



Lucky Dollar, Inc. v Mount Calvary Pentecostal Church

2016 NY Slip Op 30259(U) (2016) | Cited 0 times | New York Supreme Court | February 8, 2016

SUPREME COURT OF STATE OF YORK COUNTY OF YORK: DIVISION LUCKY DOLLAR,
MOUNT PENTECOSTAL CHURCH, 651840/2014

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predicate,

Plaintiff,

- against -

CALVARY Defendant. Hon. Charles E. Ramos, J.S.C.: Index No.

Plaintiff Lucky Dollar, Inc. ("Lucky Dollar") moves,

pursuant to motion sequence number for a Yellowstone

injunction against defendant Calvary Pentecostal Church (the "Church") staying and tolling the expiration date of the cure period set forth in the Church's notice to cure, dated

October 6, (the "Notice to Cure"), which seeks to evict

Lucky Dollar from the building located at and Amsterdam Avenue, New York, NY (the "Premises"). For the reasons set forth below, the Notice to Cure is deficient, and the Church is enjoined from



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using the Notice to Cure as a for reclaiming possession of the Premises.

Background

The facts set forth herein are taken from the parties'

submissions, which are undisputed except where noted. The Church is the owner of the Premises (Complaint, 4).

Lucky Dollar is a tenant of the Premises pursuant to a lease dated November 23, 1998 (the "Lease") (id. at 5). 7 of [* 1] "Rider")

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premisee the rider to the Lease dated November 23, 1998 (the

requires that the landlord serve the tenant with a notice to cure with a cure period prior to terminating the Lease

(Affirmation of William X. Esq. aff'"], Ex. B).

or about June the Church served Lucky Dollar a



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notice to cure alleging that Lucky Dollar violated the Lease provisions by installing an illegal heating, ventilation, and air conditioning (HVAC) system in the Premises without the Church's approval (Complaint, 6). This Court granted Lucky Dollar a

Yellowstone injunction on July 18, aff, 4).

6, the Church served Lucky Dollar with a second notice to cure alleging that Lucky Dollar violated Section

2(a) of the Rider by not maintaining a minimum insurance policy of in general liability" aff, 6-7). The

Notice to Cure states that, in order to cure the default, Lucky Dollar must:

Procure an insurance policy that complies with the terms of the lease agreement, which includes the aforementioned requirement of in general liability insurance aff, Ex. A).

Section 2 of the Rider in relevant parts:

Tenant covenants to provide and deliver to the Landlord duly issued Certificates of Insurance regarding following policies on or before the earlier of the commence date of the term hereof or Tenant's entering the for any purposes whatsoever, and to keep in force during the term hereof, for the benefit of the Landlord and Tenant:

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304, 310 (a) A comprehensive policy of general liability insurance relating to the premises and appurtenances ... policy is to be written by good and solvent insurance companies satisfactory to the Landlord for the full term of this lease and renewals thereof in the amount of MILLION FIVE minimum single risk with respect of any one person and/or incident producing personal or bodily injury and FIVE regarding property damage, single risk ... a.ff, Ex. B [emphasis added]). From the period of 1, to April 1, Lucky Dollar's general liability insurance policy covered an aggregate sum of but only up to per single risk aff, Ex. C).

Lucky Dollar brought this order to show cause within the

day cure period seeking a Yellowstone injunction against the

Church. Pending the hearing and determination of motion sequence number this Court temporarily restrained the Church from

terminating Lucky Dollar's lease and tolled the cure period.

Discussion

The purpose of a notice to cure is to the tenant of claimed defaults in its obligations under the lease and of the forfeiture and termination of ,the lease if those defaults are not

cured within a set (Filmtrucks, Inc. v Express Indus. &

Term. Corp., 127 AD2d [1st Dept 1987]). The notice to

cure must be a.nd unambiguous" (Garland v Titan West

Associates, 147 AD2d [1st Dept 1989]). Insomuch as

service of a proper notice to cure is a condition precedent to

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tor eviction under the lease, a deficient notice deprives the landlord of a predicate for reclaiming possession of the premises

(Chinatown Apts. v Chu Cho Lam, 51 NY2d 786, 788 (1980)).

I. The Notice To Cure Fails To Unequivocally and

Inform Lucky Dollar How It Violated The Lease.

The Notice to Cure stated that Lucky Dollar did not maintain (a minimum insurance policy of in general liability" aff, Ex. A). The term "general liability" is ambiguous - it

could refer to either coverage in aggregate or coverage per

single risk. Lucky Dollar maintained a general liability insurance policy of in aggregate from the period of April 1, to April 1, What Lucky Dollar failed to do

to maintain a minimum general liability insurance policy of

per single risk and property damage, single

risk pursuant to 2(a) of the Rider.

However, even if Lucky Dollar failed to maintain adequate minimum single risk insurance coverage, the Church did not unequivocally and unambiguously allege said failure in the Notice of Cure. Thus, the Notice to Cure cannot be used as a predicate

repossessing the Premises pursuant to the terms of the Lease

(see, e.g., Chinatown Apts., 51 NY2d at 788 [where a notice to

terminate failed to cite any specific prohibition in the lease which allegedly had been violated by the construction of a

structure, the deficiency in the notice caused it to be



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920 NYS2d 901 [Sup

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309 2003] ineffective and deprived the landlord of a predicate for reclaiming possession of the premises]).

II. Had The Notice To Cure Adequate1y A11eged Lucky Do11ar's

Fai1ure To Maintain The Minimum Risk Coverage, It

Wou1d Have Fai1ed To Unequivoca1ly and Unambiguous1y Inform Lucky

Do11ar The Conduct Required To Eviction.

A tenant's failure to maihtain adequate general liability insurance coverage exposes the landlord to an "unknown universe"

of claims arising during the period of inadequate insurance

coverage (Kyung Sik Kim v Idylwood, N.Y., LLC, 66 AD3d 528, 529

[1st Dept A tenant may cure an alleged default arising from inadequate occurrence-based insurance coverage by retroactively amending the terms of coverage so that it is

consistent with the lease (see Federated Retail Holdings, Inc. v

Weatherly 39th St., LLC, 896, Ct, NY County

2011]; National Fire Insurance Company of Pittsburgh, v

Red Apple Group, Inc., AD2d 657 [1st Dept [insurance endorsements that retroactively cover real estate leases can be

valid]) . Had the Notice to Cure adequately alleged Lucky Dollar's violation of Section 2(a) of the



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Rider, it still does not unequivocally and unambiguously inform Lucky Dollar of the conduct required to prevent eviction. The Notice to Cure states that Lucky Dollar may prevent eviction by procuring an insurance

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to prevent eviction pursuant to the of 2(a). In

order to prevent eviction pursuant to an effective notice to

cure, Lucky Dollar would not only have to procure a general

liability insurance policy that covers per single risk

and property damage, single risk, but would also have to

retroactively amend the terms of its inadequate past insurance coverage, so that the coverage is consistent with the Lease and

does not expose the Church to an unknown universe of claims.

By failing to unequivocally and unambiguously state the conduct required to prevent eviction, the Church prejudiced Lucky Dollar's right to cure.

Accordingly, it is hereby



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ORDERED that Mount Calvary Pentecostal Church is enjoined from using the notice to cure, dated October 6, as a predicate for reclaiming possession of the building located at and Amsterdam Avenue, New York, NY from Lucky Dollar, Inc., and it is further

ORDERED that the motion for an injunction is denied as moot. DATED: 8, ENTER: -

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