

STATE OF MAINE
CUMBERLAND, ss

BUSINESS & CONSUMER DOCKET
CIVIL ACTION
DOCKET NO. BCD-CV-18-35

HARBOR VIEW CORPORATION
d/b/a KIMBALL TERRACE INN,

Plaintiff

ORDER

v.

ROBERT V. DEGENNARO and TAN,
TURTLE TAVERN TOO

Defendants &
Third-Party Plaintiffs

v.

STEVEN FOSS, MARGIE M. MORSE-FOSS
and MOFO, LLC,

Third-Party Defendants

Before the court are cross-motions for summary judgment filed by plaintiff Harbor View Corporation (“Harbor View”) and defendants and third-party plaintiffs Robert DeGennaro and Tan Turtle Tavern Too (“DeGennaro”). The plaintiff is represented by Attorney Christopher Largay. The defendant and third-party plaintiffs are represented by Attorneys Caleb Gannon and Jack Baldacci. Third-party defendants Steven Foss, Maggie Morse-Foss and Mofos, LLC (the “Foss defendants”) are represented by Attorney Richard Silver. For the following reasons, the court concludes that (1) it does not have jurisdiction over plaintiff’s complaint and (2) the third-party complaint should be stayed.

Background

This case arises out of a commercial lease dispute. On November 14, 2015, Harbor View and DeGennaro entered into a 5-year commercial lease agreement. (Pl.'s Supp'g S.M.F. ¶ 1; DeGennaro Supp'g S.M.F. ¶ 2.) After entering into the lease, DeGennaro operated a restaurant at the premises which was connected to a hotel owned by Harbor View. (Pl.'s Opp'g S.M.F. ¶ 3; DeGennaro Supp'g S.M.F. ¶¶ 1-3, 5.) On August 29, 2016, DeGennaro and the Foss defendants executed a document known as the Management and Deferred Purchase Agreement. (Pl.'s Supp'g S.M.F. ¶ 2; Def.'s Supp'g S.M.F. ¶ 13.)

On March 5, 2018, Harbor View filed a complaint against DeGennaro alleging that DeGennaro had breached the lease agreement. In its complaint, Harbor View sought a declaration pursuant to 14 M.R.S. § 5953 that DeGennaro had violated the Lease Agreement and that the Foss defendants do not have any legal relationship or binding status relative to the restaurant premises. The complaint also included an application for preliminary injunction which sought to enjoin DeGennaro from entering the leased premises.

On March 9, 2018, DeGennaro filed an answer and counterclaim as well as a third-party complaint against Mofo, LLC and the Foss defendants. DeGennaro's third-party complaint alleges one count of tortious interference with contract and one count of breach of contract. The breach of contract claim is based upon the Foss defendant's alleged failure to make payments as required under a Management and Deferred Asset Purchase Agreement. By agreement of the parties, the court stayed proceedings on the third-party complaint on October 11, 2018. The court subsequently lifted the stay on April 11, 2019.

On August 1, 2019, this court held a hearing on Harbor View and DeGennaro's cross-motions for summary judgment. At the hearing, Harbor View clarified that it was not seeking

damages for the alleged breach of the Lease Agreement but that it was instead seeking only a declaration that DeGennaro had breached the Lease and that the Lease was therefore terminated.

Discussion

Through its complaint, Harbor View seeks a declaratory judgment that DeGennaro has breached a contract between the two parties. A declaratory judgment action is not an independent cause of action but is instead a remedy which is available “in cases where jurisdiction already exists.” *Casco Bank & Trust v. Johnson, Me.*, 265 A.2d 306, 307 (1970).

At first glance, Harbor View’s jurisdictional prerequisite appears to be satisfied by its stylization of the cause of action as one for breach of contract. However, upon deeper inspection it is apparent that Harbor View’s claim is not a breach of contract action but is instead an action for forcible entry and detainer. Harbor View is not seeking any contract damages.¹ As stated by counsel for Harbor View at oral argument, the relief Harbor View seeks is a declaration that (1) the lease has been breached; (2) the lease is invalid and has no binding or conclusive effect on the plaintiff; (3) the defendant is “out of the restaurant”; and (4) the defendant has no remedy against the plaintiff.² Based on the requested relief, the court construes plaintiff’s cause of action as one to recover the right to possess the restaurant premises to the exclusion of DeGennaro and the Foss defendants. Such actions are statutory in origin and within the exclusive original jurisdiction of the District Court. 14 M.R.S. §§ 6001, 6003; *Jones v. York*, 444 A.2d 382, 384 (Me. 1982). Consequently, this court does not have jurisdiction to provide the remedy Harbor View seeks. The court therefore dismisses Harbor View’s complaint without prejudice.

¹ At oral argument held August 1, 2019, Harbor View expressly waived any claim for damages.

² In addition to seeking a preliminary injunction which enjoins DeGennaro from entering the restaurant premises, the complaint also requests a declaration that the Foss defendants do not have any legal relationship or binding status relative to the restaurant premises. (Pl.’s Compl. at 4.)

In contrast to Harbor View's claim, DeGennaro's third-party complaint against the Foss defendants does seek relief in the form of contract damages. Further, DeGennaro is not seeking to terminate any leasehold interest in the restaurant premises which the Foss defendants may have acquired. Consequently, the court retains jurisdiction over DeGennaro's claims against the Foss defendants. However, if Harbor View decides to pursue a forcible entry and detainer action there could be consequences in regard to DeGennaro's claim against the Fosses which are difficult to predict. The court therefore believes that proceedings on the remaining claims should be stayed pending the resolution of any potential action for forcible entry and detainer.

Finally, given both the foregoing and the length of time this matter has been pending, the court orders the parties to participate in a judicial settlement conference at the Penobscot Judicial Center. It is the court's desire for the parties to discuss the prospect of future proceedings of what is in essence a landlord-tenant dispute. The court is hopeful that the parties will find common ground, reach an agreement and thus avoid the necessity of prolonging this litigation by pursuing the forcible entry and detainer process.

The entry is

Plaintiff Harbor View Corporation's Complaint against Robert DeGennaro is DISMISSED without prejudice.

Third-Party Plaintiff Robert DeGennaro's Third-Party Complaint against Steven Foss, Margie Morse-Foss and MOFO, LLC is STAYED until further order of this court.

The Clerk shall contact counsel for the parties to secure potential dates for the judicial settlement conference with a Penobscot County Superior Court Justice.

The clerk is directed to incorporate this order into the docket by reference. M.R. Civ. P.

79(a).

Date: _____

Justice, Superior Court