Reliance Hospitality LLC v. 5251 S Julian Drive LLC

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Reliance Hospitality LLC,

Plaintiff, v. 5251 S Julian Drive LLC,

Defendant.

No. CV-22-00149-TUC-JAS (MSA)

REPORT AND RECOMMENDATION

Plaintiff Reliance Hospitality LLC moves for summary judgment on its claim of breach of contract against Defendant 5251 S. Julian Drive LLC. The motion has been fully briefed and is suitable for decision without oral argument. For the following reasons, the Court will recommend that the motion be denied.

Background Defendant is the former owner of a hotel in Tucson, Arizona (the Hotel), and Plaintiff is a hotel management company. In September 2019, Defendant and Plaintiff entered into a hotel management agreement (the Agreement). (PSOF ¶ 1.) 1

The Agreement operations, and that Defendant would fund those operations (either directly or, if Plaintiff

advanced its own funds, through reimbursement). (PSOF ¶¶ 3 10.) It also provided that Defendant was required to follow all laws relating to ownership and operation of the Hotel. (PSOF ¶ 11.) A party could terminate the Agreement immediately because of the other

1 (PSOF ¶ 12.) A party could also

sums due or perform any material obligation, but such termination required advance written notice.

(PSOF ¶¶ 13 14.) Termination of the Agreement would not absolve either party of its duty to pay any sums owed to the other party. (PSOF ¶ 22.) In February 2022, Plaintiff sent Defendant a written notice of default, asserting that Defendant had breached the Agreement by failing to replace or repair , . (PSOF ¶¶ 18 19.) The notice advised Defendant that it had to begin taking action to cure the breach within ten days and that failure to do so would give Plaintiff the right to terminate the Agreement. (PSOF ¶ 19.) On March 1, 2022, Plaintiff sent Defendant a notice of termination, asserting that Defendant had failed to cure its breach. (PSOF ¶ 21.) Defendant acknowledges that it received these notices, but it denies either breaching the Agreement or failing to cure a breach of the Agreement.

Shortly thereafter, Plaintiff initiated this lawsuit, alleging a single claim of breach of contract. (Doc. 1-4.) 2

Plaintiff alleges that Defendant breached by failing to replace the panel and by failing to reimburse funds Plaintiff had advanced behalf. (Id. ¶ 26.) Defendant countersued for breach of contract, alleging (among other

things) that Plaintiff breached by failing to collect rent from extended-stay annex. (Doc. 18 at 23, ¶ 82.)

Legal Standard dispute as to an

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A dispute is Id. In 2 Plaintiff later tried to file a first amended complaint, but that pleading was stricken because it was untimely and filed without leave of Court. (Doc. 25.) In its motion briefing, Defendant erroneou not -4) remains as the operative pleadi - movant is to be believed, and all justifiable inferences are to be drawn Id. at 255 (citing Adickes v. S. H. Kress & Co., 398 U.S. 144, 158 59 (1970)). the moving party bears the burden of proof at trial, it must come forward with evidence

Houghton v. South, 965 F.2d 1532, 1536 (9th Cir. 1992) (quoting Ral , 939 F.2d 1257, 1264 65 (5th Cir. 1991)).

Discussion elements: a contract, breach of that contract, and resulting damages. Graham v. Asbury, 540 P.2d 656, 657 (Ariz. 1975) (citing Clark v. Compania Ganadera de Cananea, S.A., 387 P.2d 235, 238 (Ariz. 1963)). The parties agree that the Agreement was a valid contract. They disagree, however, as to whether summary judgment should be granted as to breach and damages. As discussed below, Plaintiff has not shown that it is entitled to summary judgment on those elements. I. There is a triable issue as to which party materially breached first.

Plaintiff contends that Defendant breached the Agreement by failing to reimburse Defendant argues that there is a triable issue as to whether it committed those breaches, but it says that the Court need not decide the issue. According to Defendant, Plaintiff materially breached the Agreement first and

therefore cannot recover for any subsequent breaches by Defendant. The Court agrees that there is a genuine dispute as to which party materially breached first, and that such dispute precludes summary judgment.

Under state law, a defendant who is sued be excused matter. QC Constr , 423 F. Supp. 2d 1008,

1013 (D. Ariz. 2006) (quoting Williston on Contracts § 43:12 (4th ed.)). This is because Zancanaro v. Cross, 339 P.2d 746, 750 (1959); see Restatement (Second) of Contracts § 237 cmt. b (1981) [W]here performances are to be exchanged under an exchange of promises, each party is entitled to the assurance that he will not be called upon to perform his remaining duties of performance with respect to the expected exchange if there has already been an uncured material failure of performance by the other party. Here, there is a triable issue as to whether Plaintiff committed a material breach when it failed to collect rent from certain long-term guests. Whether a breach is material depends on numerous factors. See Restatement (Second) of Contracts § 241 (1981) (listing relevant factors); , 788 P.2d 1189, 1197 98 (Ariz. 1990) (adopting § 241 for landlord-tenant contracts). An extended discussion of all the factors is unnecessary here. The sole purpose of a hotel is to charge people money in exchange for lodgings. Defendant has presented evidence that Plaintiff provided lodgings to 12 to 14 people but did not collect money from them for a period of six to nine months, resulting in approximately $84,000 in damages. (Doc. 106-3 at 5 6, 11; Doc. 106-15.) , and Plaintiff allegedly waited the better part of a year to take curative action. A reasonable jury could find that that was a material breach. See Restatement (Second) of Contracts § 241 & cmt. b (stating . There is also a genuine dispute as to whether Plaintiff breached before Defendant. Plaintiff presents evidence that it began discussing the fire panel with Defendant in April 2021. (Doc. 93-4 at 3 4.) Plaintiff also presents evidence (with its other motion) that the parties explored financing options for the replacement project. (Doc. 91-1 at 57 70.) Those discussions continued through mid-November 2021, when Defendant decided to put the Fire Panel Id. at 57.) Finally, Plaintiff submits evidence that, in February 2022, it formally notified Defendant that Defendant had breached by not replacing the fire panel. (Doc. 93-5 at 2.) It appears from this evidence that the parties were working together on the issue up until mid-November 2021. A reasonable jury could find that Plaintiff did not view Defendant as in breach until that time.

As for when Plaintiff might have breached, Defendant representative, Yaacov Amar, testified that Plaintiff failed to collect rent for six to nine months, and that he had to took action. (Doc. 106-3 at 5 6.) Defendant also presents evidence showing that Plaintiff served the nonpaying guests with a notice of nonpayment in December 2021 and served them with forcible detainer summonses in January 2022. (Doc. 106-10 at 2, 6.) Putting this together, the record suggests that Plaintiff failed to collect rent starting in March 2021 at the earliest (nine months before Amar demanded action) or June 2021 at the latest (six months before). Thus, a reasonable jury could find that Plaintiff committed a material breach before Defendant. Plaintiff argues that its alleged breach is irrelevant because Defendant never sent formal, written notice to Plaintiff that it had breached by failing to collect rent. But there is no Arizona caselaw holding that a party must serve formal notice to preserve its rights.

SiteLock LLC v. GoDaddy.com LLC, 562 F. Supp. 3d 283, 304 05 (D. Ariz. 2022). Moreover, as explained in the report and recommendation , a reasonable jury could find .

The record does not clearly show which party breached first. Plaintiff has the burden on its claim and its motion for summary judgment. As Plaintiff has given short shrift to this issue (and did so only in its reply brief), it has carried neither burden. Therefore, summary judgment should be denied as to the breach element. 3 II. Plaintiff has not carried its burden of production as to the damages element.

To prove damages, Plaintiff presents transaction reports from Paychex (a payroll service) showing that funds were transferred from TD Bank to Paychex. (Doc. 93-7.) These documents do not show that Plaintiff used its own funds to pay the payroll expenses, or that Defendant failed to reimburse Plaintiff; they show only that the expenses were paid. Plaintiff also presents invoices from BlueCross BlueShield, but the invoices are addressed (Doc. 93-8.) Finally, Plaintiff presents an invoice from Best Buy. (Doc. 93-9.) The fact that Plaintiff received a bill does not prove 3 This conclusion makes it unnecessary to determine whether Defendant breached by failing to replace the fire panel. As noted, if Plaintiff committed a material breach first, Defendant would be excused from liability for its later breach. that it paid the bill, let alone that it did so with its own money and was not later reimbursed. 4 Plaintiff has not carried its burden of production. Thus, Defendant has no obligation to produce anything in response, and summary judgment should be denied damages.

Conclusion The Court recommends 2) be denied.

This recommendation is not immediately appealable to the United States Court of Appeals for the Ninth Circuit. The parties have 14 days to file specific written objections with the district court. Fed. R. Civ. P. 72(b)(2). The parties have 14 days to file responses to objections. Id. The parties may not file replies to objections absent the district court s permission. The failure to file timely objections may result in the waiver of de novo review. United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). Dated this 9th day of January, 2024.

4 briefing suggests that these missing links were included in a declaration attorney forgot to submit the declaration with briefing. Defense counsel made the same error. Defendant relies on a certain concerning the fire panel, but did not submit that page to the Court. The carelessness on both sides is stunning.