

Mooney v Dvivedi

2020 NY Slip Op 32123(U)

July 2, 2020

Supreme Court, New York County

Docket Number: 159125/2018

Judge: W. Franc Perry

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. W. FRANC PERRY PART IAS MOTION 23EFM

Justice

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JAMES MOONEY, Plaintiff,

- v -

NEEL DVIVEDI, ERIC TANJELOFF, Defendant.

INDEX NO. 159125/2018

MOTION DATE 02/13/2020

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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NEEL DVIVEDI, ERIC TANJELOFF Plaintiff,

Third-Party Index No. 596026/2018

-against-

JAMES ESPOSITO, DMITRY SHEYKHAMETOV, GERARD RENNY Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 27, 28, 29, 30, 31, 32, 35, 36, 37, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 53, 58

were read on this motion to/for DISMISSAL.

This is an action for unpaid rent. Third-Party Defendant Dmitry Sheykhmetov moves to dismiss the unjust enrichment claim asserted against him by Third-Party Plaintiffs/Defendants Neel Dvivedi and Eric Tanjeloff. The motion has been fully submitted.

BACKGROUND

On February 12, 2004, Plaintiff James Mooney, as tenant, entered into a commercial lease with 313 Church Street Corporation, as landlord, to rent the ground floor and basement of 313 Church Street, New York, New York (the "Premises"). In July 2009, Mooney subleased the Premises to 313 Restaurant LLC, of which Third-Party Plaintiffs/Defendants Neel Dvivedi and Eric Tanjeloff ("TPPs") are members. (NYSCEF Doc No. 1 at ¶ 6.) However, in June 2012,

Mooney and 313 Restaurant entered into a Substitution Agreement with Tribeca Canvas, LLC, substituting Tribeca Canvas¹ as the subtenant. (NYSCEF Doc No. 4.) As an inducement for Mooney to enter into the Substitution Agreement, Dvivedi and Tanjeloff both executed “Good Guy” Guarantees, whereby they each “absolutely, unconditionally and irrevocably” guaranteed to Mooney all rent and other charges payable by Tribeca Canvas. (NYSCEF Doc No. 5.)

On July 27, 2016, Mooney sent Tribeca Canvas a Notice to Pay Rent, alleging that Tribeca Canvas owed \$109,317.51 for failing to pay rent from January to July of that year. (NYSCEF Doc No. 6.) The Premises was surrendered back to Mooney two days later. (NYSCEF Doc No. 7.)

Mooney commenced an action in this court against Dvivedi, Tanjeloff, and 313 Restaurant on March 8, 2017, bearing the index number 651214/2017. On March 12, 2018, the Hon. John J. Kelly dismissed that action without prejudice due to service issues. (NYSCEF Doc No. 8.)

Plaintiff commenced this action on September 27, 2018, setting forth three causes of action against Defendants: specific performance of the Guaranty, breach of contract, and legal fees. (NYSCEF Doc No. 1.) Defendants filed their Verified Answer on November 14, 2018 (NYSCEF Doc No. 11) and the Third-Party Complaint on December 19, 2018, naming James Esposito, Dmitry Sheykhametov, and Gerard Renny as Third-Party Defendants. (NYSCEF Doc No. 16.)

The Third-Party Complaint sets forth two causes of action for indemnification² against Esposito and one cause of action for unjust enrichment as to all Third-Party Defendants. (*Id.*) The TPPs allege, without providing evidence, that in early 2014, Tribeca Canvas admitted Tribute

¹ The TPPs allege that Tribeca Canvas was formed by Bite Hospitality, Inc. (which owned 43.75%), Restaurant Capital Partners, LLC (33.75%), MM Tribeca, LLC (15%), and Black 17 Group, LLC (7.50%). Neel Dvivedi is the sole member of Restaurant Capital Partners, while Eric Tanjeloff is the sole member of Black 17 Group. (NYSCEF Doc No. 16 at ¶¶ 10-13.)

² The TPPs submit an Indemnification Agreement between themselves and Esposito, which provides for Esposito to indemnify the TPPs against all claims and costs associated with their “Good Guy” Guarantees. (NYSCEF Doc No. 19.)

Hospitality Group, LLC, owned by Third-Party Defendant Esposito, as a member with a 75% ownership interest, and that Tribute Hospitality Group “wrongfully allowed and permitted” Sheykhmetov and Renny to exclusively operate the restaurant. (*Id.* at ¶¶ 17-21.) The TPPs further allege that Sheykhmetov and Renny collected all of Tribeca Canvas’ revenues for their own benefit, closed the restaurant, and auctioned off all of the fixtures and equipment. (*Id.* at ¶¶ 29-30.)

Sheykhmetov now moves to dismiss the unjust enrichment claim against him for failure to state a claim.

DISCUSSION

It is well established that “[o]n a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction.” (*Leon v Martinez*, 84 NY2d 83, 87 [1994].) On a pre-answer motion to dismiss a complaint for failure to state a cause of action, pursuant to CPLR 3211 [a] [7], “the court should accept as true the facts alleged in the complaint, accord plaintiff the benefit of every possible inference, and only determine whether the facts, as alleged, fit within any cognizable legal theory.” (*Frank v DaimlerChrysler Corp.*, 292 AD2d 118, 121 [1st Dept 2002].) However, the court is not required to accept factual allegations that are plainly contradicted by the documentary evidence or legal conclusions that are unsupportable based upon the undisputed facts. (*See Bishop v Maurer*, 33 AD3d 497 [1st Dept 2006]; *Igarashi v Higashi*, 289 AD2d 128 [1st Dept 2001].)

“The theory of unjust enrichment lies as a quasi-contract claim” and contemplates “an obligation imposed by equity to prevent injustice, in the absence of an actual agreement between the parties.” (*IDT Corp. v Morgan Stanley Dean Witter & Co.*, 12 NY3d 132, 142 [2009], quoting *Goldman v Metropolitan Life Ins. Co.*, 5 NY3d 561, 572 [2005].) An unjust enrichment claim is rooted in “the equitable principle that a person shall not be allowed to enrich himself unjustly at the expense of another.” (*Miller v Schloss*, 218 NY 400, 407 [1916].) Thus, in order to adequately plead such a claim, the plaintiff must allege “that (1) the other party was enriched,

(2) at that party's expense, and (3) that it is against equity and good conscience to permit the other party to retain what is sought to be recovered.” (*Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 182 [2011] [brackets and internal quotation marks omitted].)

(*Georgia Malone & Co., Inc. v Rieder*, 19 NY3d 511, 516 [2012].)

“[A] plaintiff cannot succeed on an unjust enrichment claim unless it has a sufficiently close relationship with the other party . . . that is not ‘too attenuated.’” (*Id.*, citing *Sperry v Crompton Corp.*, 8 NY3d 204 [2007].) “A plaintiff is not required to allege privity . . . the pleadings merely have to indicate a relationship between the parties that could have caused reliance or inducement.” (*Philips Intern. Investments, LLC v Pektor*, 117 AD3d 1, 7 [1st Dept 2014], quoting *Georgia Malone*, 19 NY3d at 517.)

Sheykhametov argues that the unjust enrichment claim must be dismissed because he did not receive a benefit at the expense of the TPPs, that the claim is foreclosed by the numerous contracts involved in this matter, and that the parties do not have a sufficiently close relationship to allow the claim to proceed. (NYSCEF Doc No. 30.)

The TPPs argue in response that Sheykhametov unjustly benefitted by collecting the profits of the restaurant for his personal use, instead of using them to pay rent, which demonstrates a sufficiently close relationship. (NYSCEF Doc No. 40 at 11, 14.) Additionally, the TPPs argue that the contractual documents do not foreclose the claim against Sheykhametov because he is not a party to those contracts.


The court finds that the contractual documents, namely, the “Good Guy” Guarantees, the Esposito Indemnification Agreement, and the Substitution Agreement, govern the subject matter of the unjust enrichment claim because the documents “and guaranty specifically address which parties were to bear its cost.” (*Meygrand Associates v Services Mangia*, 2019 WL 5865885, *2

[Sup Ct, NY County 2019].) It makes no difference that Sheykhametov was not a signatory of those contractual documents. (*Maor v Blu Sand Intl. Inc.*, 143 AD3d 579, 579 [1st Dept 2016].)

Under the Guarantee agreements, the TPPs were “absolutely, unconditionally and irrevocably” required to pay to Plaintiff all rent and other charges payable by Tribeca Canvas in connection with the sublease. (NYSCEF Doc No. 5.) Further, the TPPs submit the Esposito Indemnification Agreement, which provides that Esposito would indemnify the TPPs against all claims and costs accruing from the Guarantees. (NYSCEF Doc No. 19.) Accordingly, because there are contractual documents that cover the subject matter of the unjust enrichment claim, recovery under a quasi-contract theory is precluded. Thus, it is hereby

ORDERED, that Third-Party Defendant Sheykhametov’s motion to dismiss the Third-Party Complaint as against him is granted.

Any requested relief not expressly addressed by the Court has nonetheless been considered and is hereby denied and this constitutes the decision and order of the Court.

<u>7/02/20</u> DATE	 W. FRANC PERRY, J.S.C.			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	DENIED
			<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT