Well-Being Chiropractic, P.C. v Eihab Human Servs., Inc.
2025 NY Slip Op 35433(U)
January 27, 2025
Supreme Court, Nassau County
Docket Number: Index No. 610179/2024
Judge: Gregg Roth
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SUPREME COURT - STATE OF NEW YORK

PRESENT:

Honorable Gregg Roth
Justice of the Supreme Court

TRIAL/IAS, PART 29
NASSAU COUNTY

WELL-BEING CHIROPRACTIC, P.C.,

Plaintiff(s),

-against-

EIHAB HUMAN SERVICES, INC.,

Defendant(s).

Index No.: 610179/2024

Motion Seq. No.: 001
Motion Submitted: 8/14/24

The following papers read on this motion:

Order to Show Cause/Supporting Exhibits and Memorandum of Law in Support X
Affirmation in Opposition/Supporting Exhibits and Memorandum of Law in Opposition....................X
Reply Memorandum of Law....................X

Plaintiff, Well-Being Chiropractic, P.C. (Well-Being), moves this Court, by order to show cause, pursuant to CPLR 6301, for a preliminary injunction enjoining the Defendant, Eihab Human Services, Inc. (EIHAB) from taking any action to terminate Plaintiff's lease of the first floor premises located at 219 Hempstead Turnpike, Hempstead, New York, and from commencing summary proceedings to evict Plaintiff from the Premises. Defendant opposes the motion.

The following background facts are not disputed. In May, 2016, Well-Being, as tenant, entered into a lease with Samas Property LLC (Samas), as landlord, for occupancy of commercial property consisting of the first floor of premises 219 Hempstead Turnpike, Hempstead, New York (the Premises). Samas was the owner of the Premises at the time the lease was entered into, but subsequently sold the Premises to EIHAB. The lease provided for a term of five (5) years. Article 64 of the lease rider provided a right of renewal provision, stating as follows:

> Provided Tenant is not in default under any of the provisions of the Lease and Lease Rider or any applicable notice and time to cure, Tenant, at its option, may renew the Lease for an additional period of Five (5) years commencing upon the end of the current lease term expiration. Tenant shall exercise said option by giving the owner written notice as provided in this Lease no later than six (6) months prior to the end of the base lease term expiration. In the event Tenant exercises the option to renew, the Base Rent for the first renewal year shall be increased by three percent (3%) of the base rent for the twelve (12) month period immediately preceding the Renewal Term. The Base Rent shall increase thereafter on each annual anniversary of the renewal term beginning date during the Renewal period by an additional three (3%) percent over the base rent for the immediately prior twelve month period.

Well-Being did not exercise the renewal option by giving the owner written notice in accordance with the terms of the lease before the five (5) year term expired in May, 2022.

In April, 2024, the Premises were sold to EIHAB. By letter dated May 21, 2024, EIHAB, as landlord, served Well-Being with a thirty (30) day termination notice, demanding that Well-Being quit and vacate the premises by June 30, 2024.

By letter dated May 28, 2024, Well-Being notified EIHAB that "[i]n accordance with Article 64 . . . of the Rider to said lease, this letter serves as [Well-Being]'s written notice of its invocation of the right to extend the Lease Term for a five (5) year period so that its tenancy will continue uninterrupted through the close of business on May 30, 2027.

By letter dated June 4, 2024, EIHAB rejected Well-Being's attempt to exercise the option as untimely.

Well-Being thereafter commenced this action by verified complaint filed on June 11, 2024, seeking a declaratory judgment that it has effectively renewed the term of the lease through the close of business on May 30, 2027, and a permanent injunction enjoining EIHAB from taking any action to terminate the lease prior to May, 30, 2027. Simultaneously with the filing of the action, Well-Being moved for a preliminary injunction, by order to show cause, which was issued by the Court (Dawn M. Jimenez, J.) on June 17, 2024. The order to show cause also granted a temporary restraining order restraining EIHAB from taking any action to terminate the lease and evict Well-Being pending the hearing and determination of the motion.

In support of the motion, Well-Being relies on a verified complaint, and copies of the lease, and the termination notice sent by EIHAB. In a memorandum of law signed by its attorney, Well-Being argues that it established a successful practice and established significant goodwill during the seven year period it has occupied the Premises. It further argues that Well-Being's principals had failed to recall that the lease required six (6) months prior written notice to renew the lease, and that the failure to provide notice was not deliberate. Well-Being argues further that Samas never inquired whether Well-Being elected to renew the lease, and that Samas implicitly extended the term of the lease, as evidenced by Samas having continued to accept Well-Being's monthly rental payment for two (2) years beyond the initial five (5) year term. Finally, Well-Being argues that EIHAB acknowledged the extension of the lease term by its continued acceptance of Well-Being's monthly rental payment without comment or objection.

In opposition to the motion, EIHAB submits the affirmation of Hamdy Elgindy, its Chief Executive Officer, in which he states as follows. EIHAB is a not-for-profit organization that services clients with intellectual and developmental disabilities, and provides residential day programs and community respite services. EIHAB purchased the commercial property known as 219 Hempstead Turnpike, Hempstead, New York on April 24, 2024 for the sum of $1,719,000. The property was purchased for EIHAB to use the property to operate its residential day programs and community respite services and as its office. EIHAB currently operates at 615 Merrick Avenue, Westbury, New York, which it rents pursuant to a lease, the term of which was due to expire on November 30, 2024. EIHAB pays a monthly rent of $23,200, plus additional rent and utilities for that space. EIHAB submits copies of its lease for the Westbury premises, and a certified copy of the April, 24, 2024 deed through which it acquired title to the Premises.

Elgindy further states that the contract of sale for the Premises executed between EIHAB and Samas provided that the two (2) commercial leases had not been modified, amended or extended, and that no renewal or extension options had been granted. Further, an Assignment of Leases and Rents dated April 24, 2024 was executed by Samas and delivered to EIHAB at closing, indicating that the Well-Being lease had expired, and that no renewal or extension had been granted. Copies of the contract of sale and the assignment of leases and rents were submitted. EIHAB intends to move in and operate its not-for profit business at the Premises. EIHAB obtained a mortgage loan in the amount of $1,289,250, and it has a monthly mortgage payment of $12,514.56. EIHAB furtherpays $325 monthly for elevator service maintenance along with water charges and insurance charges. Copies of the mortgage, a monthly mortgage statement, and elevator service contract are provided. EIHAB only receives $4,088 monthly rent from Well-Being, and $5,500 monthly rent from the second floor tenant, as set forth in the assignment of leases and rents. Accordingly, the total monthly rent received is approximately $4,000 less than EIHAB's monthly carrying costs for the property. In addition, EIHAB pays $23,200 per month to rent its current space in Westbury. After the term of that lease was to end on November 30, 2024, the monthly holdover use and occupancy charge would be $46,400, as set forth in that lease.

Elgindy asserts that shortly after the closing, EIHAB served Well-Being with a thirty (30) day termination notice, demanding that Well-Being quit and vacate the premises by June 30, 2024. Well-Being thereafter sent EIHAB a letter dated May 28, 2024, purporting to exercise the option to renew. By letter dated June 4, 2024, EIHAB rejected, as untimely, Well-Being's attempt to exercise the option. Copies of the termination notice and the aforementioned letters are submitted by EIHAB.

EIHAB first argues that Well-Being's motion for injunctive relief should be denied because Well-Being failed to submit an affidavit or affirmation by anyone with personal knowledge of the facts, having submitted only a memorandum of law signed by its attorney. Accordingly, Well-Being has failed to demonstrate entitlement to a preliminary injunction by demonstrating a probability of success on the merits, irreparable injury in the absence of an injunction, and a balance of equities in its favor. EIHAB further argues that Well-Being failed to timely exercise the renewal option before the lease expired on May 20, 2022, it remained in possession as a month-to-month tenant, and that EIHAB properly terminated the month-to-month tenancy. It argues that Well-Being has failed to demonstrate its prima facie entitlement to equitable renewal of the lease, and that EIHAB will be substantially prejudiced if the Court disregards the clear and unequivocal terms of the lease and if EIHAB is precluded from taking steps to take possession of the Premises.

"Preliminary injunctive relief is a drastic remedy which will not be granted unless a clear right thereto is established under the law and the undisputed facts upon the moving papers, and the burden of showing an undisputed right rests upon the movant" *(Saran v. Chelsea GCA Realty Partnership, L.P.*, 148 AD3d 1197, 1199 [2d Dept 2017][internal quotation marks omitted]; *see Shake Shack Fulton St. Brooklyn, LLC v Allied Prop. Group, LLC*, 177 AD3d 924, 926 [2d Dept 2019]). "As a general rule, the decision to grant or deny a preliminary injunction lies within the sound discretion of the Supreme Court" *(Soundview Cinemas, Inc. v. AC I Soundview, LLC*, 149 AD3d 1121, 1123; *see Doe v. Axelrod*, 73 NY2d 748, 750 [1988]). "In exercising that discretion, the Supreme Court must determine if the moving party has established: (1) a likelihood of success on the merits, (2) irreparable harm in the absence of an injunction, and (3) a balance of the equities in favor of the injunction" (*Shake Shack Fulton St. Brooklyn, LLC v Allied Prop. Group, LLC*, 177 AD3d at 927 [2d Dept 2019][internal quotation marks omitted]).

"An election to renew must be timely, definite, unequivocal, and strictly in compliance with the terms of the lease" (*Redlyn Elec. Corp. v Louis Shiffman, Inc.*, 81 AD3d 621, 622 [2d Dept 2011]; *see J.N.A. Realty Corp. v Cross Bay Chelsea*, 42 NY2d 392, 396 [1977]). "Equity will intervene, however, to relieve a tenant of the consequences of an untimely notice of an option to renew a lease where (1) the tenant's failure to exercise the option in a timely fashion resulted from an honest mistake or inadvertence, (2) the nonrenewal of the lease would result in a substantial forfeiture by the tenant, and (3) the landlord would not be prejudiced by the renewal" *(Matter of 221-06 Merrick Blvd. Assoc., LLC v Crescent Elec. Acquisition Corp.*, 79 AD3d 896, 896-97 [2d Dept 2010]; *see J.N.A. Realty Corp. v Cross Bay Chelsea*, 42 NY2d at 399-400 [1977]).

Here, the motion for a preliminary injunction will be denied. Well-Being failed to make a prima facie showing of a likelihood of success on the merits on its claim for equitable renewal of the lease, irreparable harm in the absence of an injunction, and a balance of the equities in favor of the injunction. To make a factual showing in support of the requested relief, Well-Being relied on its complaint, which was verified by its president, Zinalda Goldshteyn. Well-Being asserts that the verified pleading may be used as an affidavit, citing to CPLR 105 (u). Nevertheless, the Court finds that the verified complaint here is insufficient. The complaint alleges that the failure to timely exercise the option to renew the lease was inadvertent, and makes only general and unsupported allegations that "Well-Being earned and enjoyed enormous Goodwill" (*see* Verified Complaint, at par. 8), that "upon information and belief, EIHAB has not made any effort to . . . rent the premises to a third party and will not be prejudiced by Well-Being's continued occupancy" (*see* Verified Complaint, at par. 27), and that if EIHAB is not enjoined from terminating the lease, Well-Being will suffer immediate and irreparable damage".

While the failure to timely exercise the option to renew the lease may have been inadvertent, Well-Being has failed to make a sufficient showing that a substantial forfeiture would result if equitable renewal was not granted or that the landlord would not be prejudiced by the renewal *(see Matter of 221-06 Merrick Blvd. Assoc., LLC v Crescent Elec. Acquisition Corp.*, 79 AD3d 896, 897 [2d Dept 2010]; *cf. Popyork, LLC v 80 Ct. St. Corp.*, 23 AD3d 538, 539 [2d Dept 2005]; *Bench 'N' Gavel Rest. v Time Equities*, 169 AD2d 755, 757 [2d Dept 1991]; *Souslian Wholesale Beer & Soda v 380-4 Union Ave. Realty Corp*., 166 AD2d 435, 437 [2d Dept 1990]; *Nanuet Nat. Bank v Saramo Holding Co.*, 153 AD2d 927, 928 [2d Dept 1989]). In contrast, in opposition to the motion, EIHAB made a sufficient and detailed showing that it would be prejudiced by the renewal of the lease, by its inability to move into the Premises to operate its not-for-profit business, incurring monthly carrying costs well beyond the rents being paid for the Premises, and further being liable for rental payments for the space it occupies in Westbury.

Accordingly, Well-Being has failed to establish its entitlement to preliminary injunctive relief, and it is

ORDERED, that the plaintiff's motion for a preliminary injunction is DENIED, and it is further

ORDERED, that the temporary restraining order contained in the order to show cause dated June 17, 2024 ((Dawn M. Jimenez, J.) is VACATED.

This foregoing constitutes the Decision and Order of the Court. The Court has considered the other arguments raised by the parties and finds them to either be moot or without merit.

Dated: January 27, 2025
Mineola, N.Y.

Hon. Gregg Roth, J.S.C.

ENTERED
Jan 28 2025
NASSAU COUNTY
COUNTY CLERK'S OFFICE