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Comment

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 7

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405 LEXINGTON, L.L.C.,

Index No.: 404901/01

Plaintiff,

- against -

DUANE READE, a partnership,

DECISION AND ORDER

Defendant.

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HONORABLE FAVIOLA A. SOTO, J.:

This matter was on trial before me on October 31, November 2, and November 3, 2005. The parties appeared before me on November 9, 2005 for a post-trial settlement conference, after which they submitted simultaneous post-trial submissions on December 8, 2005. The court now issues the following decision and order.

Introduction

The plaintiff, 405 Lexington, L.L.C. (Landlord), owner of the Chrysler Building, is seeking money damages as a result of an alleged breach of a commercial lease with defendant Duane Reade (Tenant), its Tenant, for the cost of storefront restoration of the leasehold located on the ground floor of the Chrysler Building.

Landlord claims that the Tenant breached the lease by its failure to properly reconstruct the storefront and Tenant denies that it reconstructed the storefront and/or that it was obligated to do so.

This action arises from Landlord's Sixth Counterclaim in the action entitled Duane Reade v. 405 Lexington, L.L.C., Index No. 110178/99 (the "Original Action"), pursuant to Justice Gans'

of Tenant's corner entrance and although there was discussion on this issue between the parties, no final agreement was reached as to who would bear the cost of the restoration of the windows.

The store opened on January 1999 and Duane Reade jointly with the Landlord submitted an application to LPC for approval which reflected the changes to the storefront which appeared in the Master Plan. On January 13, 1999 LPC issued an Authorization to Proceed approving Tenant's application which included the move of the corner doors and the renovation of the storefront. The parties' relationship deteriorated, litigation ensued and without an agreement as to the windows, Tenant began restoration. Tenant engaged IDI to perform the storefront renovations which included the doors and window restoration.

On or about January 10, 2000, IDI and its subcontractor began work installing the new storefronts at Tenant's premises. Contrary to Tenant's position at trial, IDI did not perform the storefront installation as Landlord's agent or in reliance on anything Landlord may have said prior to or after execution of the lease. The Court finds that Tenant was not "duped" into assuming responsibility for the renovation of the windows.

The construction work done by IDI was defective as to the windows and the doors. Landlord directed them to stop any further work until the parties could determine how to remedy the defective storefront.

Specifically, the Court finds that Tenant was not tricked into doing the storefront renovation but it undertook to do so upon an understanding that the parties would agree in the future as to who should bear the responsibility. No agreement was ever reached and in 1999, the parties were in litigation as their relationship had severely deteriorated.

Based on Tenant's failure to cure, on December 13, 2000 Landlord issued a Notice of

Default. As no agreement was reached and the parties were in litigation, and after giving the Tenant an opportunity to cure, Landlord applied to LPC to repair the defective work, obtained several bids for the work, and awarded the contract to the lowest bidder and completed the storefront restoration. On October 21, 2001, LPC issued an order approving the repair work.

The work performed by IDI damaged existing stone in the storefront and was of such poor quality that the windows and doors it installed were not worth repairing and had to be replaced. The Court finds it was not feasible to put IDI work into compliance with the approved plan.

In accordance with the lease and the Notice of Default, Landlord completed the storefront restoration by hiring its own contractors to do the necessary work. Landlord contractors remedied the defective work and brought the premises into compliance with LPC's requirements.

The Court finds that although the renovation of the windows was not a condition to creation of the corner entrance, once Tenant undertook its renovations, which were defective, it was required under the lease to remedy any defective work.

Article 7, Section 7.2 of the lease provides that if the building is damaged because of Tenant's alterations, Landlord shall perform the repairs at tenant's expense.

In addition, Article 20 of the lease gives landlord the right to perform work resulting from Tenant's default in the event Tenant fails to cure, to interest on the amount expended and reasonable attorneys' fees and disbursements.

Pursuant to Landlord's rights under the lease, it hired and paid architects and contractors to remedy IDI defective storefront work.

As to the damages incurred by the Landlord, the Court finds that the cost incurred in remediation of tenant's defective work was reasonable and necessary and in compliance with LPC

orders. 405 Lexington, L.L.C.'s claim for $641,599.26 is granted.

The Court finds that the Tenant has breached its obligation under the lease. The Tenant's defense and counterclaims are dismissed as the Court finds no merit to these positions. Tenant is obligated to pay Landlord $641,599.26 plus interest. Finally, the Court holds that the Landlord is the prevailing party entitled to attorneys' fees and refers the question of the amount to Special Referee Louis Crespo, who heard and determined the issue of reasonable attorneys' fees in the Original Action, to hear and determine.

Parties to submit judgment to the Clerk in accordance with this decision and order.

Dated: New York, New York
January 30, 2006

FAVIOLA A. SOTO, J.S.C.

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