

498 Seventh Ave. LLC v Easy St., Inc.

2011 NY Slip Op 32252(U)

August 5, 2011

Sup Ct, NY County

Docket Number: 116108/08

Judge: Debra A. James

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: DEBRA A. JAMES
Justice

PART 59

498 SEVENTH AVENUE LLC,
Plaintiff,

Index No.: 116108/08

Motion Date: 11/12/10

- v -

Motion Seq. No.: 01

EASY STREET, INC., SHOWROOM SEVEN
INTERNATIONAL, a/k/a ELECTRIC WONDERLAND,
INC., SHOWROOM SEVEN STUDIOS, INC., JOSEPH
MEIRS SHOE CO. INC., SHOWROOM SEVEN-SEVENTH
HOUSE PR, JEAN-MARK FLACK, AND KAREN
ERICKSON,

Defendants.

FILED

AUG 18 2011

NEW YORK
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The following papers, numbered 1 to 7 were read on this motion for summary judgment.

Notice of Motion/Order to Show Cause -Affidavits -Exhibits	No(s).	1, 2
Answering Affidavits - Exhibits	No(s).	3 - 5
Replying Affidavits - Exhibits	No(s).	6, 7

Cross-Motlon: Yes No

Upon the foregoing papers, it is ordered that this motion is
Plaintiff-landlord moves for summary judgment seeking rent
due and owing from its former tenant Easy Street. Defendants
cross-move to dismiss plaintiff's complaint against all
defendants except Easy Street.

The following facts are not in dispute based upon the record
on this motion. In August and November 1994, plaintiff's
predecessor-in-interest and defendant Easy Street entered into a
three leases of premises in plaintiff's building consisting of

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .. MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

Suites 2405, 2424 and 2500 for a term of nine years. Defendant Jean-Marc Flack signed the leases as President of Easy Street and defendant Karen Erickson signed the leases without any indication of corporate authority. Easy Street was dissolved by proclamation by the New York State Department of Taxation and Finance on December 29, 1999. See Tax.Law 203-a. An Extension Agreement between plaintiff and Easy Street dated November 24, 2003, extended the term of the three aforesaid leases to January 31, 2009. The Extension Agreement was signed by Jean-Marc Flack as President of Easy Street and by defendant Karen Erickson as witness for the tenant. Finally, an Additional Space Agreement dated June 24, 2005, between the plaintiff and defendant Easy Street was signed by defendant Karen Erickson as President of Easy Street and modified the Extension Agreement to the extent of adding Suite 2407 to the premises included under the lease.

With respect to defendant Easy Street the court shall grant plaintiff summary judgment on its claims as there is no dispute that Easy Street was the named corporate tenant on the leases and is liable for its defaults thereupon.

Plaintiff moves for judgment against the remaining defendants and the defendants, with the exception of Easy Street, cross-move for summary judgment dismissing the complaint against them on the grounds that they are not obligated under the leases for any unpaid rent as they are not named as tenants therein.

With respect to defendants Showroom Seven International a/k/a Electric Wonderland, Inc., Showroom Seven Studios, Inc., Joseph Meirs Shoe Co., Inc., and Showroom Seven-Seventh House PR, the court finds defendants' argument against summary judgment persuasive as there is no evidence in the record that these parties bound themselves in privity with the plaintiff under any cognizable legal theory. See Solow Bldg. Co., L.L.C. v Jones Apparel Group, Inc., 21 Misc3d 328, 331 (Civ Ct, NY County, July 9, 2008) ("you do not become a tenant by agreeing, whether as agent or principal, to amend a lease to which you are not a party, and the amendment of which does not make you a party"). Plaintiff's argument that these defendants should be held liable in quantum meruit/unjust enrichment is wholly unsupported by any evidence in the record that these defendants even occupied the subject premises and therefore plaintiff's motion is fatally deficient as to this claim.¹ Defendants however similarly fail to establish the right of the corporate defendants to dismissal under CPLR 3211 as plaintiff's causes of action for quantum meruit/unjust enrichment are sufficiently pled. See Gateway I Group, Inc. v Park Ave. Physicians, P.C., 62 AD3d 141, 148-149 (2d Dept 2009) (owner can sue corporate defendants in quantum

¹ Plaintiff's claim is properly considered as one for use and occupancy although the complaint does not utilize that specific term.

meruit based on their use and occupation of the subject premises).

Defendants argue that Jean-Marc Flack and Karen Erickson also cannot be held personally liable because they only signed the leases in their representative capacities as officers of Easy Street. See Williamson, Picket, Gross, Inc. v Hirschfeld, 92 AD2d 289, 290 (1st Dept 1983) ("since it is clear from such evidence that the individual defendants . . . never obligated themselves in their personal capacities, the complaint against them was properly dismissed"). However, the plaintiff correctly argues that an exception to this general rule applies to the facts of this case because the individual defendants purported to act on behalf of a corporation that had been dissolved by proclamation of the Tax Department.

"Upon its dissolution [the corporation] was authorized to conduct business only to the extent necessary to wind up its affairs. The plaintiff's sale to the defendant of certain goods . . . was clearly not a transaction relating to the winding up of the corporation's affairs and the corporation therefore lacks the capacity to sue or to be sued in connection with that transaction. The defendant[s], in effect, purported to act on behalf of a corporation which had neither a de jure nor a de facto existence, and [are] therefore personally responsible for the obligations [] incurred." Brandes Meat Corp. v Cromer 146

AD2d 666, 667 (2d Dept 1989) (citations omitted); Keystone Mech. Corp. v Conde, 309 AD2d 627 (1st Dept 2003) (plaintiff was entitled to summary judgment against individual defendants based upon evidence establishing that defendants were officers of the corporate defendant and that the corporate defendant although dissolved by proclamation was utilized to enter into agreements with plaintiff, and then failed to pay plaintiff for its services thereunder).

Controlling authority based on the preceding caselaw compels this court to grant summary judgment in favor of the plaintiff against the individual defendants here. As stated by the Court, "[d]efendant is personally liable for the rent due under the subject lease, since he admits having signed it as president of a corporation that had been previously dissolved pursuant to the Tax Law, and fails to show that entering into the lease was necessary to the winding up of the corporation's affairs." Pennsylvania Bldg. Co. v Schaub, 14 AD3d 365 (1st Dept 2005). That is this case and defendants attempt to distinguish its precedential effect falls short. The defendants here signed the extension lease and the lease for additional space in their capacity as President of Easy Space long after Easy Space had been dissolved. Defendants purported lack of knowledge that the company was dissolved at the time they signed the leases does not diminish their liability. See Suraleb, Inc. v International

Trade Club, Inc., 13 AD3d 612, 613 (2d Dept 2004) ("personal liability was established by the undisputed fact that [corporation] had been dissolved more than six months prior to the date on which [individual defendant] purportedly entered into the contract on its behalf").

Defendants' argument that Easy Street was operated as a de facto corporation following its dissolution must be rejected as contrary to precedent. As stated by the Court, a "dissolved corporation has no existence, either de jure or de facto, except for a limited de jure existence for the sole purpose of winding up its affairs." Lodato v Greyhawk North America, LLC, 39 AD3d 496, 497 (2d Dept 2007). The Court's opinion in Lodato, however, contains dicta stating that "[n]onetheless, an individual who has no actual knowledge of the dissolution, and thus has not fraudulently represented the corporate status of the dissolved entity, will not be held personally liable for the obligations undertaken by the entity while it was dissolved." Id. citing Bedford Hills Supply v Hubert, 251 AD2d 438 (2d Dept 1998). However, Lodato and Bedford Hills concerned cases where the dissolved corporations had been subsequently reinstated. In Lodato the dissolution was actually annulled while in Bedford Hills a "certificate of consent" was issued upon the payment of all past due taxes including penalties and interest. The reinstatement in those cases meant that a judgment could be

entered against the corporate entity and the Court therefore determined that if the individual officers had no actual knowledge of the dissolution there was no basis for personal liability. In this case it is undisputed that Easy Street was never reinstated and that the dissolution was never annulled so those holdings are not applicable here.

The court notes that neither party moves for judgment upon defendants' counterclaims and plaintiff in its reply brief explicitly states that it is not seeking dismissal of the counterclaims at this juncture.

Based upon the foregoing, it is

ORDERED that plaintiff's motion for summary judgment on its first and second causes of action is GRANTED and damages as to those causes shall be determined at the time of trial or other adjudication of the claims in this action; and it is further

ORDERED that plaintiff's motion is otherwise DENIED; and it is further

ORDERED that defendants' cross-motion to dismiss is DENIED; and it is further

ORDERED that the parties shall appear for a preliminary conference on September 13, 2011, at 9:30 A.M, in IAS Part 59, Room 103, 71 Thomas Street, New York, NY 10013.

This is the decision and order of the court.

FILED

Dated: AUG 05 2011

ENTER: AUG 18 2011

NEW YORK
COUNTY CLERK'S OFFICE

~~Michelle A. ...~~
J.S.C.

DEBRA A. JAMES
J.S.C.