

Supreme Court, Kings County, New York.
Adam D. ADAMS, Plaintiff,
v.
WASHINGTON GROUP, LLC, 30 Main LLC and Two Trees Management Co., LLC,
Defendants.
No. 40621/2004.
April 19, 2006.

Oved and Oved, LLP, New York, NY, attorneys for plaintiffs.
Greenberg Traurig, LLP, New York, NY, attorney for defendants.

[MARTIN SCHNEIER](#), J.

***1** Plaintiff is a holdover tenant of defendants Washington Group, LLC and 30 Main Street LLC (“landlords”). Plaintiff’s lease extension expired on December 15, 2004. Plaintiff then commenced this action, seeking to enjoin the landlords from terminating the lease, alleging a breach of the implied covenant of good faith and fair dealing, detrimental reliance and a declaratory judgment of the rights of the parties. The defendants move for summary judgment and the plaintiff cross-moves for summary judgment.

Plaintiff alleges that he entered into an oral agreement with the landlords to extend the lease on December 1, 2004. The plaintiff’s affirmation, however, fails to set forth what the material terms of the supposed agreement were. Moreover, on December 3, 2004, plaintiff wrote to the landlords and stated “[y]ou have not gotten back to me in order to confirm the verbal agreement, in principle, that we have from our very positive meeting on Wednesday December 1, 2004.” This establishes that the negotiations between the parties had not yet ripened into an enforceable contract. Furthermore, plaintiff argues that he detrimentally relied on the continuous conduct of the landlords which gave rise to a reasonable belief that an agreement would be reached. Plaintiff claims that this conduct is reflected in letters written by the plaintiff to summarize the meetings. The letters, however, contain numerous caveats that belie the plaintiff’s claim of reasonable reliance.

For example, on November 23, 2004, plaintiff wrote “[n]ow I am asking you to take a chance ... [a]s you know my lease extension ends December 15, 2006 ... I am sure we can reach an agreement we will both feel o.k. about.” On November 18, 2006: “I am sure we are not at an impasse. I continue to believe that we will reach a satisfactory agreement.” November 16, 2006: “With this in mind I propose the following ...” October 29, 2004: “Securing an o.k. from you in regard to the gallery space is an important element to our smooth transition.” In sum, the Court finds that the negotiations between the parties amounted to, at most, an agreement to agree.

The first cause of action purports to be for an injunction. An injunction is a form of equitable relief, and not a cause of action in itself. Thus the Court can only consider granting an injunction if the plaintiff prevails on one of its proper causes of action.

The second cause of action alleges a breach of good faith and fair dealing. There is an implied covenant of good faith and fair dealing in every contract ([Dalton v. Educational Testing Service](#), 87 N.Y.2d 384, 389). The breach of good faith alleged in this case, however, regards the negotiation of a new contract, and not any issues arising out of the existing contract. Accordingly, the defendants’ motion for summary judgment is granted with respect to the second cause of action.

The third cause of action purports to be for “detrimental reliance.” There is no independent cause of action for detrimental reliance. Detrimental reliance is, however, an element of equitable and promissory estoppel, both of which, plaintiff argues, apply here.

***2** The elements of equitable estoppel are: “with respect to the party estopped: (1)

conduct which amounts to a false representation or concealment of material facts; (2) intention that such conduct will be acted upon by the other party; and (3) knowledge of the real facts. The party asserting estoppel must show with respect to himself: (1) lack of knowledge of the true facts; (2) reliance upon the conduct of the party estopped; and (3) a prejudicial change in his position" ([*Airco Alloys Division, Airco Inc. v. Niagara Mohawk*, 76 A.D.2d 68](#))(*citations omitted*).

The elements of promissory estoppel are: "a clear and unambiguous promise; a reasonable and foreseeable reliance by the party to whom the promise is made; and an injury sustained by the party asserting the estoppel by reason of his reliance (*see, e.g., King & Son v. DeSantis Constr. No. 2 Corp.*, 97 Misc.2d 1063, 413 N.Y.S.2d 78)" ([*Ripple's of Clearview, Inc. v. Le Havre Associates*, 88 A.D.2d 120](#)).

In this case, the evidence presented by the plaintiff makes clear that there was never any binding agreement to extend the plaintiff's lease or lease other premises to him. Accordingly, there is no evidence of a false representation or a clear and unambiguous promise upon which the plaintiff could reasonably rely. The motion for summary judgment with respect to the third cause of action is, therefore, granted.

The fourth cause of action seeks a declaration of the rights of the parties with respect to the leased premises and other premises. The Court finds that the parties have no rights other than those arising out of the now-expired lease. The Court defers to the findings of the Civil Court where those rights are being adjudicated (*Washington Group, LLC v. Adams*, Index No. L & T 10917/2004).

The plaintiff's cross motion, which seeks summary judgment on estoppel grounds is denied. The plaintiff has failed to raise an issue of fact regarding misrepresentations or promises by the defendants.

Accordingly, the defendants motion for summary judgment is granted, the plaintiff's cross-motion for summary judgment is denied and complaint is dismissed.

This shall constitute the Decision and Order of the Court.

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