

Brighton Leasing Corp. v Brighton Realty Corp.

2021 NY Slip Op 32269(U)

November 12, 2021

Supreme Court, Kings County

Docket Number: Index No. 519057/2018

Judge: Loren Baily-Schiffman

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At an IAS Part 65 of the Supreme Court of the State of New York, County of Kings at a Courthouse Located at 360 Adams Street, Brooklyn, New York on the 12th day of November, 2021.

PRESENT: HON. LOREN BAILY-SCHIFFMAN

JUSTICE

BRIGHTON LEASING CORP.,
Plaintiff,

- against -

BRIGHTON REALTY CORP.,
Defendant.

Index No.: 519057/2018

Motion Seq. # 10 & 11

DECISION & ORDER

As required by CPLR 2219(a), the following papers were considered in the review of this motion:

	<u>PAPERS NUMBERED</u>
Notice of Motion, Affidavits, Affirmation and Exhibits	1
Affidavit in Opposition to Motion	2
Reply Affirmation in Support of Motion	3
Notice of Cross-Motion, Affidavit, Affirmation and Exhibits	4
Affirmation in Support of Cross-Motion	5
Affirmation in Opposition to Cross-Motion	6
Reply Affirmation in Support of Cross-Motion	7
Supplemental Affirmation in Support of Cross-Motion	8

Upon the foregoing papers Defendant, Brighton Realty Corp. (“Landlord”), moves this Court for an Order a) directing the Referee to issue a decision in reliance on the record that comports with the order of reference; b) alternatively, scheduling the hearing of an underlying, pending Order to Show Cause before a Justice of the Supreme Court; c) referring this case pursuant to the order of reference to the Referee’s Part for a new hearing; d) ordering a full accounting of all deposits and expenditures from the escrow account of Plaintiff, Brighton Leasing Corp.’s (“Tenant”) counsel; e) ordering Tenant to pay outstanding bills in respect of the subject property; f) directing what should be done with the rent that Landlord’s counsel has been holding in escrow; g) directing Tenant to pay all past due use and occupancy and use and

occupancy prospectively pending the ultimate resolution of this lawsuit; and h) granting the Landlord such other and further relief as is just and proper. Tenant cross-moves for an Order a) compelling both Tenant and its attorneys to turn over all rent they have collected since October 1, 2018; b) allowing Tenant to pay use and occupancy for the months of March, April, May, June, July, August and September 2020 from the funds that are in escrow; c) directing Landlord to pay the outstanding taxes from the use and occupancy funds it received from Tenant and d) such other and further relief as this Court deems just, proper and equitable.

Procedural Background

On September 21, 2018, Hon. Lara Genovesi, the then ex parte judge, signed an Order to Show Cause (Motion Seq. No. 1) in this action which restrained Landlord from interfering with Tenant's leasehold right or starting an eviction proceeding and set the return date of the Order to Show Cause for October 17, 2018. The Order to Show Cause requested a preliminary injunction for relief similar to what was granted by Hon. Genovesi's temporary restraining order. On October 17, 2018, Hon. Pamela Fisher, the assigned IAS judge, referred this to the Office of Special Referee to hear and determine the request for preliminary injunction. On December 26, 2019, the Referee issued a Decision that found a purported lease extension to be inauthentic but did not specifically decide whether a preliminary injunction should be granted. Hon. Fisher then vacated all stays by Order dated February 13, 2020.

Tenant appealed the February 13, 2020 Order to the Appellate Division, Second Department. The Appellate Division ruled that the referee acted beyond the scope of her jurisdiction by deciding matters not before her, namely the authenticity of a purported lease renewal. The Appellate Division further found that Hon. Fisher erred in vacating the stays,

based on the referee's determination. This matter was then reassigned to this Court. On November 10, 2021, this Court held a hearing to determine whether the underlying preliminary injunction (requested in Motion Seq. No. 1) should be granted.

Discussion

"To be entitled to a preliminary injunction, a movant must establish (1) a likelihood or probability of success on the merits, (2) irreparable injury absent granting the preliminary injunction, and (3) a balancing of the equities in the movant's favor." **Rowland v. Dushin, 82 A.D.3d 738, 739 (2d Dep't 2011)**. "The decision to grant or deny a preliminary injunction rests in the sound discretion of the Supreme Court." *Id.* At the hearing in the instant case, Tenant failed to prove its entitlement for a preliminary injunction with sufficient evidence. Specifically, Tenant failed to admit the purported lease extension, which could demonstrate likelihood of success on the merits. Tenant additionally failed to address the balancing of the equities prong of the preliminary injunction requirements.

Accordingly, it is

ORDERED that Motion Seq. No. 10 is granted to the extent that the September 21, 2018 Order to Show Cause (Motion Seq. No. 1) is DENIED in its entirety; and it is further

ORDERED that all stays currently in place are VACATED, including the temporary restraining order contained in the September 21, 2018 Order to Show Cause (Motion Seq. No. 1); and it is further

ORDERED that all monies held in counsel for Tenant's escrow account in relation to this matter be immediately released to Landlord's counsel; and it is further

ORDERED that all monies in counsel for Landlord's escrow account in relation to this matter be released to Landlord; and it is further

ORDERED that the cross-motion (Motion Seq. No. 11) is DENIED in all respects.

This is the Decision and Order of the Court.

ENTER



HON. LOREN BAILY-SCHIFFMAN