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### 238-240 7th Ave. Corp. v. Lizcano

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[\*1]

<b>238-240 7th Ave. Corp. v Lizcano</b>
2021 NY Slip Op 50160(U)
Decided on March 1, 2021
Supreme Court, New York County
Lebovits, J.
Published by <a href="#">New York State Law Reporting Bureau</a> pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on March 1, 2021

Supreme Court, New York County

<p><b>238-240 7th Avenue Corp., Plaintiff,</b></p> <p><b>against</b></p> <p><b>Felipe Lizcano and DORA TRUJILLO, Defendants.</b></p>
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655769/2017

Heller Horowitz & Feit, P.C., New York, NY (Stuart A. Blander of counsel), for plaintiff.

Law Office of Michael R. Curran, Esq, Rego Park, NY (Michael R. Curran of counsel), for defendants.

Gerald Lebovits, J.

As the owner of the building located at 330 East 53rd Street in New York County, plaintiff, 238-240 7th Avenue Corp., seeks to recover back rent from defendant, Felipe Lizcano, a tenant who operated a store in the building. Plaintiff alleges it is owed rents that

accrued over 10 years from 2006 through 2016, while Lizcano continuously occupied the store. (The claims against co-defendant Dora Trujillo, based upon her guaranty of the original written lease between plaintiff and Lizcano, were dismissed by stipulation.)

## BACKGROUND

In the early 1980s, Nancy Luk, a shareholder of plaintiff and member of a Hong Kong family, began managing the plaintiff as its Chief Executive Officer. (NYSCEF No. 81; NYSCEF No. 74.)

Under Ms. Luk's leadership, on January 29, 1990, plaintiff entered into a commercial lease with Lizcano. The lease specified a monthly rent of \$4,000 for the store. The lease additionally provided that defendant would pay for water charges in the store, cost-of-living adjustments, and real estate-tax escalations. The lease also called for a late charge equal to five [\*2]percent on any late payments, along with interest of one percent per month on the untimely payment. (NYSCEF No.68.)

On February 1, 1995, plaintiff and Lizcano executed a renewal agreement under which the lease term was extended through February 28, 2000 upon all the same terms, conditions and covenants as the original lease. (NYSCEF No. 68.) These terms were then extended through February 2005. On March 10, 2005, plaintiff and Lizcano executed a final renewal agreement that extended the lease through February 28, 2006, and provided that the monthly base rent would be increased to \$4,750. Upon the expiration of this last renewal agreement, Lizcano remained in possession of the store as a month-to-month tenant, without a written lease, from 2006 through January 2017. (NYSCEF No. 58.)

Ms Luk and her family members in Hong Kong fell out over disputes regarding her management of the family's U S companies, including her management of plaintiff Ms Luk's family sued her in two separate actions challenging her ownership interests in plaintiff One of those cases remains open

In 2011 Ms. Luk died, and her husband, Chun Ka Luk, became the administrator of her estate. Mr. Luk also became plaintiff's president and chief executive officer. (NYSCEF No. 82.) Ms. Luk's brother, Dennis Lee, has brought a claim against Ms. Luk's estate contesting Mr. Luk's position as the administrator. Additionally, Ms. Luk's family continue to dispute Mr. Luk's ownership interests in plaintiff.

Plaintiff's complaint asserts two causes of action against Lizcano. The first cause of action alleges a breach of the lease. Plaintiff alleges that after the written lease extensions between the parties ended, plaintiff and Lizcano agreed that Lizcano would remain a tenant on a month-to-month basis, on the same terms and conditions as provided by the written lease, except that the base rent would be reduced to \$4,000 a month. (NYSCEF No. 68.) Based on this agreement, plaintiff alleges, defendant did not pay \$136,998.62 in outstanding obligations between December 2006 and December 2016. The second cause of action seeks to recover this amount on a theory of unjust enrichment and quantum meruit. Lizcano argues that the store's fair and reasonable rent for the relevant period was equal to the base rent, together with utility charges and late payments.

Lizcano now moves for summary judgment under CPLR 3212.

## Discussion

A summary-judgment motion should be denied if either party shows issues of material fact that requires a trial. (CPLR 3212 [b].) Courts review the evidence in a light most favorable to the non-movant to determine whether a purported claim is established as a matter of law, and every available inference must be drawn in the nonmoving party's favor. (*De Lourdes Torres v Jones*, [26 NY3d 742](#), 763 [2016].) It is not the court's function in deciding a summary judgment motion to make credibility determinations or findings of fact. (*Vega v Restani Constr. Corp.*, [18 NY3d 499](#), 505 [2012].)

Lizcano does not challenge the legal sufficiency of either the breach-of-contract or the quantum meruit claim. Lizcano raises other grounds to dismiss.

### a. Whether the case belongs in the Commercial Division

Lizcano argues that "plaintiff has failed to bring a case that is jurisdictionally adequate, and the case should be dismissed." (NYSCEF No. 78.) According to Lizcano, plaintiff erred in stating that the amount in controversy was \$661,433.32. Based on this error, the case was assigned to the Supreme Court, even though the plaintiff only seeks \$136,998.62. Lizcano [\*3] further claims that there is no merit to plaintiff's demand for real estate and utility payments and that the "true amount" in controversy is the base rent of \$17,000. Lizcano

argues that this figure demonstrates that "the case should have been brought in Civil Court." (NYSCEF No. 78.)

As plaintiff notes, though, Supreme Court has general jurisdiction in law and equity. (NY Const, art VI, § 1.) It has the power to hear a case regardless whether it could have been brought in a different court. An action for breach of contract or quantum meruit falls within the general jurisdiction of our state courts. Although this case has been assigned as a commercial contract case, the monetary threshold prescribed under 22 NYCRR § 202.70 (a) applies only to the Commercial Division's jurisdiction. It does not apply to this case as the Supreme Court has unlimited civil jurisdiction. Plaintiff's request for dismissal is denied.

### **b. Whether Mr. Luk is a necessary and indispensable party**

Lizcano argues that Mr Luk, as plaintiff's sole shareholder or as the administrator for Ms Luk's estate, is a necessary party and that plaintiff's failure to include him warrants summary judgment. Lizcano contends that Mr Luk's role in the litigation is not clear and that this ambiguity may mean that plaintiff is bringing this lawsuit without an underlying client or a "real party in interest " (NYSCEF No 78 at ¶ 33 ) Because the estate's role is "concealed from the world" and a subject of three other lawsuits, Lizcano argues, "confusion of identity or challenges from other quarters" could open him to multiple lawsuits. To prevent that possibility, Lizcano argues Mr Luk needed to be included in the action as a named plaintiff (NYSCEF No 77 ) These arguments are unpersuasive.

Corporations may sue in all courts and participate in actions and proceedings in their corporate name. (Business Corporation Law § 1006 [4].) A corporation has a legal existence separate and apart from its shareholders. ([Matter of Franklin St. Realty Corp. v NYC Env'tl. Control Bd.](#), [164 AD3d 19](#), 25 [1st Dept 2018].) An individual shareholder, even a sole shareholder, may not bring an action over an alleged wrong done to the corporation. ([MatlinPatterson ATA Holdings LLC v Federal Express Corp.](#), [87 AD3d 836](#), 839 [1st Dept 2011].) A corporation, not its individual shareholders, is entitled to damages if it is injured.

Lizcano's alleged breach of the lease or unjust enrichment injured plaintiff as a corporate entity. Any potential remedy must be pursued by the plaintiff alone. Plaintiff entered into the leases with Lizcano under its name and identity and continued to operate as a separate entity from Ms. Luk throughout the duration of leases. (NYSEF No. 68.) Because plaintiff's two causes of action belong entirely to the plaintiff as a corporate entity—and not to Ms. Luk's

estate or any administrator—Mr. Luk is not a necessary party. This also means Lizcano will not be exposed to any additional lawsuits on these claims.

Lizcano's additional contention—that Ms. Luk's estate's standing to sue is impaired due to ownership questions—is unavailing for the same reasons. Plaintiff brings this suit to enforce its own rights under the lease agreement, not to enforce Ms. Luk's personal rights. Ms. Luk's estate's standing is irrelevant to whether plaintiff can bring this action.

Accordingly, it is hereby

ORDERED that defendants' motion for summary judgment is denied

DATE 3/1/2021

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