

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

Vitamin Realty Associates LLC v. The Time Record Storage, LLC, et al.

2021 NY Slip Op 02231 (N.Y. Ct. App. 2021) (Supreme Court of the State of New York Appellate Division First Department 2021) · No. Appeal No. 13555; Case No. 2020-03457; Index No. 654417/19 · Decided April 8, 2021

SUMMARY

The Appellate Division, First Department modified an order dismissing breach-of-contract and implied-covenant claims arising from an easement and crossing agreement. The court reinstated those claims against 225 Long Avenue LLC, concluding that the agreements could reasonably be read together and that the alleged failure to maintain the crossing agreement rendered the easement worthless. The court affirmed dismissal of the claims against The Time Record Storage, LLC because the allegations were insufficient to establish alter ego liability.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Webber, J.P.; Mazzarelli, J.; González, J.; Mendez, J.
JURISDICTION	New York
DECIDED	April 8, 2021
DOCKET	Appeal No. 13555; Case No. 2020-03457; Index No. 654417/19
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff appealed from an order granting defendants' motion to dismiss the first and second causes of action for breach of contract and breach of the implied covenant of good faith and fair dealing.
STANDARD OF REVIEW	The Appellate Division reviewed the legal sufficiency of the complaint on a motion to dismiss.
PRECEDENTIAL VALUE	published appellate opinion
PARTIES	Vitamin Realty Associates LLC v. The Time Record Storage, LLC, 225 Long Avenue LLC, et al.

TOPICS

breach of contract

implied covenant of good faith

contract interpretation

corporate veil piercing

appellate procedure

PRACTICE AREAS

contract law

real estate law

corporate law

commercial litigation

appellate procedure

QUESTIONS PRESENTED

1. Whether the agreements, read together, could reasonably be interpreted to require 225 Long Avenue LLC to maintain its crossing agreement with Conrail.
2. Whether plaintiff stated a claim for breach of the implied covenant of good faith and fair dealing based on the alleged failure to maintain the crossing agreement.
3. Whether plaintiff could maintain the implied-covenant claim as an alternative to the breach-of-contract claim at the pleading stage.
4. Whether the allegations were sufficient to impose alter ego liability on The Time Record Storage, LLC.

HOLDINGS

1. Although the easement agreement did not expressly contain that requirement, plaintiff offered a reasonable interpretation under which the contemporaneous agreements, executed in connection with the same transaction, should be read together.
2. Plaintiff stated a claim under the implied covenant because it alleged that, absent maintenance of the crossing agreement, the easement would be worthless.
3. Because the express terms of the agreements were ambiguous, plaintiff could maintain the implied-covenant theory as an alternative to the breach-of-contract claim at that stage of the action.
4. The complaint did not sufficiently allege alter ego liability against The Time Record Storage, LLC based on shared offices, officers, ownership, and conclusory allegations of domination.

KEY QUOTATIONS

“However, plaintiff offers a reasonable interpretation of the agreements that includes such a requirement when the agreements, which were executed at about the same time, in connection with the same transaction, are read together” ([*1])

“Moreover, absent the maintenance of the crossing agreement, the easement is alleged to be worthless.” ([*1])

“However, defendant The Time Record Storage, LLC (TRS) cannot be held liable on either of these claims.” ([*1])

FACTUAL BACKGROUND

Plaintiff received an easement from defendants' predecessor in connection with agreements executed at approximately the same time and as part of the same transaction. Plaintiff alleged that the easement depended on

defendant 225 Long Avenue LLC maintaining a crossing agreement with Conrail and that, without maintenance of that agreement, the easement would be worthless. Plaintiff also sought to impose liability on The Time Record Storage, LLC under an alter ego theory based on shared offices, officers, ownership, and alleged domination.

PROCEDURAL HISTORY

Supreme Court, New York County, granted defendants' motion to dismiss the complaint insofar as it dismissed the first and second causes of action. The Appellate Division unanimously modified the order to reinstate those claims against 225 Long Avenue LLC and otherwise affirmed.

DISPOSITION

other

REMAND INSTRUCTIONS

The claims for breach of contract and breach of the implied covenant of good faith and fair dealing were reinstated against 225 Long Avenue LLC; the order was otherwise affirmed.

CASES CITED

- PETRA CRE CDO 2007-1 CDO, Ltd. v. Morgans Group LLC, 84 A.D.3d 614, 615 (1st Dep't 2011)
- 511 W. 232nd Owners Corp. v. Jennifer Realty Co., 98 N.Y.2d 144, 153 (2002)
- Demetre v. HMS Holdings Corp., 127 A.D.3d 493 (1st Dep't 2015)
- Etex Apparel, Inc. v. Tractor Intl. Corp., 83 A.D.3d 587 (1st Dep't 2011)

OPINION

PER CURIAM.

Vitamin Realty Assoc. LLC v Time Record Stor., LLC (2021 NY Slip Op 02231) Vitamin Realty Assoc. LLC v Time Record Stor., LLC 2021 NY Slip Op 02231 Decided on April 08, 2021 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided and Entered: April 08, 2021 Before: Webber, J.P., Mazzairelli, González, Mendez, JJ. Index No. 654417/19 Appeal No. 13555 Case No. 2020-03457 [*1]Vitamin Realty Associates LLC, Plaintiff-Appellant, vThe Time Record Storage, LLC, et al., Defendants-Respondents. Bowles & Johnson PLLC, New York (David K. Bowles of counsel), for appellant. Fox Rothschild LLP, New York (Joshua Kopelowitz of counsel), for respondents.

Order, Supreme Court, New York County (Alan C. Marin, J.), entered on or about March 6, 2020, which, to the extent appealed from, granted defendants' motion to dismiss the complaint insofar as it dismissed the first and second causes of action, for breach of contract and breach of the implied

covenant of good faith and fair dealing, unanimously modified, on the law, to reinstate the claims against defendant 225 Long Avenue LLC, and otherwise affirmed, without costs.

Defendants are correct that the easement granted to plaintiff by defendants' predecessor does not contain a requirement that defendant 225 Long Avenue maintain its crossing agreement with Conrail. However, plaintiff offers a reasonable interpretation of the agreements that includes such a requirement when the agreements, which were executed at about the same time, in connection with the same transaction, are read together (*PETRA CRE CDO 2007-1 CDO, Ltd. v Morgans Group LLC*, 84 AD3d 614, 615 [1st Dept 2011]).

Moreover, absent the maintenance of the crossing agreement, the easement is alleged to be worthless. As such, plaintiff states a claim under the covenant of good faith and fair dealing (511 W. 232nd Owners Corp. v Jennifer Realty Co., 98 NY2d 144, 153 [2002]). While arguably duplicative of the breach of contract claim, where, as here, the express terms of the agreement are ambiguous, plaintiff may maintain this alternate theory, at least at this stage of the action (*Demetre v HMS Holdings Corp.*, 127 AD3d 493 [1st Dept 2015]).

However, defendant The Time Record Storage, LLC (TRS) cannot be held liable on either of these claims. Plaintiff sought to hold TRS liable on an alter ego theory. However, plaintiff's allegations that defendant TRS and defendant 225 Long Avenue share offices, officers, and ownership, along with conclusory allegations of "domination," are insufficient to allege alter ego liability (*Etex Apparel, Inc. v Tractor Intl.*

Corp., 83 AD3d 587 [1st Dept 2011]). THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: April 8, 2021