Soldiers', Sailors', Marines' & Airmen's Club, Inc. v Carlton Regency Corp.
2015 NY Slip Op 32114(U)
August 5, 2015
Supreme Court, New York County
Docket Number: 600813/2007
Judge: Charles E. Ramos
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FA 8/7/15 E

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. CHARLES E. RAMOS PART 53
Justice

Index Number : 600813/2007
SOLDIERS', SAILORS', MARINES'
vs.
CARLTON REGENCY
SEQUENCE NUMBER : 010
OTHER

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

Motion is decided in accordance with accompanying Memorandum Decision.

FILED
AUG -7 2015
COUNTY CLERK'S OFFICE
NEW YORK

RECEIVED
AUG 07 2015
GENERAL CLERK'S OFFICE
NYS SUPREME COURT - CIVIL

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

Dated: 8/5/15

HON. CHARLES E. RAMOS, J.S.C.

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

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SOLDIERS', SAILORS', MARINES' AND AIRMEN'S CLUB, INC.,

Plaintiff,

-against-

THE CARLTON REGENCY CORP.,

Defendant.

----------x

Index No. 600813/07

Hon. Charles E. Ramos, J.S.C.:

This action arises out of a lease and sublease executed in 1973 for several buildings located on Lexington Avenue in New York City, as well as several agreements executed thereafter, including a 2006 escrow agreement.

Third-party defendant/fourth-party plaintiff James Conforti, III (Conforti) moves for an order directing the release of certain escrow funds. Defendant/third-party plaintiff the Carlton Regency Corp. (Carlton) conditionally opposes the motion. For the reasons stated below, the motion is granted.

Background

Plaintiff Soldiers', Sailors', Marines' and Airmen's Club, Inc. (the Club) has run a not-for-profit corporation providing overnight accommodations in New York City to military personnel and retirees since 1927. The Club originally purchased two

connected buildings located at 281-283 Lexington Avenue (Clubhouse), and, in 1940, purchased the building located at 285 Lexington Avenue.

In 1972, the Club sold the 285 Lexington property to developers James Conforti, Jr. (Conforti, Jr.) and Stephen Lyras (Developers), for $227,000. The Club also leased the Clubhouse to the Developers for 50 years under a ground and air rights lease, with two options to renew for 25 years each (Lease), for $30,000 per year. The Developers then subleased the Clubhouse back to the Club rent free for 25 years with one 15-year renewal term (Sublease) with an expiration date of March 12, 2013.

The parties also entered into an option agreement entitled "Demised Premises Contract" (Option Agreement) under which the Club had the option to sell the Clubhouse to the Developers for $500,000 at any point before the expiration of the Sublease.

In 1980, the Developers built a residential building at 137 36th Street using air rights acquired in the Lease. That building and a neighboring building at 136 East 37th Street, also owned by the Developers, were then converted to cooperative ownership.

Pursuant to the conversion, the Developers assigned their rights in the Lease, Sublease, and Option Agreement to the cooperative apartment corporation, Carlton, which became the

tenant under the Lease and became responsible for paying the Club $30,000 in annual rent. Carlton could also be compelled by the Club to purchase the Clubhouse for $500,000.

The offering plan required the Developers to place $500,000 in escrow to be available in the event that the cooperative was compelled to purchase the Clubhouse. The Developers also agreed to pay the cooperative $30,000 per year to cover the rent obligation on the Clubhouse.

In February of 1980, the parties executed an agreement (1980 Agreement) which, among other things, memorialized the Developers' obligation to secure the escrow funds. At the same time, Conforti, Jr. executed an escrow agreement (1980 Escrow Agreement) in furtherance of the 1980 Agreement.

In 2006, Conforti and Carlton executed another agreement (2006 Agreement) which provided, among other things, that if the Club chose not to compel Carlton to purchase the Clubhouse, Carlton would not permit the Club or any other party to occupy the premises after the Sublease expired in 2013.

The 2006 Agreement also provided that Conforti would fund $375,000 of the $500,000 escrow and that he would use his "best efforts" to compel Dean Lyras, the son of Stephen Lyras, to put $125,000 in the escrow account. The agreement states that the funds would remain in escrow for the balance of the term of the

Sublease. It also states, in section 9, that

> At the end of the term of the Sublease, if the Club has not exercised its option to require the purchase of the Club Property, [the] escrow agent shall remit such $375,000 to Conforti and, in the event [Dean] Lyras has previously paid the $125,000 escrow amount...shall remit the $125,000 to Lyras.

The agreement also provided that Conforti would pay $75,000 for ground-lease rent reimbursements and he agreed to continue to make ground-lease payments.

In support of his motion, Conforti represents that the entire $500,000 is currently in the escrow account. He states that he funded his portion, $375,000, as well as Dean Lyras's obligation of $125,000, by placing the funds in an escrow account maintained by his counsel, Mark Slama, Esq. Carlton does not dispute these assertions.

It is also undisputed that the Sublease expired on March 13, 2013 and that the Club's rights to exercise the Option Agreement expired at that time so that the fee to the Club Property remains with the Club.

Discussion

Conforti now moves for an order directing the release of the escrow funds. Conforti states that, under the terms of the 2006 Agreement, as soon as the Sublease expired without the Club

exercising its option to require the purchase of the Clubhouse, the escrow agent was required to return the escrow funds to Conforti.

Carlton does not dispute this assertion. However, it argues that, under the terms of the 1980 Escrow Agreement, interest on the escrow funds had to be paid to the Cooperative, i.e. Carlton, to offset rent reimbursement arrears on Conforti's part under the terms of the Lease. Carlton alleges that, as of November 2014, such arrears totaled approximately $234,575 and it seeks payment of such arrears either from the escrow funds or otherwise.

"Under well-established principles of contract interpretation, agreements are generally construed in accord with the parties' intent...and the best evidence of the parties' intent is what they say in their writing." *Osprey Partners, LLC v Bank of NY Mellon Corp.*, 115 AD3d 561, 561-562 (1st Dept 2014). "Thus, where the terms of a contract are clear and unambiguous, the intent of the parties must be found within the four corners of the document...and extrinsic evidence is not to be considered." *Id.*, at 562.

Here, the language of the 2006 Agreement, as set forth above, is very clear that, once the Club failed to exercise its option under the Option Agreement, which is not disputed here, the escrow agent was required to return the funds to Conforti

and/or Lyras. The agreement does not condition that return on the use of interest to pay alleged rent arrears under the Lease. If the parties intended such a condition, they could have included it in the terms of the 2006 Agreement.

Carlton is correct that the 1980 Escrow Agreement contained such a condition. However, the parties did not incorporate that agreement into the 2006 Agreement. Again, had the parties intended the conditions of the earlier agreement to be made part of the 2006 Agreement, they would have done so.

The 2006 Agreement is unambiguous on its face and the Court need not attempt to read any further conditions into it. Therefore, Carlton has not demonstrated that any portion of the escrow funds should be applied to any alleged rent arrears at issue here. To the extent that Carlton seeks to recover for such arrears in this action, that issue is not part of the instant motion.

Accordingly, it is

ORDERED that the motion by third-party defendant/fourth-party plaintiff James Conforti, III for an order directing the release of the escrow funds at issue is granted.

Dated: August 5, 2015

ENTER:

J.S.C.

HON. CHARLES E. RAMOS