrated that the second amendment of lease was signed by Mr. Harnik as Trustee of the member of the Plaintiff company. The Court finds that Mr. Harnik’s testimony will likely be necessary to address questions regarding the enforceability and negotiations of the settlement agreement. As such, Defendant’s cross-motion to disqualify Mr. Harnik and his law firm is **granted**.

The parties’ remaining arguments on sanctions need not be reached in light of the foregoing determination.

Accordingly, it is

ORDERED, that the branch of Plaintiff's omnibus motion (Mot. Seq. 1) for leave to amend the Complaint and caption is **GRANTED TO THE EXTENT** that Plaintiff's third cause of action for rent acceleration is **DISMISSED** from the Second Amended Complaint; and that the remaining branches of Plaintiff's omnibus motion are **DENIED**, and it is further

ORDERED that the Plaintiff's motion for summary judgment (Mot. Seq. 2) is **DENIED**; and it is further

ORDERED that the Defendant's cross-motion (Mot. Seq. 3) is **GRANTED TO THE EXTENT** of denying Plaintiff's request to dismiss Defendant's affirmative defenses and counterclaims, to imposing sanctions, and to enter a default judgment; and that the remaining branch of the Defendant's cross-motion to disqualify Plaintiff's counsel is **GRANTED**; and it is further

ORDERED that Defendant's cross-motion to deny Plaintiff's summary judgment motion (Mot. Seq. 4) is **GRANTED**; and it is further

ORDERED that this matter shall be stayed for 45 days from notice of entry of this order to permit Plaintiff an opportunity to obtain new counsel of record, and it is further

ORDERED that the proposed second amended complaint is the operative pleading and the Defendant is to file their answer within 20 days of the notice of entry of this decision.

This constitutes the Decision and Order of this Court.

ENTER:



HON. CAROLYN E. WADE, JSC

HON. CAROLYN E. WADE
JUSTICE OF THE SUPREME COURT

2025 MAY 23 A 9:38
KINGS COUNTY CLERK
FILED