

**Wells Fargo Fin. Leasing, Inc. v W2001
Metro. Hotel Realty, L.L.C.**

2007 NY Slip Op 32795(U)

September 4, 2007

Supreme Court, New York County

Docket Number: 0604271/2006

Judge: Helen E. Freedman

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SCANNED ON 9/7/2007
SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT.

PART _____

Index Number : 604271/2006

WELLS FARGO FINANCIAL LEASING

vs

W2001 METROPOLITAN HOTEL RLTY,

Sequence Number : 002

SUMMARY JUDGMENT

C

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

IS DECIDED

IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

FILED
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NEW YORK
COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 9/4/07

[Signature]

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK PART 39

-----X
WELLS FARGO FINANCIAL LEASING, INC.,

Plaintiff,

Index No. 604271/06

-against-

W2001 METROPOLITAN HOTEL REALTY, L.L.C. d/b/a
METROPOLITAN HOTEL REALTY LLC, and also d/b/a
METROPOLITAN HOTEL, and also d/b/a DOUBLETREE
METROPOLITAN HOTEL,

Defendant.

-----X
W2001 METROPOLITAN HOTEL REALTY, L.L.C.
d/b/a DOUBLETREE METROPOLITAN HOTEL,

Third-Party Plaintiff,

-against-

KONICA MINOLTA BUSINESS SOLUTIONS U.S.A., INC.,

Third-Party Defendant.
-----X

Helen E. Freedman, J.:

Motion by Wells Fargo Financial Leasing, Inc. ("Wells Fargo") for summary judgment pursuant to CPLR 3212 is granted as set forth below.

In this action concerning an equipment lease, lessor Wells Fargo seeks to recover from lessee W2001 Metropolitan Hotel Realty LLC (the "Metropolitan Hotel") the remaining payments owed under the lease plus interest, insurance and tax charges, reasonable attorney's fees, and the residual value of the leased equipment pursuant to a December 2, 2003 lease (the "Wells Fargo Lease"). In September 2003, the Metropolitan Hotel leased five photocopy machines from third-party defendant Konica Minolta Business Solutions U.S.A., Inc. ("Konica Minolta"). The lease had a sixty month

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term and monthly payment obligations equal to \$1,500 for the first thirty months and \$4,013 for the last thirty months (the "Konica Minolta Lease"). Wells Fargo financed the deal. The Metropolitan Hotel split the monthly payments between Konica Minolta and Wells Fargo. For twenty-nine months, the Metropolitan Hotel paid Konica Minolta \$360 and Wells Fargo \$1,140. In May 2006 before the rent payments to Wells Fargo were scheduled to increase to \$3,653 pursuant to the Wells Fargo Lease, the Metropolitan Hotel stopped submitting payments and attempted to cancel the lease. Wells Fargo contends that defendant's failure to pay constitutes a default, triggering acceleration of the remaining lease payments totaling \$110,730 plus costs and attorney's fees pursuant to the default provision in the Wells Fargo Lease.

The Metropolitan Hotel contends that it was permitted to cancel the lease under the Konica Minolta Lease in conjunction with the Konica Minolta sales order. It further contends that the only operative lease is the Konica Minolta Lease, and the signature that appears on the Wells Fargo Lease purporting to be that of its Executive Vice President Sam Bhadha ("Bhadha") is a forgery. Bhadha states in an affidavit that he did not sign the Wells Fargo Lease. The Metropolitan Hotel avers it submitted payments to Wells Fargo because Konica Minolta instructed it to split lease payments between Konica Minolta and Wells Fargo. The Metropolitan Hotel further avers that the signature purporting to be that of "Rupesh Khakar," controller of the Metropolitan Hotel, on the Wells Fargo delivery and acceptance certificate is a forgery because the document refers to the undersigned as Konica Minolta, rather than defendant, and the name of the Metropolitan Hotel employee is actually spelled "Rupesh Khakhar."

In reply, Wells Fargo contends that Bhadha's affidavit is self-serving and, on its own, does not demonstrate that the signature on the Wells Fargo lease is a forgery. Even if the signature was

forged, Wells Fargo contends that the Metropolitan Hotel ratified the Wells Fargo Lease by making twenty-nine payments to Wells Fargo and enjoying the use of the leased equipment for forty-one months. Wells Fargo avers that the Metropolitan Hotel had notice of the terms of the Wells Fargo Lease because the parties exchanged correspondence regarding the lease after it was executed. Wells Fargo points out that the Wells Fargo Lease explicitly prohibited cancellations. Kelley Schneider, Wells Fargo's loan adjuster and employee, states in an affidavit that Wells Fargo paid Konica Minolta \$115,448 to buy out an old lease and to purchase new equipment. Thus, it would not make sense for Wells Fargo to permit the Metropolitan Hotel to cancel the lease after paying only \$34,200, subjecting Wells Fargo to an \$81,248 loss.

Turning to the relevant documents, both the Konica Minolta Lease and the Wells Fargo Lease prohibit cancellation.

The Konica Minolta Lease contains only Sam Bhadha's signature, which Bhadha acknowledges is authentic. The lease contained a sixty year term with rent payments equal to \$1,500 for the first 30 months and \$4,013 for the last thirty months. Paragraph 2 "Term and Rent" states

Your obligation to pay the rent and other obligations hereunder shall be absolute and unconditional and are not subject to any abatement, set-off, defense or counter-claim for any reason whatsoever. This Agreement is NON-CANCELABLE.

The Wells Fargo Lease dated December 2, 2003 contains a signature from a Wells Fargo representative and a signature purporting to be that of Sam Bhadha. Above the space for signatures, it states, "This lease may not be terminated early." Both the Konica Minolta and Wells Fargo Leases contain default provisions that permit the lessor to accelerate remaining payments due under the lease upon the lessee's failure to pay.

The Metropolitan Hotel's assertion that it could cancel the equipment lease is solely based

on handwritten text that appears on the Konica Minolta sales order. The Konica Minolta sales order is neither dated nor signed by representatives from Konica Minolta or the Metropolitan Hotel. The initials “TC,” presumably referring to the sales representative Thomas Calta, appear next to handwritten text under the heading “description of equipment.” The hand written text reads:

After 30 month can be upgraded at same dollar amount. Can be cancelled out after 30 months.
No penalty.
45 day billing - no late fees included.

The sales order also states “This sales order shall not constitute a binding agreement unless signed by a MBS [Minolta Business Solutions] Branch Manager or officer of MBS and subject to credit approval by MBS.” The space designated for signatures under this text is blank. Thus, the sales order is not a binding agreement.

The Metropolitan Hotel does not dispute that it entered into a sixty month equipment lease. The only issue is whether it had the right to cancel that lease. The two relevant leases establish that the Metropolitan Hotel did not have the right to cancel. It makes no sense that a lessor would permit the Metropolitan Hotel to cancel the lease because a cancellation would render the default provision meaningless and would subject the lessor to substantial losses.

Defendant’s assertion that the signature on the Wells Fargo Lease is a forgery does not raise an issue regarding an alleged cancellation right because the Konica Minolta Lease that Bhadha signed also clearly prohibited cancellation. Additionally, the assertion of forgery without supporting facts may not defeat a summary judgment motion. *Bronsnick v. Brisman*, 30 A.D.3d 224, 819 N.Y.S.2d 492 (1st Dept. 2006)(finding that more than a “bald assertion of forgery is required to create an issue of fact contesting the authenticity of a signature”); *Banco Popular, N.A. v. Victory Taxi*

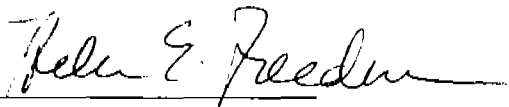
Management, Inc., 1 N.Y.3d 381, 774 N.Y.S.2d 480 (2004). Moreover, defendant's payments to Wells Fargo functioned as ratification of the Lease whether or not it was actually signed by Bhadha.

Accordingly, Wells Fargo's motion for summary judgment is granted as to the balance of the payments due under its lease, \$110,730.

Parties are directed to contact the court at (646) 386-3275 on or before September 17, 2007 to schedule a hearing to determine to what extent any additional payments are due under the applicable lease.

DATED: September 4, 2007

ENTER:


Helen E. Freedman, J.S.C.

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