

117-119 Leasing Corp. v Reliable Wool Stock LLC

2015 NY Slip Op 31530(U)

August 10, 2015

Supreme Court, New York County

Docket Number: 654310/2013

Judge: Robert D. Kalish

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY - PART 29**

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117-119 Leasing Corp.

Plaintiff

DECISION AND ORDER

-against-

INDEX NO.: 654310/2013

Reliable Wool Stock LLC, et al

Defendant
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Upon the foregoing papers, the Defendant Reliable Wool Stock LLC's ("RWS") motion to dismiss the Co-Defendants Harriet Shorr, Soho Sanctuary, Ltd., Joanna Gangemi, Virginia Benham, Michael Standford, Rag Traders Soho, LLC and Denise Williamson Showroom Inc. (the "Co-Defendants") as Defendants in the underlying action is granted as to the Co-Defendants Harriet Shorr, Joanna Gangemi, Virginia Benham, Michael Standford, Rag Traders Soho, LLC and Denise Williamson Showroom Inc. and denied as to the Co-Defendant Soho Sanctuary, Ltd. as follows:

Procedural History

Relevant Background and Underlying Dispute

Without restating the entirety of the pleadings, the following recitation of the background of the underlying action includes only those allegations and facts that are directly relevant to the Reliable Wool Stock LLC's ("RWS") instant motion to dismiss the Co-Defendants from the underlying action.

On or about December 12, 2013, RWS served a notice of default and termination upon the Plaintiff for violation of specific terms of a lease agreement between RWS and the Plaintiff.

On or about December 18, 2013, the Plaintiff filed an order to show cause seeking a Yellowstone injunction against RWS. By decision dated March 25, 2015, Justice Singh granted the Plaintiff's motion in part.

The Plaintiff commenced the instant action alleging in the summons and complaint dated December 16, 2013 that it is the tenant of a premises described as 117-119 Mercer Street, and that RWS is the landlord and/or owner of the said premises. The Plaintiff alleges that on August 18, 1993, it entered into a lease with RWS's predecessor in interest, Reliable Wool Stock Corp. as to said premises, and that the lease was subsequently amended on or about January 29, 1997. The Plaintiff alleges that RWS served the Plaintiff with a Notice of Default and Termination dated December 12, 2013, wherein RWS threatened to terminate the Plaintiff's lease. The Plaintiff denies violating any terms of the lease and seeks a declaratory judgement finding that the Plaintiff is not in violation of the lease and that RWS's Notice of Default and Termination is defective on its face. The Plaintiff further seeks attorney's fees in an amount not less than \$15,000.00.

In its verified answer, RWS denies the Plaintiff's allegations, asserts the affirmative defense that the lease agreement was properly terminated (therefore the Plaintiff lacks standing), and counterclaims for a declaratory judgment finding that RWS properly terminated the lease based upon the Plaintiff's violation of said lease.

On or about May 20, 2014, the Plaintiff moved by order to show cause to add Harriet Shorr, Soho Sanctuary, Ltd., Joanna Gangemi, Virginia Benham, Michael Standford, Rag Traders Soho, LLC and Denise Williamson Showroom Inc. (All subtenants at the subject premises) as Defendants in the underlying action pursuant to CPLR §1003 for the purpose of obtaining a Court order directing the subtenants to make their rental spaces available for inspection. By decision dated June 11, 2014, the Honorable Justice Anil C. Singh granted the Plaintiff's motion. Justice Singh indicated in his decision that the added Defendants Harriet Shorr, Soho Sanctuary, Ltd., Joanna Gangemi, Virginia Benham, Michael Standford, Rag Traders Soho, LLC and Denise Williamson Showroom Inc. were directed to "provide full access to their space and their apartments so that defendant landlord Reliable Wool Stock LLC may inspect and photograph....".

The Defendant Soho Sanctuary, Ltd. ("Soho") filed a verified answer including a cross-claim against the RWS. Soho's cross-claim alleges in sum and substance that Soho is a subtenant and operates a day spa at the subject location. Soho alleges that in order to continue operating its business at said location, Soho requires that RWS execute an affidavit of ownership and authorization to allow Soho to renew Soho's physical culture permit with the City of New York. Soho alleges that RWS has repeatedly refused to provide an executed affidavit of ownership and authorization and as such prevented Soho from receiving the fruits of its sublease. Soho claims damages against TWS for said conduct and requests a determination by the Court that RWS is required to provide Soho with an executed affidavit of ownership and authorization.

The instant motion was re-assigned from Justice Singh to this Court for decision.

RWS's instant motion to dismiss the Co-Defendants from the underlying action

The Defendant RWS now moves to dismiss the other Co-Defendants from the underlying action. The Plaintiff and the Defendant Soho Sanctuary, Ltd. ("Soho") oppose. The Defendants Harriet Shorr, Joanna Gangemi, Virginia Benham, Michael Standford, Rag Traders Soho, LLC and Denise Williamson Showroom Inc. have not submitted any opposition to RWS's instant motion to have them dismissed as Defendants in the underlying action.

RWS argues in sum and substance that the Co-Defendants are not necessary parties in the underlying action. Specifically, RWS argues the Co-Defendants are all subtenants in the subject property, and that neither the Plaintiff nor RWS has alleged any causes of action or directed any theories of liability towards them.

RWS further argues that the lease at issue in the underlying action relates solely to Plaintiff's and RWS respective obligations and as such any ruling by the Court in the underlying action would have no effect upon the rights of the Co-Defendants. Specifically, RWS argues that in the event that the Court rules in RWS's favor, pursuant to the terms of the lease, RWS would simply stand in the Plaintiff's shoes and the Co-Defendant would pay their rents directly to RWS as opposed to the Plaintiff. As such, RWS argues that the Co-Defendant's rights under their respective subleases would not be effected and that the Co-Defendants have no real stake in the outcome of the underlying dispute between the Plaintiff and RWS.

RWS further argues that the sole purpose of the Plaintiff's motion to have the Co-Defendants added in the underlying action was to obtain a court order allowing the Plaintiff and RWS to inspect the Co-Defendant's respective spaces and apartment. RWS argues in sum and substance that said inspections have been conducted and that there is no longer any need for the Co-Defendants to be kept in the underlying action. RWS further argues that at no time was service or process made upon the Co-Defendants and that there are no pleadings against the Co-Defendants. RWS recognizes that Soho filed an answer in the underlying action, however, RWS argues that said answer is void. RWS further indicates that Justice Singh's March 25, 2015 decision specifically indicated that RWS's cross-motion for an order making the premises available for inspection was moot as said inspection had already occurred. Further, RWS argues that the Co-Defendants' continued presence in the case impose an unnecessary burden and expense upon RWS.

The Plaintiff argues in opposition to the motion that the Co-Defendants are all necessary and/or proper parties to the underlying action pursuant to CPLR §1001. The Plaintiff argues that the Co-Defendants' possessory interests in their respective spaces and apartment will clearly be affected by the judgment in the underlying action, as will the Co-Defendant's ability to operate their respective businesses. The Plaintiff further argues that should the Plaintiff's net lease be terminated, all of the Co-Defendants' subleases will also fall.

The Co-Defendant Soho also opposes RWS's motion. Soho argues in sum and substance that RWS instant motion is, in effect, seeking summary judgment dismissing Soho's cross-claims against RWS. Soho argues that RWS has not established any basis for its argument that Soho's answer is void, nor has RWS established a sufficient basis for dismissing Soho's cross-claims against RWS. Soho further argues that its cross-claims against RWS directly relate to the subject matter of the underlying action between the Plaintiff and RWS. Specifically, Soho argues that RWS alleges that one of the Plaintiff's defaults (on the lease) was based upon Soho's operation of a spa without a license. Soho argues that it is unable to obtain the necessary license due to RWS's repeatedly refusal to provide an executed affidavit of ownership and authorization.

In its reply papers, RWS reiterates its arguments that the Co-Defendant are not necessary and/or proper parties to the underlying action. RWS further argues that at no time has it sought to evict the CO-Defendants.

Analysis

Soho has established that it is a "proper" party to the underlying action if not a "necessary" party.

A "proper" party is a party whose absence will not prevent the entry of a binding judgment, but whose presence would make an order or judgment more complete (Teachers College v. Wolterding, 77 Misc. 2d 81 (N.Y. App. Term 1st Dept 1974)). Upon review of the submitted papers, this Court finds that the Co-Defendant Soho has established that as a subtenant of the subject location, it is a "proper" party to the underlying action, although not a "necessary" party (See Triborough Bridge & Tunnel Auth. v. Wimpfheimer, 165 Misc. 2d 584 (NY App Term 1st Dept 1995)). Specifically, any rights that Soho may claim as subtenant in the subject premises stem directly from the Plaintiff's rights as tenant in said property. The Court notes that Soho was the only one of the subtenant Co-Defendants to file an answer in the underlying action and the only subtenant Co-Defendant to file opposition to RWS's instant motion.

Accordingly and in view of the fact that Soho is the only subtenant to have appeared in the underlying action and/or opposed RWS's instant motion, it is hereby

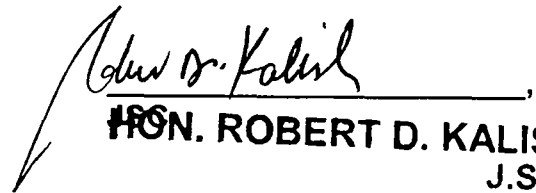
ORDERED that RWS's motion is granted in part and the Co-Defendants Harriet Shorr, Joanna Gangemi, Virginia Benham, Michael Stanford, Rag Traders Soho, LLC and Denise Williamson Showroom Inc. are hereby dismissed as Defendants in the underlying action. It is further

ORDERED that RWS's motion is denied as to the Defendant Soho, who will remain as a Defendant in the underlying action. It is further

ORDERED that the Plaintiff and the Remaining Defendants RWS and Soho shall appear before the Court for a compliance conference in the underling action to be held at 9:30 a.m. on October 19, 2015 as previously scheduled.

The foregoing constitutes the ORDER and DECISION of the Court.

Dated: August 10, 2015


HON. ROBERT D. KALISH
J.S.C.