2023-06-12

BLDG Mgt. Co., Inc. v. Rodman

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BLDG Mgt. Co., Inc. v Rodman
2023 NY Slip Op 50564(U)
Decided on June 12, 2023
Supreme Court, New York County
Lebovits, J.
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Decided on June 12, 2023

Supreme Court, New York County

BLDG Management Co., Inc., Plaintiff,

against

Matthew Rodman, Defendant.

Index No. 159054/2022

Nathanson Law Firm LLP, Garden City, NY (Mitchell A. Nathanson of counsel), for plaintiff.

Tamoor Law P.C., Long Island City, NY (Jan M. Tamoor of counsel), for defendant.

Gerald Lebovits, J.

This action arises from allegedly unpaid rent under a residential lease. Defendant moves to dismiss. Plaintiff cross-moves for partial summary judgment.

BACKGROUND

Plaintiff, an apartment management company, alleges that defendant Matthew Rodman leased unit 2H of the premises located at 124 East 24th Street in Manhattan, beginning December 1, 2010 (NYSCEF Doc No. 1 ¶ 5, complaint). Plaintiff alleges that defendant defaulted on the lease from May 1, 2020, through December 31, 2020, owing a balance of

$30,199.75 (NYSCEF Doc No. 1 ¶ 7-8). Plaintiff alleges three causes of action: first for breach [*2]of contract, second for rent arrears totaling $30,199.75, and third for attorneys' fees of $9,059.93.

Defendant represents that he moved out at the end of his lease term on December 31, 2012, and notified the building manager (NYSCEF Doc No. 8 ¶ 4, Rodman Affidavit). He states that a man named Matthew Raposo has resided in the unit since he left (*Id.* at ¶ 6). In support of his claims, defendant provides a notarized letter from Raposo, which states that Raposo resided in the apartment from January 1, 2012, through July 15, 2020 (NYSCEF Doc No. 9 at 1, Raposo Communications). On July 16, 2020, Raposo emailed the management company, stating that he moved out and was unable to pay rent due to financial hardship related to the pandemic (NYSCEF Doc No. 9 at 2). Raposo, who has the same initials as defendant, states that he initialed the lease renewals mailed to the unit each year (NYSCEF Doc No. 9 at 1). Raposo argues that plaintiff knew he was not defendant Rodman, yet approved the renewal each year with Raposo's signature *(id.*).

Defendant moves to dismiss the complaint on the ground that he is not liable for unpaid rents on a lease he did not renew. Plaintiff opposes and cross-moves for partial summary judgment on the first and second causes of action for breach of contract and rent arrears. The motion and cross-motion are denied.

DISCUSSION

I. Defendant's Motion to Dismiss

On a motion to dismiss, the court "accept[s] the facts as alleged in the complaint as true, accord[ing] plaintiffs the benefit of every possible favorable inference, and determin[ing] only whether the facts as alleged fit within any cognizable legal theory" (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). Hence, a motion to dismiss "must be denied if from the pleadings' four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law" (*511 West 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 152 [2002] [internal quotation marks and citations omitted]).

"[T]o plead a cause of action for breach of contract, a plaintiff usually must allege that: (1) a contract exists; (2) plaintiff performed in accordance with the contract; (3) defendant breached its contractual obligations; and (4) defendant's breach resulted in damages." (*34-06 73, LLC v Seneca Ins. Co.*, 39 NY3d 44, 52 [2022] [citation omitted]). Plaintiff successfully

pleads a cognizable action for breach of contract, unpaid rents, and attorney fees within the four corners of the complaint by providing a signed lease and account stated for the unpaid rents *(see* NYSCEF Doc Nos. 2, 3).

Defendant's first argument for dismissal is that he should not be liable because he did not sign the lease renewals following his move-out in December 2012. Where a written agreement "unambiguously contradicts the allegations supporting a litigant's cause of action for breach of contract, the contract itself constitutes documentary evidence warranting the dismissal of the complaint pursuant to CPLR 3211 (a) (1), regardless of any extrinsic evidence or self-serving allegations offered by the proponent of the claim." (*150 Broadway NY Assoc., L.P. v Bodner*, 14 AD3d 1, 5 [1st Dept 2004]). The lease renewals for 2013-2020 are signed with the initials "MR" and have defendant's name on the documents (*see* NYSCEF Doc No. 2). Because the initials of the defendant and Raposo, who allegedly signed the renewals, are the same, the court finds that the lease renewals do not unambiguously contradict the allegations in the complaint (*see Bodner*, [*3]14 AD3d at 5).

In further opposition to the motion, plaintiff argues that each renewal has defendant's name and signature and hypothesizes that there may have been an unknown assignment or sublease that would not absolve defendant's responsibilities (NYSCEF Doc No. 12 ¶¶ 8, 12). Plaintiff argues that defendant has not produced any evidence showing he vacated, surrendered possession, or terminated the lease (NYSCEF Doc No. 13 ¶ 9, plaintiff attorney's affirmation). Paul Howard, Associate Property Manager of plaintiff, hypothesizes that unbeknownst to plaintiff, defendant may have intended Raposo to be a subletter or assignee of the lease, in which defendant would be obligated for an additional 5% of the amount claimed in the complaint according to the terms of a sublease/assignment in the lease (NYSCEF Doc No. 12 ¶ 11-12, Howard affidavit). This argument sets forth a cognizable legal theory that defendant might not have surrendered the apartment. "A surrender by operation of law occurs when the parties to a lease do some act inconsistent with the subsisting relationship of landlord and tenant, indicating that they have both agreed to a surrender" (*Stahl Assocs. Co. v Mapes*, 111 AD2d 626, 628 [1st Dept. 1985]). A**s** "the pleading is to be afforded a liberal construction" on a motion to dismiss, the court also denies defendant's motion on this additional ground (*Leon v Martinez*, 84 NY2d at 87).

As a second argument for dismissal, defendant argues that the complaint fails to name Raposo as an indispensable party in the matter under CPLR 3211 (a) (10). CPLR 1001(a) defines necessary parties as "[p]ersons who ought to be parties if complete relief is to be accorded between the persons who are parties to the action *or* who might be inequitably

affected by a judgment in the action shall be made plaintiffs or defendants" (emphasis added). Plaintiff is under no obligation to join Raposo in the present action, because an "indispensable party" under CPLR 1001 (a) is a party who must be joined "lest the action be dismissed" (*Saratoga County Chamber of Commerce v Pataki*, 100 NY2d 801, 819 [2003]). As for whether plaintiff may be accorded complete relief, plaintiff may obtain complete relief whether in this action against defendant or another action against Raposo. "A plaintiff may proceed against any or all defendants" (*Hecht v City of New York*, 60 NY2d 57, 62 [1983]). Applying this logic for the unpaid rent, they do not have an inseverable interest, and plaintiff may choose whom to pursue for relief.

Additionally, a person may be considered an indispensable party under CPLR 1001 (a) if that person or party may be inequitably affected by a judgment. The determination of defendant's liability alone will not inequitably affect Raposo, as it has no bearing on Raposo's possible liability. (*See Triborough Bridge & Tunnel Auth. v Wimpfheimer*, 165 Misc 2d 584, 586 [App Term, 1st Dept 1995] [holding that "subtenants, while 'proper' parties to [a holdover proceeding], are not 'necessary' parties whose presence is indispensable to the according of complete relief as between landlord and tenant"). Furthermore, plaintiff is not pursuing any causes of action against Raposo within its complaint and tailors its complaint solely against defendant (*see* NYSCEF Doc No. 1). Raposo's liability for the rent arrears is an issue separate from the question of defendant's liability. Plaintiff may pursue a cause of action against Raposo if no contractual relationship is found between plaintiff and defendant; alternatively, defendant may seek indemnity from Raposo.

If defendant is not found liable, plaintiff may pursue an action against Raposo separately, because Raposo is a permissive party under CPLR 1002. CPLR 1002 gives deference to plaintiffs to join permissive parties at their discretion, stating parties "*may* be joined in one [*4]action as defendants if any common question of law or fact would arise" (emphasis added). Alternatively, defendant also has discretion to pursue action against Raposo. CPLR 1007 provides that a "defendant *may* proceed against a person not a party who is or may be liable to that defendant for all or part of the plaintiff's claim against that defendant" (emphasis added). Lastly, "[p]arties may be added at any stage of the action" under CPLR 1003; hence, plaintiff or defendant may seek to add Raposo at any time.

Because complete relief can be accorded here without including Raposo, and he will not be inequitably affected by a judgment in this action, Raposo is not an indispensable party as defined by CPLR 1001(a). This ground for defendant's motion to dismiss is rejected as well.

II. Plaintiff's Cross-Motion for Partial Summary Judgment

Plaintiff cross-moves for partial summary judgment on its contract and rent arrears causes of action. Summary judgment is appropriate where there are no disputed material facts (*Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). The moving party must tender sufficient evidentiary proof to warrant judgment as a matter of law (*Zuckerman v City of NewYork,* 49 NY2d 557, 562 [1980]). If the moving party tenders sufficient evidentiary proof, the opposing party must proffer its own evidence to show disputed material facts requiring a trial (*id.*). However, the reviewing court should accept the opposing party's evidence as true as well as evidence proffered by the movant favoring the opposing party (*Aguilar v City of New York*, 162 AD3d 601, 601 [1st Dept 2018]) and give the opposing party the benefit of all reasonable inferences (*Negri v Stop & Shop*, 65 NY2d 625, 626 [1985]).

In support of the cross-motion, Plaintiff argues that summary judgment is appropriate in light of the lease terms and account statements showing unpaid rent (NYSCEF Doc Nos. 2 and 3). Plaintiff argues that the evidence is sufficient proof necessary for summary judgment. However, defendant testifies that he has not occupied the apartment and provides a statement from Raposo, stating Raposo (not plaintiff) signed the lease renewals (*see* NYSCEF Doc Nos. 8 and 9). Defendant also provides proof of his address after he allegedly vacated the unit at the end of his lease in 2012 (*see* NYSCEF Doc No. 12). Defendant avers that he notified the building manager of his move-out in 2012 *(see* NYSCEF Doc No. 8), but plaintiff argues it was unaware that defendant vacated the property (*see* NYSCEF Doc No. 12). Courts have denied summary judgment where "the record presents issue of fact regarding whether [tenants] remained in possession of the apartment—for example, whether they surrendered their keys when they left to stay at a different residence and whether they intended to permanently vacate the apartment" (*Clarke v Fifth Ave. Dev. Co., LLC*, 211 AD3d 460, 461 [1st Dept 2022]). Similarly, although defendant testifies that he notified the building manager that he was vacating the apartment, there is no other evidence in the record that he did not remain in possession of the apartment. Accordingly, whether defendant relinquished possession of the apartment remains a question of fact precluding summary judgment.

Furthermore, "[t]he court's role on a motion for summary judgment is issue-finding, not issue-determination" (*Lebedev v Blavatnik*, 193 AD3d 175, 182 [1st Dept 2021]). On the current record, there are material issues about whether defendant properly vacated the apartment, Raposo's occupancy, and the signatures on the lease renewals. Defendant's liability cannot be determined until these issues are resolved.

Accordingly, it is hereby

ORDERED that defendant's motion to dismiss the complaint is denied; and it is further

ORDERED that plaintiff's cross-motion for partial summary judgment is denied; and it is further

ORDERED that the parties appear before this court for a preliminary conference on July 14, 2023.

DATE 6/12/2023

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