

Rite Aid of N.Y., Inc. v Chalfonte Realty Corp.

2012 NY Slip Op 33892(U)

August 14, 2012

Supreme Court, New York County

Docket Number: 651329/12

Judge: Melvin L. Schweitzer

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 45

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RITE AID OF NEW YORK, INC. and RITE AID CORPORATION,	:
	:
Plaintiffs,	:
	:
-against-	:
	:
CHALFONTE REALTY CORP.,	:
	:
Defendant.	:
	:
-----X	

Index No. 651329/12
DECISION AND ORDER
Motion Sequence No. 001

MELVIN L. SCHWEITZER, J.:

Background

This action was commenced by plaintiffs Rite Aid of New York, Inc. and Rite Aid Corporation (collectively Rite Aid) against Chalfonte Realty Corporation (“Chalfonte Realty”). Rite Aid alleges that Chalfonte Realty overcharged it in real estate taxes in connection with a lease agreement and is suing for breach of contract, breach of the implied covenant of good faith and fair dealing, and unjust enrichment. Rite Aid seeks damages and a declaration as to the proper amount of taxes that are due through the remainder of the lease term.

Rite Aid and Chalfonte Realty executed a lease agreement in 1996 in which Chalfonte Realty agreed to lease Rite Aid property for a drug retail store located at 220 West 70th Street, New York, New York 10023 (the “premises”). The lease was amended in 1997 to provide for a fifteen-year term. The premises are located in a high-rise building with approximately 229 residential and four non-residential units. The premises were delivered to Rite Aid in the

1998/1999 tax year (the “base year”). The lease agreement describes the payment of real estate taxes in paragraph 48, which reads:

The Tenant shall pay as additional rent Fifty (50%) percent of the amount of the real estate taxes and assessments over and above the amounts paid or assessed for real estate taxes and assessments for the tax year in which the Premises are delivered to Tenant (expected to be in 1998/1999), for the premises of which the space leased herein forms a part, in any and every year during the term of this lease.

Additionally, paragraph 54 of the lease states that Rite Aid’s obligation to pay 50% of the real estate taxes does not extend to any tax increase attributed to the residential parts of the building:

“if it is determined that a part of a tax increase is due to a higher assessed value of the residential parts of the building, then tenant’s percentage of such increase will be reduced accordingly.”

Rite Aid was provided with yearly invoices that detailed its real estate taxes; many of these invoices were also accompanied by a “Statement of Detail” from the New York City Department of Finance.

On January 15, 2011, Rite Aid obtained a Notice of Property Value in order to determine whether Chalfonte Realty had correctly calculated its real estate tax obligations. According to the Notice of Property Value, the market value of the premises was \$32,218,000. The city used a gross income of \$6,325,308 to calculate the building’s market value. Because Rite Aid’s gross income for the 2011/2012 tax year only comprised 6.9% of the gross income used to calculate the property value of the building, Rite Aid alleges that Chalfonte Realty charged it for real estate taxes ascribable to residential parts of the building and breached the lease agreement in doing so. On January 16, 2012, Rite Aid sent a letter to Chalfonte Realty expressing concern that it was overpaying its real estate taxes, requesting a refund of its alleged overpayment for the 2011/2012 year, and asking for all tax statements and invoices dating back to the beginning of

the lease. Three days later, Chalfonte Realty responded by rejecting Rite Aid's claim that it was owed reimbursement. Around February 27, 2012, Chalfonte Realty gave Rite Aid 5 days' notice requiring payment for real estate taxes due for January and February of 2012; Rite Aid paid the taxes under protest to avoid a default under the lease. Rite Aid filed this suit on April 24, 2012.

Chalfonte Realty now moves to dismiss Rite Aid's breach of contract claim as time barred pursuant to CPLR 3211 (a) (5), and moves to dismiss Rite Aid's breach of good faith and fair dealing and its unjust enrichment claims pursuant to CPLR 3211(a) (1) and (7).

Rite Aid's Breach of Contract Claim

In support of its motion to dismiss the breach of contract claim as time barred, Chalfonte Realty cites an appellate division case, *Goldman Copeland Associates P.C. v Goodstein Bros. & Co., Inc.*, 268 AD2d 370, 371 (1st Dept. 2000), which held that if the tax formula used by the landlord remains constant and the tenant is given notice of the method used to calculate the taxes or possesses all the information needed to challenge the accuracy of the tax computations, the cause of action for rent overpayment accrues when a tenant first receives notice of the tax computation method. Rite Aid claims that, though Chalfonte Realty provided it with invoices and statement details, these documents did not contain sufficient information to determine whether a portion of the real estate taxes was ascribable to the residential parts of the building, and therefore, it could not have challenged its real estate taxes when it first began to pay them. Because the court must give the nonmoving party the benefit of every doubt when deciding a motion to dismiss, the court accepts as true the allegations contained in the complaint. Since Rite Aid pleads that it was not provided with the information needed to challenge its taxes, the cause of action for breach of contract as pleaded did not accrue upon Rite Aid's first receipt of notice of its real estate taxes.

Chalfonte Realty's reliance on the voluntary payment doctrine, which bars claims for overcharges if the tenant paid them consistently without inquiry or protest, also fails. Though Rite Aid did not protest its real estate taxes until 2011, it alleges that it paid the real estate taxes believing that Chalfonte Realty would, by its own initiative, reduce Rite Aid's real estate tax obligations in accordance with paragraph 54 of the lease agreement, which Rite Aid now believes Chalfonte Realty failed to do. Chalfonte Realty, however, faults Rite Aid for failing to perform its own due diligence to determine whether or not the tax calculations were correct. Rite Aid was likely operating under a material mistake as to which party had the responsibility to ensure that proper deductions were made from the real estate taxes. *See Eighty-Eight Bleecker Co., LLC v 88 Bleecker Street Owners, Inc.*, 34 AD3d 244, 246 (1st Dept. 2006) (barring a tenant's claim for rent overcharge under the voluntary payment doctrine because it had paid its rent without inquiry *and* because it had not been operating under a mistake of fact while making those payments). Paragraph 54 does not place the burden of verifying the accuracy of the taxes on either party, and the court finds that it would be improper to decide this question on a motion to dismiss. Accordingly, giving Rite Aid the benefit of any doubt in the circumstances, Chalfonte Realty's motion to dismiss the breach of contract claim as timed barred is denied.

Rite Aid's Breach of the Implied Covenant of Good Faith & Fair Dealing Claim

Every contract contains an implied promise that neither party will take actions that would frustrate the right of the other party to receive the fruits of its contractual bargain. *MBIA Ins. Corp. v Credit Suisse Securities (USA) LLC*, 32 Misc 3d 758, 778 (Sup. Ct. N.Y. Cnty. 2011). A claim for breach of the implied covenant of good faith and fair dealing will be dismissed if it is duplicative of a breach of contract claim that is also plead. *Park East 67th Assoc. LP v Minister, Elder, and Deacons of Reformed Protestant Dutch Church of N.Y.*, 301 AD2d 453 (1st Dept.

2003). In order to plead a breach of the covenant of good faith claim that can stand independently of a breach of contract claim, a complaint's allegations must tend to show that the defendant "sought to prevent the performance of the contract or to withhold its benefits from the plaintiff." *Dialcom, LLC v AT&T Corp.*, Index No. 12026/03, 2008 N.Y. Misc. LEXIS 3855 (Sup. Ct. Kings Cnty. June 17, 2008). New York courts have consistently held that a breach of an implied covenant of good faith claim can stand on its own if a plaintiff pleads facts that show that a defendant acted in bad faith in order to deprive the plaintiff of the fruits of its bargain. *Silvermark Corp. v Rosenthal & Rosenthal, Inc.*, No. 602026/07 18 Misc 3d 1124A at *3 (N.Y. Sup. Ct. N.Y. Cnty. Jan. 25, 2008).

Rite Aid's second cause of action claims that Chalfonte Realty overcharged and misrepresented Rite Aid's real estate taxes, which had the effect of depriving Rite Aid of the fruits of its contract. The court finds this allegation to be duplicative of Rite Aid's breach of contract allegation, which asserts: "[b]y misrepresenting and overcharging Rite Aid for real estate tax obligations...Defendant breached the Lease." Furthermore, Rite Aid does not plead any factual allegations that would tend to show that Chalfonte Realty acted in bad faith or in a willful manner in order to prevent performance of the contract. Accordingly, Chalfonte Realty's motion to dismiss the breach of the implied covenant of good faith claim is granted.

Rite Aid's Unjust Enrichment Claim

Chalfonte Realty also moves to dismiss Rite Aid's unjust enrichment claim pursuant to CPLR (a) (1) and (7). Rite Aid alleges that Chalfonte Realty collected grossly inflated real estate taxes and has been enriched in the amount of at least \$1,850,000 at Rite Aid's expense. The New York Court of Appeals made clear in *Miller v Schloss* that the remedy of unjust enrichment can only be applied in the *absence* of any agreement. 218 NY 400, 407 (1916).

Though *Miller* was decided almost a century ago, it has endured as the law of New York and has been affirmed by hundreds of cases since it was handed down. Even the case cited by Rite Aid, *J.C. Penney Corp v Carousel Center Co., L.P.*, 635 F Supp 2d 126, 138 (NDNY 2008), states that unjust enrichment is a quasi-contractual form of relief and therefore the existence of an enforceable contract precludes recovery. In light of the well-established case law that precludes unjust enrichment claims in connection with enforceable contracts, Chalfonte Realty's motion to dismiss Rite Aid's third cause of action is granted.

Accordingly, it is

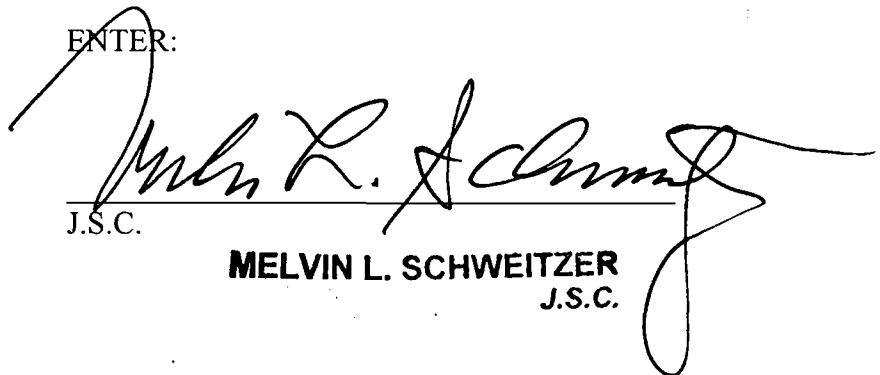
ORDERED that the court denies the defendant's motion to dismiss the plaintiff's first cause of action related to breach of contract; and it is further

ORDERED that the court grants the defendant's motion to dismiss the plaintiff's second cause of action for breach of the implied covenant and good faith and fair dealing; and it is further

ORDERED that the court grants the defendant's motion to dismiss the plaintiff's third cause of action for unjust enrichment.

Dated: August 14, 2012

ENTER:


J.S.C.
MELVIN L. SCHWEITZER
J.S.C.