

239 East 79th Owners Corp. v Lamb 79 & 2 Corp.

2006 NY Slip Op 30053(U)

June 28, 2006

Supreme Court, New York County

Docket Number: 0600215/0215

Judge: Marilyn Shafer

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This opinion is uncorrected and not selected for official
publication.

At an IAS Part ³⁴⁶² of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse, located at 80 Center Street, New York, New York, on the 28 day of June 2006

P R E S E N T :

Hon. Marilyn Shafer,
Justice.

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239 EAST 79TH OWNERS CORP.,	:	Index No. 600215/03
	:	
Plaintiff,	:	
	:	
-against-	:	ORDER ORDER
	:	
LAMB 79 & 2 CORP.,	:	FILED
	:	
Defendant.	:	JUL 07 2006
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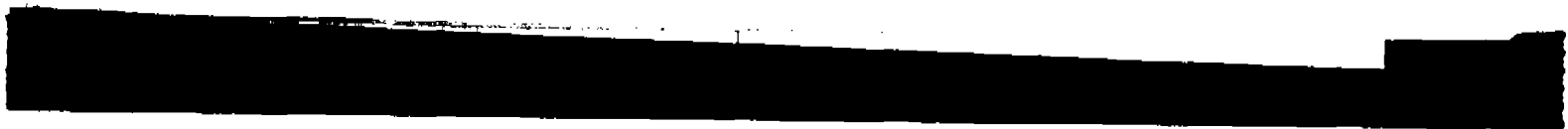
~~ORDER~~ ORDER

FILED

JUL 07 2006

NEW YORK COUNTY CLERK'S OFFICE

Plaintiff 239 East 79th Owners Corp., ~~has~~ ^{has} commenced this action seeking, inter alia, damages in the amount of one-half of the past due real estate tax escalation payments received by defendant Lamb 79 & 2 Corp. from its subtenants accruing on or after January 22, 1997, as well as a declaration that defendant owes, as rent, one-half of all future real estate tax escalation payments collected by defendant from its subtenants; and defendant having answered the complaint denying that it owed, as rent, any real estate tax escalation payments



collected by defendant from its subtenants; and plaintiff having moved for a summary judgment; and defendant having cross-moved for a summary judgment; and the Court having denied plaintiff's motion and defendant's cross-motion by decision and order, dated December 10, 2003; and defendant having moved to renew its prior motion for summary judgment; and plaintiff having cross-moved to renew its motion for summary judgment;

Now, upon the reading and filing of plaintiff's Notice of Motion, dated May 21, 2003, seeking a summary judgment: (i) declaring that pursuant to paragraph 2(b) of the parties' lease agreement, defendant's annual rent includes one-half of the real estate tax escalations collected by defendant from its subtenants; (ii) directing payment by defendant to the plaintiff for all such tax escalation payments collected since January 22, 1997; and (iii) awarding plaintiff its attorneys' fees; and upon the Affirmation of Harry W. Lipman, dated May 21, 2003, the Affidavit of Mark B. Shernicoff, sworn to May 21, 2003, and all the exhibits and other papers submitted therewith all in support of plaintiff's motion for summary judgment; and

Upon the reading and filing of defendant's Notice of Cross-Motion, dated June 17, 2003, seeking summary judgment dismissing plaintiff's complaint; and upon the Affidavit of Philip S. Ross, sworn to June 16, 2003, the Affidavit of Rosanne Lobue, sworn to June 9, 2003, and all the exhibits and other

papers submitted therewith all in support of defendant's cross-motion for summary judgment; and

Upon the decision and order of this Court, dated December 10, 2003, denying plaintiff's motion for summary judgment and denying defendant's cross-motion for summary judgment; and

Upon the reading and filing of defendant's order to show cause, signed by the Court on November 2, 2005, seeking leave to renew its cross-motion for summary judgment; and upon the Affidavit of Philip S. Ross, sworn to October 31, 2005, the Affidavit of Rosanne Lobue, sworn to October 31, 2005, and all the exhibits and other papers submitted therewith all in support of defendant's motion for leave to renew its cross-motion for summary judgment; and

Upon the reading and filing of plaintiff's Notice of Cross-Motion, dated December 9, 2005, for leave to renew its motion for summary judgment; and upon the Affidavit of Mitchel H. Ochs, sworn to December 8, 2005, the Affidavit of Franklin M. Speiser, sworn to December 8, 2005, and all the exhibits and other papers submitted therewith all in support of plaintiff's cross-motion for leave to renew its motion for summary judgment; and

Upon the reading and filing of the Affidavit of Philip S. Ross, sworn to December 21, 2005, the Affidavit of Michael I.

Lipstein, sworn to December 20, 2005, and all the exhibits and other papers submitted therewith all in further support of defendant's motion for leave to renew its cross-motion for summary judgment; and

Upon the reading and filing of the Affidavit of Mitchel H. Ochs, sworn to December 29, 2005, and all the exhibits and other papers submitted therewith all in further support of plaintiff's cross-motion for leave to renew its motion for summary judgment; and

Upon the Court's consideration of the foregoing, and of all the prior pleadings, papers and proceedings, and due deliberation having been had thereon, and the Court having rendered a decision, dated April 7, 2006 (annexed), it is hereby;

ORDERED, that defendant's motion for leave to renew and plaintiff's cross-motion for leave to renew are granted; and it is further

ORDERED, that, upon renewal, the Court adheres to its original decision denying defendant's motion for summary judgment; and it is further

ORDERED, that, upon renewal, the Court reverses its decision denying the plaintiff's motion for summary judgment to the extent of granting the plaintiff's motion for summary judgment; ~~to the extent that it is~~ to the extent that it is;

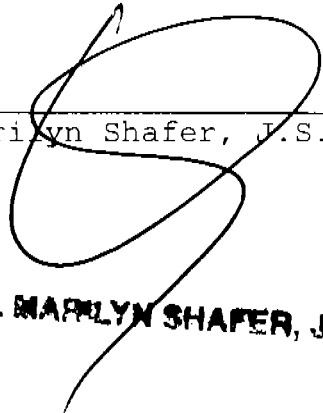
ORDERED, that pursuant to paragraph 2(b) of the first amendment to the parties' lease agreement, plaintiff is entitled, on its first and third causes of action, to recover, as part of defendant's annual rent, one-half of the difference between all real estate tax escalation payments received by defendant from its subtenants, and the amount of real estate tax escalation payments paid by defendant to plaintiff pursuant to paragraph 40 of the parties' lease agreement; and it is further

ORDERED, that plaintiff shall recover a judgment, on its first cause of action, against defendant, in the amount of one-half of the difference between all real estate tax escalation payments received by defendant from its subtenants since, on or after January 22, 1997, and the amount of real estate tax escalation payments paid by defendant to plaintiff pursuant to paragraph 40 of the parties' lease agreement, with statutory interest at a rate of 9 percent per annum ^{FROM THE DATE OF ENTRY} and it is further

ORDERED, that plaintiff's request for its attorneys' fees is denied; and it is further

ORDERED, that the action shall continue with respect to plaintiff's second cause of action and defendant's counterclaim.

E N T E R :



Hon. Marilyn Shafer, J.S.C.

HON. MARILYN SHAFER, JSC

FILED
JUL 07 2006
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