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Ainealem "Alex" Gidewon et al Order on Defedants' Motion for Summary Judgment

John J. Goger

Fulton County Superior Court, Judge

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**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

AINEALEM “ALEX” GIDEWON)	
and AG ENTERTAINMENT, INC.)	
)	
Plaintiffs,)	
)	
v.)	Civil Action File No. 2016CV270971
)	
MICHAEL GIDEWON, 990 BRADY)	
AVENUE, LLC, and RONALD F.)	
JACOBS,)	
)	
Defendants.)	

ORDER ON DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT

This matter is before the Court on Defendants 990 Brady Avenue, LLC (“990 Brady Avenue”) and Ronald F. Jacobs’ (“Jacobs”) (collectively “Defendants”) Motion for Summary Judgment. Upon consideration of the motions and briefs submitted the Court finds as follows:

I. Facts and Procedural History

Plaintiffs Alex Gidewon and AG Entertainment (“Plaintiffs”) operate an Atlanta nightclub, Compound, which is located primarily at 1008 Brady Avenue. Compound’s VIP section and parking lot are located on an adjacent lot located at 990 Brady Avenue. Defendant 990 Brady Avenue, LLC (“990 Brady”) owns the 990 Brady Avenue property (the “Property”); Defendant Jacobs is a member of 990 Brady.¹

On June 10, 2009, The Gidewons Property Holdings, Inc. (“GPH”), owned by Defendant Michael Gidewon, entered into a Standard Commercial/Industrial Lease Agreement (the “Lease”) with 990 Brady to rent the Property. The Lease gave GPH, as Tenant, a purchase option and required monthly payments of non-refundable earnest money. According to the terms

¹ According to the Amended Verified Complaint filed on May 19, 2016, Plaintiffs believe Defendant Michael Gidewon is also a member of 990 Brady.

of the Lease, the Property could be used “for any zone conforming use by Tenant and any other possible Sub-Tenants and related activities.” The Lease also allows GPH to assign the Lease, sublet the Property, or permit the use of the Property by any other party without prior written consent of 990 Brady. The Lease does not name or otherwise allude to Alex Gidewon, AG Entertainment, or Compound. The Lease was extended through five Amendments. On January 31, 2016, 990 Brady and GPH entered into a Termination Agreement which terminated the Lease effective February 1, 2016 and stated that “neither party shall have any further obligations or liability to the other thereunder.”

In their Amended Verified Complaint filed May 19, 2016, Count 1 asserts a claim against 990 Brady as a purported third party beneficiary to the Lease claiming that 990 Brady breached the Lease by fraudulently terminating the Lease without recognizing Plaintiffs’ “ownership interest in and status as third party beneficiary of the 990 Lease and the purchase option.” Plaintiffs allege they are entitled to specific performance of the purchase option under the Lease. The remainder of the claims (fraudulent misrepresentation, detrimental reliance, conversion of specific money and personal property, foreclosure of liens, and expenses of litigation) rely on disputed facts² and discovery does not close until September 6, 2016. Plaintiffs’ Counsel filed an affidavit under O.C.G.A. § 9-11-56(f) stating that further discovery is necessary to oppose this Motion for Summary Judgment.

² Plaintiffs allege that Compound’s operations were the source of the funds used by Michael Gidewon to make lease payments and non-refundable purchase payments to 990 Brady. Plaintiffs allege that on January 30, 2016, Jacobs instructed them to immediately pay February rent of \$29,500 and \$35,000 for a six-month lease extension to Michael Gidewon or his attorney, DeWayne Martin. Plaintiffs claim they paid Mr. Martin a total of \$ 64,500 on January 30, 2016, and the payments were never refunded. Regardless, they have been denied access to the VIP area at the Property and Jacobs turned off the power to the Property. Plaintiffs claim that Defendants have refused to return personal property left at the Property, including couches, speakers, chandeliers, padded walls, LED and other club lights, a marble bar top, and an outdoor patio tent.

II. Standard of Review

Summary Judgment should be granted when the movant shows “that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” O.C.G.A. § 9-11-56(c). “A defendant may do this by showing the court the documents, affidavits, depositions and other evidence in the record reveal that there is no evidence sufficient to create a jury issue on at least one essential element of plaintiff’s case.” *Scarborough v. Hallam*, 240 Ga. App. 829, 829 (1999).

To avoid summary judgment, “an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this Code section, must set forth specific facts showing that there is a genuine issue for trial.” O.C.G.A. § 9-11-56(e). “Should it appear from the affidavits of a party opposing the motion that he cannot, for reasons stated, present by affidavits facts essential to justify his opposition, the court may... permit affidavits to be obtained or depositions to be taken or discovery to be had, or may make such other order as is just.” O.C.G.A. § 9-11-56(f). The Court views the evidence in the light most favorable to the nonmoving party. *Morgan v. Barnes*, 221 Ga. App. 653, 654 (1996).

III. Analysis


Count 1 against 990 Brady fails as a matter of law because Plaintiffs are not third party beneficiaries to the Lease. Generally, an action on a contract must be brought in the name of the party in whom the legal interest in such contract is vested. O.C.G.A. § 9-2-20(a). However, “[t]he beneficiary of a contract made between other parties for his benefit may maintain an action against the promisor on the contract.” O.C.G.A. § 9-2-20(b). For a contract to be for the benefit of a third person, it must clearly appear from the contract that it was intended for his benefit. See *Marvel Enterprises, Inc. v. World Wrestling Fed'n Entertainment, Inc.*, 271 Ga.

App. 607, 614 (2005) (noting the beneficiary does not have to be expressly named but the intent must be clear from the face of the contract). “The mere fact that he would benefit incidentally from performance of the agreement is not alone sufficient.” *Jai Ganesh Lodging, Inc. v. David M. Smith, Inc.*, 328 Ga. App. 713, 718 (2014), reconsideration denied (July 31, 2014), cert. denied (Oct. 6, 2014). When a contract is unambiguous, the existence of a third party beneficiary is found on the face of the contract and determined as a matter of law without consideration of parol evidence. *Id.*

Here, neither Alex Gidewon nor AG Entertainment is mentioned in the Lease or the five subsequent Lease Amendments. There is no indication from the Lease’s plain unambiguous language that the Lease was intended for the benefit of AG Entertainment or Alex Gidewon. It would be improper to consider parol evidence given the unambiguous language of the Lease. Accordingly, Defendants’ Motion for Summary Judgment on the Third Party Beneficiary claim against them is **GRANTED**.

Genuine issues of material fact exist as to the remaining claims against Defendants and discovery has not yet been completed. As such, Defendants’ Motion for Summary Judgment is **DENIED** as to the remaining claims against them.

SO ORDERED this 23 day of June, 2016.



JUDGE JOHN J. GOGER
Superior Court of Fulton County
Atlanta Judicial Circuit

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