

VERMONT SUPERIOR COURT
Windham Unit
7 Court Street
Newfane VT 05345
802-365-7979
www.vermontjudiciary.org



CIVIL DIVISION
Case No. 444-12-17 Wmcv

Fitz-Rose, Incorporated vs. CLP Stratton, LP

Decision on Defendant CNL Lifestyle's Motion for Summary Judgment

Plaintiffs Thomas Rose and Patricia Christy are majority shareholders of TEP, Inc., a defunct Vermont corporation that owned a deli and grocery, Partridge in the Pantry and Stratton Mountain Provisions, in the Village at Stratton Mountain (the Village). Plaintiffs Rose and Christy allege, as assignees of TEP, that TEP leased the real estate in which it operated the deli and grocery from CNL Lifestyle Properties, Inc. (CNL Lifestyle). TEP's lease expired in 2013 and was not renewed. In their complaint they allege that CNL Lifestyle owned the Village from 2008 through 2018, and then sold it to another entity.

Defendant CNL Lifestyle Properties, Inc. (CNL Lifestyle) moves for summary judgment on all claims asserted against it: Count Two—breach of agreement to renew lease; Count Three—intentional interference with contractual and economic relationship; Count Six (actually the seventh count, because there are two Counts Four)—unfair trade practices; Count Seven (actually Eight)—detrimental reliance; and Count Eight (actually Nine)—unfair trade practices by conspiracy. CNL Lifestyle argues that: (1) Rose and Christy do not have the capacity to sue on behalf of TEP because TEP has not followed the procedures for voluntary dissolution of a corporation pursuant to the Vermont Business Corporations law, 11A V.S.A. § 14.01 et seq., and (2) the lease and related documents show that CNL Lifestyle did not own this property and was never TEP's landlord, and TEP was aware that another entity, CLP Stratton, was its landlord, not CNL Lifestyle.

The plaintiffs oppose the motion for summary judgment, asserting that the individual representatives do have capacity to sue, and that despite CNL Lifestyle's non-ownership of the property it was the key decisionmaker regarding leasehold issues for the property.

Undisputed Material Facts

In December 1994 the Stratton Corporation, as landlord and owner of the premises at issue here, entered into a lease with TEP for a 2000 square foot space in the Stratton Village Square complex, Building 10, Shop B/C, to be used for the business Partridge in a Pantry, as a deli, and to sell gourmet foods, Vermont products, and the like for a lease term of five years, with two five-year extension options. The Stratton Corporation was named as the landlord and owner of the premises in the lease.

On November 5, 2004, TEP entered into an agreement under which they confirmed the terms of the lease with Stratton Corporation. This agreement confirmed that the term of the lease commenced on December 1, 1994. It also confirmed that the expiration date of the current term of the lease was then December 1, 2009, that TEP had two options of five years each to renew the lease, and that it had

already exercised both options to renew. It also confirmed that the Stratton Corporation's successor landlord was to be CNL Income Stratton, LP, a Delaware limited partnership.

In December 2004, the Stratton Corporation assigned the leases to CNL Village Retail Partnership, LP, a Delaware limited partnership. The lease assignments were signed by Andrew Voysey as authorized agent for the Stratton Corporation, and Thomas Huffsmith as Senior VP of CNL Income Stratton GP, LLC. CNL Income Stratton GP, LLC is described in that assignment as a limited liability company and the sole general partner of CNL Income Stratton LP, a Delaware limited liability partnership. Attached to the agreement was a description of the assigned TEP leases, as follows:

Lease Agreement by and between The Stratton Corporation, a Vermont corporation as Landlord and TEP, Inc., a Vermont corporation as Tenant dated December 1, 1994, as amended by Addendum dated May 21, 1996, as further amended by letter dated December 23, 2002 and as further amended by letter dated January 7, 2003.

CLP Stratton is the lessor in the TEP lease that expired in July 2013. CLP Stratton is an indirect, remote subsidiary of CNL Lifestyle.

The plaintiffs rely, in support of their claims against CNL Lifestyle, primarily on the affidavit of Andrew Lacy. Mr. Lacy asserts that between 2012 and 2017, he worked for Intrawest as a Director of Asset Management, and that one of his responsibilities was "to oversee the management of the Village at Stratton Mountain." He stated that "Intrawest managed the Village under a property management contract with its owner, CLP Stratton, LP ("CLP"), a limited partnership majority owned by CNL Lifestyle Properties, Inc." He stated that although "Intrawest performed various management services and acted as a fiduciary, ... CNL as property owner made all final decisions with respect to major issues concerning its property and all tenancy related issues, such as selection of tenants for space in the Village and subsequent lease terms." The plaintiffs' complaint against Intrawest was dismissed in August 2019, due to lack of proper service.

Mr. Lacy's more recent affidavit states:

I cannot dispute any of the factual allegations in CNL [Lifestyle]'s statement of undisputed facts as they relate to the existence of and relationships between the various CNL entities; I am not an attorney, and have never worked for CNL, nor been privy to the details of their corporate structures.

Argument on CNL Lifestyle's motion was held on March 9, 2021; the court heard oral argument from Attorney Dunn for the plaintiffs, and Attorney Flynn for CNL Lifestyle.

Plaintiffs' Claims against CNL Lifestyle

Under V.R.C.P. 56, the court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. "Summary judgment is appropriate when, construing the facts as alleged by the nonmoving party and resolving reasonable doubts and inferences in favor of the nonmoving party, there are no genuine issues of material fact and judgment is appropriate as a matter of law." *Newton v. Preseau*, 2020 VT 50, ¶ 4.

The court concludes that even taking the facts alleged by the plaintiffs in the light most favorable to them, the plaintiffs have failed to state a sufficient basis to show that CNL Lifestyle had any involvement in any of the misconduct that they allege.

The plaintiffs have sued CNL Lifestyle Properties, Inc., not CLP Stratton, which was the owner and lessor of the property in question at the time of the alleged breach of agreement and other misconduct. The plaintiffs refer to CNL Lifestyle throughout all their pleadings as if it were an individual, capable of acting by itself. However, CNL Lifestyle is a corporation. It can act, therefore, only through its human agents, whoever they may be. *In re McGrath*, 138 Vt. 77, 80 (1980). If it acted through corporate or other entities as agents, those entities could act only through human agents.

The plaintiffs have failed to name in their pleadings and supporting documents any human being or entity that was an agent or officer of CNL Lifestyle and playing a role in the conduct of which they complain. Their primary witnesses, Mr. Rose and Mr. Lacy, also failed to make any distinction among the various entities that include CNL as their first three initials. These include: CNL Income Stratton LP, a Delaware limited liability partnership, CNL Income Stratton GP, LLC, and CNL Village Retail Partnership, LP, as well as CNL Lifestyle. Mr. Lacy and Mr. Rose simply refer to “CNL” as the actor in their supporting affidavits.

The court concludes that these allegations are insufficient to create any colorable claims against CNL Lifestyle and therefore grants CNL Lifestyle’s motion for summary judgment as to all the plaintiffs’ claims. This decision eliminates the necessity to rule on any of CNL Lifestyle’s more specific summary judgment claims.

It is so ordered.

A handwritten signature in black ink, appearing to read 'K.A.H.', is written over a horizontal line. The signature is stylized and extends to the right of the line.

Katherine A. Hayes
Superior Judge

Signed electronically March 19, 2021

So Ordered