306 Rutledge, LLC v City of New York

Supreme Court of New York, Appellate Division, Second Department
December 27, 2011, Decided
2010-10155

Reporter

90 A.D.3d 1026 *; 935 N.Y.S.2d 619 **; 2011 N.Y. App. Div. LEXIS 9578 ***; 2011 NY Slip Op 9625 ****

[****1] 306 Rutledge, LLC, Respondent, v City of New York et al., Appellants., (Index No. 23292/09)

Counsel: [***1] Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Stephen J. McGrath and Victoria Scalzo of counsel), for appellants.

Goldberg & Cohn, LLP, Brooklyn, N.Y. (Elliott S. Martin of counsel), for respondent.

Judges: REINALDO E. RIVERA, J.P., DANIEL D. ANGIOLILLO, ARIEL E. BELEN, SHERI S. ROMAN, JJ. RIVERA, J.P., ANGIOLILLO, BELEN and ROMAN, JJ., concur.

Opinion

[*1026] [**619] In an action, inter alia, for injunctive relief and to recover damages for breach of contract, the defendants appeal from an order of the Supreme Court, Kings County (Velasquez, J.), dated August 30, 2010, which granted those branches of the plaintiff's motion which were to direct them to disclose the complete records concerning [**620] their use of, and activities at, the subject premises, relating to the creation and remediation of pollution at the premises, and any tangible records concerning any actions or plans to remediate the polluted condition, and for a preliminary injunction directing them to pay the plaintiff the amount of all rental payments due since September 15, 2009, together with all payments due for real estate taxes, water and sewer rental, and any other payments required under the 2006 lease between

the parties until [***2] the defendants abate the environmental hazard existing on the subject premises or the outcome of any trial in this matter.

[*1027] Ordered that the order is modified, on the law and in the exercise of discretion, by deleting the provision thereof granting that branch of the plaintiff's motion which was for a preliminary injunction directing the defendants to pay the "plaintiff the amount of all rental payments due since September 15, 2009, together with all payments due for real estate taxes, water and sewer rental, and any other payments required under the 2006 lease between the parties" until the defendants abate the environmental hazard existing on the subject premises or the outcome of any trial in this matter, and substituting therefor a provision denying that branch of the plaintiff's motion; as so modified, the order is affirmed, without costs or disbursements.

The plaintiff is the owner of premises which were, at one time, occupied by the defendant Sanitation Department of the City of New York (hereinafter the City) pursuant to a month-tomonth tenancy under a renewal lease. On January 30, 2009, the City terminated the tenancy, surrendered the premises, and discontinued paying rent and [***3] other charges under the lease. Approximately eight months later, the plaintiff commenced this action, alleging that the City had failed to complete environmental remediation on the premises pursuant to a 1994 consent order issued by the New York State Department of Environmental Conservation. The plaintiff moved, inter alia, to direct disclosure of the City's complete records concerning its use of, and activities at, the premises relating to the creation and remediation of pollution at the premises, and any tangible records concerning any actions or plans to remediate the polluted condition, and for a preliminary injunction directing the defendants to pay the plaintiff the amount of all rental payments due since [****2] September 15, 2009, together with all payments due for real estate taxes, water and sewer rental, and any other payments required under the 2006 lease between the parties until the defendants abate the environmental hazard existing on the subject premises or the outcome of any trial in this matter. The Supreme Court granted those branches of the motion.

CPLR 3101 (a) provides for full disclosure of "all matter material and necessary in the prosecution . . . of an action" (see [***4] Allen v Crowell-Collier Publ. Co., 21 NY2d 403, 406, 235 NE2d 430, 288 NYS2d 449 [1968]). "The Supreme Court has broad discretion in the supervision of discovery, and its determinations should not be disturbed on appeal unless improvidently made" (Foster v Herbert Slepoy Corp., 74 AD3d 1139, 1140, 902 NYS2d 426 [2010] [internal quotation marks omitted]; see JRP Old Riverhead Ltd. v Town of Southampton, 73 AD3d 1130, 1132-1133, 902 NYS2d 603 [2010]; Kaplan v Herbstein, 175 AD2d 200, 572 NYS2d 78 [1991]). Under the circumstances of this case, the Supreme [*1028] Court providently granted that branch of the plaintiff's motion which was to direct the defendants to disclose its complete records concerning its use of, and activities at, the premises, relating to the creation and remediation of pollution at the premises, [**621] and any tangible records concerning any actions or plans to remediate the polluted condition, as these records are material and necessary to the issues in this case.

"The purpose of a preliminary injunction is to preserve the status quo until a decision is reached on the merits" (*Icy Splash Food & Beverage, Inc. v Henckel*, 14 AD3d 595, 596, 789 NYS2d 505 [2005]; see S.J.J.K. Tennis, Inc. v Confer Bethpage, LLC, 81 AD3d 629, 630, 916 NYS2d 789 [2011]; Ruiz v Meloney, 26 AD3d 485, 486, 810 NYS2d 216 [2006]). "To be entitled to a preliminary injunction, [***5] 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 AD3d 738, 739, 917 NYS2d 702 [2011]; see Board of Mgrs. of Wharfside Condominium v Nehrich, 73 AD3d 822, 824, 900 NYS2d 747 [2010]; Yemini v Goldberg, 60 AD3d 935, 936, 876 NYS2d 89 [2009]). "Where the plaintiffs can be fully compensated by a monetary award, an injunction will not issue because no irreparable harm will be sustained in the absence of such relief" (Mar v Liquid Mgt. Partners, LLC, 62 AD3d 762, 763, 880 NYS2d 647 [2009]).

Here, the City has not yet remediated the contamination on the premises. Although the plaintiff may ultimately be successful in this action, the order of the Supreme Court effectively altered

the status quo and granted the monetary relief the plaintiff seeks in the complaint (see SHS Baisley, LLC v Res Land, Inc., 18 AD3d 727, 728, 795 NYS2d 690 [2005]; Village of Westhampton Beach v Cayea, 38 AD3d 760, 762, 835 NYS2d 582 [2007]). Accordingly, that branch of the plaintiff's motion which was for a preliminary injunction directing the defendants to pay the plaintiff the amount of all rental payments due since September 15, 2009, together with all payments [***6] due for real estate taxes, water and sewer rental, and any other payments required under the 2006 lease between the parties until the defendants abate the environmental hazard existing on the subject premises or the outcome of any trial in this matter, should have been denied. Rivera, J.P., Angiolillo, Belen and Roman, JJ., concur.

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