

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, SECOND JUDICIAL DEPARTMENT

Mona and Jack's Clothing, Inc. v. Ola, Inc.

133 A.D.3d 642 (N.Y. App. Div. 2d Dep't 2015) · No. 2014-02551 · Decided November 12, 2015

SUMMARY

The Appellate Division, Second Department reversed an order denying defendants’ motion in an action involving alleged moisture, mold, and mildew damage to clothing stored in leased premises. The court held that the plaintiff’s failure to comply with a conditional order of preclusion made the order absolute and that the plaintiff failed to show a reasonable excuse or a potentially meritorious cause of action. The court also held that defendants established entitlement to summary judgment and remitted the matter for a hearing on contractual costs and reasonable attorneys’ fees.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Judicial Department
WRITING FOR THE COURT	L. Priscilla Hall, J.P.; Leonard B. Austin, J.; Sandra L. Sgroi, J.; Sylvia O. Hinds-Radix, J.
JURISDICTION	New York
DECIDED	November 12, 2015
DOCKET	2014-02551
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendants appealed from an order denying their motion to dismiss for failure to comply with a conditional order of preclusion, or alternatively for summary judgment, and denying their request for costs and reasonable attorneys' fees.
STANDARD OF REVIEW	The Appellate Division reviewed the order on the law and in the exercise of discretion. Summary judgment was reviewed under the standard requiring the movant to establish entitlement to judgment as a matter of law and the opposing party to raise a triable issue of fact.
PRECEDENTIAL VALUE	published

PARTIES

Ola, Inc., doing business as Ridgewood Automotive Center, et al. v.
Mona and Jack's Clothing, Inc., doing business as Cheap Jack's
Clothing

TOPICS

motions to dismiss

summary judgment

sanctions

attorney fees

civil procedure

PRACTICE AREAS

civil procedure

contracts

torts

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appellate procedure

QUESTIONS PRESENTED

1. Whether the plaintiff's failure to comply with the conditional order of preclusion caused the order to become absolute and warranted dismissal of the complaint.
2. Whether the plaintiff demonstrated a reasonable excuse for noncompliance and a potentially meritorious cause of action sufficient to obtain relief from the preclusion order.
3. Whether defendants were entitled to summary judgment because they established entitlement to judgment as a matter of law and plaintiff failed to raise a triable issue of fact.
4. Whether defendants were entitled under the lease to recover costs, including reasonable attorneys' fees.

HOLDINGS

1. A conditional order of preclusion becomes absolute when the party subject to it fails to comply timely with its directives.
2. A party seeking relief from a conditional preclusion order must demonstrate both a reasonable excuse for the failure to comply and the existence of a potentially meritorious cause of action.
3. Defendants were entitled to summary judgment because they established their entitlement to judgment as a matter of law and the plaintiff failed to raise a triable issue of fact.
4. Under the parties' lease, which bound the plaintiff as a holdover tenant, the prevailing party in an action arising from the plaintiff's possession of the premises was entitled to costs incurred in the action, including reasonable attorneys' fees.

KEY QUOTATIONS

*“As a result of the plaintiff's failure to timely comply with the conditional order of preclusion, that conditional order became absolute” (*2)*

*“To be relieved of the adverse impact of the conditional order, the plaintiff was required to demonstrate a reasonable excuse for its failure to comply with the order and the existence of a potentially meritorious cause of action” (*2)*

FACTUAL BACKGROUND

In 2005, the plaintiff leased premises from the defendants to store vintage clothing. In 2010, the plaintiff discovered that the clothing had been damaged by moisture, mold, and mildew and sued for breach of contract and negligence. The plaintiff failed to comply with a conditional preclusion order requiring production of damages documentation and an expert report, and also failed to retain new counsel after its attorney was relieved. Defendants submitted expert evidence attributing the damage to the plaintiff's defective storage methods rather than defective premises conditions.

PROCEDURAL HISTORY

The plaintiff commenced an action alleging breach of contract and negligence after clothing stored on leased premises was damaged by moisture, mold, and mildew. The Supreme Court issued a conditional order of preclusion requiring the plaintiff to provide damages documentation and an expert damages report, but the plaintiff failed to comply. The Supreme Court denied defendants' subsequent motion to dismiss or for summary judgment and directed the parties to complete discovery. The Appellate Division reversed, granted defendants' motion, and remitted for a hearing on costs and attorneys' fees.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remit the matter to the Supreme Court, Queens County, for a hearing and determination of defendants' request for costs, including reasonable attorneys' fees.

CASES CITED

- Wilson v. Galcia Contr. & Restoration Corp., 10 N.Y.3d 827, 830
- SRN Realty, LLC v. Scarano Architect, PLLC, 116 A.D.3d 693
- Gibbs v. St. Barnabas Hosp., 16 N.Y.3d 74, 80
- Hughes v. Brooklyn Skating, LLC, 120 A.D.3d 758
- Alvarez v. Prospect Hosp., 68 N.Y.2d 320
- City of New York v. Pennsylvania R.R. Co., 37 N.Y.2d 298, 300
- Visken v. Oriole Realty Corp., 305 A.D.2d 493, 494
- Lynch v. Savarese, 217 A.D.2d 648, 649