SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAVID BENJAMIN COHEN **PART** IAS MOTION 58EFM

Justice

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BHATIA & ASSOCIATES PLLC,

Plaintiff,

- v -

ROOSEVELT LEE 38 LLC and UIKUN LEE,

Defendants.

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INDEX NO. 155688/2020

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 36, 37, 38

were read on this motion to/for DISMISSAL.

In this action by plaintiff Bhatia & Associates PLLC seeking, inter alia, injunctive relief, defendants Roosevelt Lee 38 LLC ("38 LLC") and Uikun Lee ("Lee") move, pursuant to CPLR 3211(a)(1) and (a)(7), to dismiss the complaint or, in the alternative, pursuant to CPLR 3211(f), granting them permission to file an answer within ten days after the entry of the order deciding this motion. Plaintiff opposes the motion and cross-moves to enjoin defendants from prosecuting the holdover proceeding they filed against plaintiff in Civil Court, New York County under Index Number 300484/20, styled *Roosevelt Lee 38 LLC v Bhatia & Associates, PLLC, et. al.* ("the holdover proceeding"), as well as for such other relief this Court deems just and proper. Defendants oppose the cross motion. After a review of the parties' contentions, as well as a review of the relevant statutes and case law, the motions are decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff, a law firm and professional limited liability corporation, commenced the captioned action by filing a summons and complaint against defendants on July 24, 2020. Doc. 1. In its amended complaint, plaintiff alleged that, on or about April 9, 2003, it entered into a lease agreement with RGA Realty Management Corp. ("RGA), 38 LLC's predecessor-in-interest, pursuant to which it was to rent Suite 151 at 38 West 32nd Street in Manhattan for five years at $3,166.67 per month. Doc. 26 at par. 9. On or about May 23, 2008, the lease was extended until May 31, 2012 and the rent was increased to $4,400 per month. Id. at par. 10. Following the execution of the lease extension, ownership of the building was transferred to the defendant 38 LLC, whose principal was Lee, and, on or about July 1, 2012, 38 LLC entered into a one-year lease of the premises to plaintiff at the monthly rent of $4,400 for a term from July 1, 2012 through June 30, 2013. Id. at pars. 11-12.[1]

Plaintiff alleged that, on or about June 25, 2015, its lease with 38 LLC was extended for three years, effective July 1, 2012 to June 30, 2018 and that, pursuant to the extension, executed by Lee, as Managing Member of 38 LLC, and Satish Bhatia ("Bhatia"), as Managing Attorney for plaintiff, and the rent for the period July 1, 2012 to June 30, 2018 was $6,650.00 per month. Doc. 17.[2]

On or about Jun 18, 2018, 38 LLC sent plaintiff a proposed lease extension providing that the rent would be $7,192.64 from July 1, 2018 – June 30, 2020 and $7,408.42 per month from July 1, 2020 through June 30, 2021, and that the terms of the lease were otherwise to remain the

[1] Although not mentioned in the amended complaint, the lease contained an option for plaintiff to renew from July 1, 2013 through June 30, 2014 at a monthly rent of $4,576.00 and a second option to renew from July 1, 2014 through June 30, 2015 at a monthly rent of $4,759.00. Doc. 17, lease rider, at par. 79.

[2] The lease extension was actually for the period of July 1, 2015 through June 30, 2018 and plaintiff's rent was to be $6,650.00 per month from July 1, 2015 through June 30, 2016; $6,916.00 per month from July 1, 2016 to June 30, 2017; and $7,192.64 from July 1, 2017 to June 20, 2018. Doc. 17.

same. Doc. 31. The renewal was executed by Bhatia on June 20, 2018 but was not executed by Lee or anyone else on behalf of 38 LLC. Doc. 18.

Plaintiff claims that, although the lease extension provided for a monthly rent of $7,194.64 for the first two years and $7,408.42 for the third, defendants began sending it invoices demanding monthly rent of $7,704.66 in March of 2020. Doc. 26 at par. 16; Doc. 32.

On or about November 6, 2018, plaintiff sent an email to Michelle Fernandez of 38 LLC's management company reminding the latter that its monthly rent was $7,192.64 and not $7,480.35, as 38 LLC claimed. Doc. 33. Fernandez responded to Bhatia that her "accounting office ha[d] the wrong figures" and that she was "going to fix this for [him]". Doc. 33.

On March 23, 2020, 38 LLC sent a memorandum to all tenants of the building notifying them that, due to the Covid-19 pandemic, the building would be closed to the public Monday through Friday 6 pm – 8 am and all day on weekends and holidays. Doc. 35.

On or about June 16, 2020, 38 LLC sent plaintiff a Notice of Termination ("NOT"), signed by Lee, in his capacity as a principal of the company, advising that it elected to terminate plaintiff's month-to-month tenancy as of July 31, 2020 and that, if plaintiff did not vacate the premises by that date, a summary proceeding would be brought against it pursuant to Article 7 of the Real Property Actions and Proceedings Law. An affidavit of service reflected that plaintiff was served with the NOT by affix and mail on June 29, 2020 at 9:15 a.m., after one previous attempt to serve plaintiff on June 26 at 1:02 p.m. Doc. 14. However, a United States Postal Service tracking document reflects that plaintiff received the NOT on July 9, 2020. Doc. 34.

As a first cause of action in its amended complaint, plaintiff alleged that it was entitled to temporary and permanent injunctive relief insofar as it has a "strong and meritorious case", it would suffer "irreparable loss" as a result of the closure of the building, and that the equities

weighed in its favor since defendants would not suffer any harm if plaintiff were permitted to continue to occupy the premises. Doc. 26 at par. 21.

As a second cause of action, plaintiff claimed intentional infliction of emotional distress. Id. at pars. 24-25.

As a third cause of action, plaintiff claimed that it sustained lost profits due to defendants' curtailing of the building's hours of operation. Id. at pars. 27-29.

As a fourth cause of action, plaintiff demanded punitive damages. Id. at pars. 31-33.

38 LLC and Lee now move, pursuant to CPLR 3211(a)(1) and (a)(7), to dismiss the complaint or, in the alternative, pursuant to CPLR 3211(f), granting them permission to file an answer within ten days after the entry of the order deciding this motion. Plaintiff opposes the motion and cross-moves to enjoin defendants from prosecuting the holdover proceeding they filed against plaintiff in Civil Court, New York County, as well as for such other relief as this Court deems just and proper. Defendants oppose the cross motion.

LEGAL CONCLUSIONS

Defendants' Motion To Dismiss

In determining a motion to dismiss pursuant to CPLR 3211, "the pleading is to be afforded a liberal construction. [This Court is to] accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994] [internal citations omitted]).

Here, plaintiff alleges as a first cause of action "Temporary and Permanent Injunction." Doc. 26. "A preliminary injunction will only be granted when the party seeking such relief

demonstrates a likelihood of ultimate success on the merits, irreparable injury if the preliminary injunction is withheld, and a balance of equities tipping in favor of the moving party." (*1234 Broadway LLC v West Side SRO Law Project*, 86 AD3d 18, 23 [1st Dept 2011]). Whether to grant a preliminary injunction is a matter to be determined in the broad discretion of the court (*See Madden Int'l., Ltd. v Lew Footwear Holdings Pty Ltd.,* 143 AD3d 418 [1st Dept 2016]; *Cityfront Hotel Assoc. Ltd. Partnership v Starwood Hotels & Resorts Worldwide, Inc*., 142 AD3d 873 [1st Dept 2016]).

> "A party seeking the drastic remedy of a preliminary injunction must [nevertheless] establish a clear right to that relief under the law and the undisputed facts upon the moving papers" (*Gagnon Bus Co., Inc. v Vallo Transp., Ltd*. 13 AD3d 334, 335 [2004]). Conclusory statements lacking factual evidentiary detail warrant denial of a motion seeking a preliminary injunction (*Village of Honeoye Falls v Elmer*, 69 AD2d 1010, 1010 [1979]).

(*1234 Broadway LLC v West Side SRO Law Project,* 86 AD3d at 23-24).

Here, plaintiff's allegations in support of its cause of action seeking a preliminary injunction are conclusory at best. Initially, plaintiff fails to allege a likelihood of success on the merits, instead merely claiming in summary fashion that it has a "strong and meritorious case." Doc. 26 at par. 21.

Even assuming that plaintiff had established a likelihood of success on the merits, an injunction can only be granted "if the activity complained of will cause irreparable injury to the party seeking such relief before a trial can be held to resolve the underlying controversy. In this context, irreparable injury means a continuing harm resulting in substantial prejudice caused by the acts sought to be restrained if permitted to continue *pendente lite.* (citation omitted)" (*Societe Anonyme Belge D'Exploitation de La Navigation Aerienne v Feller*, 112 AD2d 837, 840 [1st Dept 1985]; *see also Second on Second Café, Inc. v Hing Sing Trading, Inc*., 66 AD3d 255 [1st Dept

2009]). Here, plaintiff alleges that "if the lease is terminated, [it] would be deprived of income from [its] clients." Doc. 26 at 21. However, since "[l]ost profits . . . are clearly compensable with money damages" (*Buchanan Capital Mkts., LLC v DeLucca*, 144 AD3d 508 [1st Dept 2016] [citations omitted]), this allegation does not support a claim of irreparable harm.

Further, plaintiff's claim that the equities tip in his favor because "[d]efendants would not suffer any damages or injury if [p]laintiff is allowed to run its office during the terms of [its] lease" (Doc. 26 at par. 21) is conclusory as well. Since plaintiff fails to sufficiently plead the elements necessary for a preliminary injunction, its claim for such relief must be dismissed.

Plaintiff's cause of action seeking a permanent injunction must also be dismissed. To plead a cause of action for a permanent injunction, a plaintiff must allege, inter alia, "a violation of a right presently occurring, or threatened and imminent" (*Lemle v Lemle*, 92 AD3d 494, 500 [1st Dept 2012] [citation omitted]). Here, since the complaint is devoid of any such allegation, the claim for a permanent injunction cannot be sustained.

Moreover, "injunctive relief is simply not available when the plaintiff does not have any substantive cause of action." (*Weinreb v 37 Apts. Corp.*, 97 AD3d 54, 59 [1st Dept 2012]). Here, as discussed immediately below, since plaintiff's remaining claims must be dismissed, there is no basis upon which to award it injunctive relief herein.

Initially, the allegations in the complaint do not set forth "the sort of extreme and outrageous conduct needed to support a cause of action for intentional infliction of emotional distress" (*Barbato v Giacin*, 188 AD3d 556 [1st Dept 2020]) and, thus, this claim is dismissed.

Although this Court notes above that plaintiff is not prevented from seeking damages for lost profits, its boilerplate claim of $500,000 in lost profits is not based on any facts demonstrating that the alleged damages resulted from defendants' actions (*See Gordon v Dino*

De Laurentiis Corp., 141 AD2d 435, 436 [1st Dept 1988]). Given the conclusory nature of this allegation, this claim must be dismissed as well.

Further, the complaint lacks the requisite allegations of egregious conduct or moral turpitude necessary to support an award of punitive damages (*See Denenberg v Rosen*, 71 AD3d 187, 196 [1st Dept 2010]), and so this claim, too, must be dismissed.

Moreover, since plaintiff has failed to allege that Lee committed any acts which would give rise to individual liability on his part, all claims against him in his personal capacity are dismissed on this ground as well. (*See Morris v NY State Dep't of Taxation & Finance*, 82 NY2d 135, 140 [1993]).

Plaintiff's Motion To Enjoin Defendants From Prosecuting The Holdover Proceeding

In its cross motion, plaintiff seeks an order denying defendants' motion to dismiss, as well as injunctive relief enjoining 38 LLC and Lee from pursuing their holdover proceeding against plaintiff in Civil Court. Doc. 23-25. In light of the reasons stated above for dismissing the complaint, the branch of plaintiff's cross motion seeking denial of defendants' motion is denied. Similarly, given this Court's previously stated rationale for dismissing plaintiff's claims seeking injunctive relief, the branch of plaintiff's cross motion seeking to enjoin 38 LLC from prosecuting its holdover proceeding against plaintiff is denied.

The parties' remaining contentions are either without merit or need not be addressed given the findings set forth above.

Therefore, it is hereby:

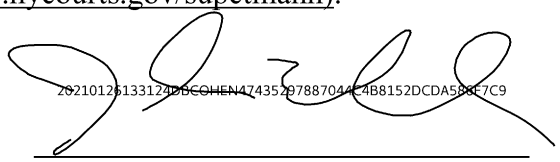
ORDERED that the motion to dismiss by defendants Roosevelt Lee 38 LLC and Uikun Lee is granted in all respects, with costs and disbursements to said defendants as taxed by the Clerk

of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendants; and it is further

ORDERED that the cross motion by plaintiff Bhatia & Associates PLLC is denied in all respects; and it is further

ORDERED that counsel for the movants shall serve a copy of this order, with notice of entry, upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the dismissal; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (access*ible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).



1/26/2021
DATE

DAVID BENJAMIN COHEN, J.S.C.

CHECK ONE:	X	CASE DISPOSED		NON-FINAL DISPOSITION			
	X	GRANTED		DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER		SUBMIT ORDER			
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT		REFERENCE	