

**Related 96th St. Assoc. LP v Alexander**

2009 NY Slip Op 32862(U)

December 4, 2009

Supreme Court, New York County

Docket Number: 103858/06

Judge: Judith J. Gische

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: JUDITH J. GISCHE, J.S.C.  
*Justice*

PART 10

*related 96<sup>th</sup> St.*

INDEX NO. 103858/06

MOTION DATE \_\_\_\_\_

- v -

MOTION SEQ. NO. 001

*Alexander*

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 ...

PAPERS NUMBERED

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

**FILED**

DEC 08 2009

NEW YORK  
COUNTY CLERK'S OFFICE

**motion(s) and cross-motion(s)  
decided in accordance with  
the annexed decision/order  
of even date.**

Dated: 12/4/09

JUDITH J. GISCHE, J.S.C. *J.S.C.*

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 10

-----X

RELATED 96<sup>TH</sup> STREET ASSOC. LP,  
  
Plaintiff,

**Decision/Order**  
Index No.: 103858/06  
Seq. No. : 001

-against-

Present:  
Hon. Judith J. Gische  
J.S.C.

KEITH ALEXANDER, SHARELL ALEXANDER  
a/k/a SHARRELL MESH,  
  
Defendants.

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Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this (these) motion(s):

<b>Papers</b>	<b>Numbered</b>
Pltf's n/m w/ EA affid, HR affirm, exhs <sup>1</sup> .....	1

*Upon the foregoing papers, the decision and order of the court is as follows:*

This action arises from an alleged breach of a residential lease. Plaintiff now moves for: [1] summary judgment pursuant to CPLR § 3212 against defendant Keith Alexander; [2] for entry of a default judgment against Sharell Alexander pursuant to CPLR § 3215; and [3] for summary judgment "for any non-monetary relief requested in the text of the Summons and Complaint." This motion has been submitted on default, although proof of service has been provided.

At the outset, the motion for a default judgment against Ms. Alexander is denied with prejudice. Plaintiff has failed to provide any proof that it served Ms. Alexander with

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<sup>1</sup>Rule 14 of the New York Justices Rules requires that all motion papers have tabbed exhibits. Plaintiff has, however, failed to provide tabbed exhibits, or even separate them, so that they could be easily referenced by the court.

the summons and complaint. Absent a showing that the court has obtained jurisdiction over Ms. Alexander, the requested relief is not available. See generally CPLR § 3215. Moreover, plaintiff has utterly failed to explain why it is moving against Ms. Alexander more than three years after her default in this action. Finally, Ms. Alexander did not sign the subject lease renewal which plaintiff seeks to hold her liable for. For all these reasons, plaintiff's motion for a default judgment is denied.

Since issue has been joined as to Mr. Alexander, and the motion is otherwise timely, the court will consider whether plaintiff is entitled to summary judgment. CPLR § 3212; Brill v. City of New York, 2 NY3d 648 (2004).

The following facts are based upon the affidavit of Mr. An, managing agent of the plaintiff, and documentary evidence. Plaintiff and Mr. Alexander executed a lease for the premises known as 175 East 96<sup>th</sup> Street, Apt 18K, New York, New York 10128. The lease commenced on October 1, 1993 and ran through September 30, 2005 based upon numerous renewal leases. Plaintiff claims that Mr. Alexander defaulted under the lease by failing to pay rent due in January 2004, and continuing thereafter. Although Mr. Alexander made a partial payment of \$3,390.20 in March 2005, the total balance due and owing during the course of Mr. Alexander's occupation of the premises remains \$33,062.69. Plaintiff commenced this Action on January 6, 2006 and asserted three causes of action for: [1] unpaid rent in the total sum of \$33,062.69 representing rent from 1/26/04 through 8/20 /05 at the agreed lease sum of \$648.21/mo after application of payment and security deposit; [2] reimbursement for painting and repairs; and [3] \$500 in damages for reasonable attorneys fees and costs.

Mr. Alexander generally denies the allegations contained in the complaint and

asserts the following affirmative defenses in his answer: Mr. Alexander claims to have not been properly served with the summons and complaint. Mr. Alexander "asks the court to remove [Ms. Alexander] from the summons and complaint because she did not sign the last couple of leases." Finally, Mr. Alexander claims that there was an understanding between him and plaintiff that his payments would be "erratic" and irregular because he is a "freelance actor/performer", and that at some point before the end of the duration of the lease, Mr. Alexander surrendered the premises because plaintiff doubled the monthly rent thereby forcing an undue hardship on Mr. Alexander and his family.

### **Discussion**

A movant seeking summary judgment in its favor must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case. " Winegrad v. New York Univ. Med. Ctr., 64 N.Y.2d 851, 853 (1985). Since here the moving party is the defendant, to prevail on its motion, the landlord must establish its defenses. Friends of Animals v. Associated Fur Mfrs., 46 NY2d 1065 (1979). Only if it meets this initial burden does it then shift to the opponent (here, plaintiff) who then must demonstrate, by admissible evidence, the existence of a factual issue requiring a trial, and therefore, the denial of defendant's motion. Zuckerman v. City of New York, 49 NY2d 557 (1980).

Plaintiff has established that there was a lease signed by Mr. Alexander for the premises commencing on October 1, 2003 and ending on September 30, 2005.<sup>2</sup> The

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<sup>2</sup> It bears noting that Ms. Alexander did not sign this lease.

monthly rent for the premises was set at \$3,150. Plaintiff has established through the affidavit of Elliot An and the rent ledger that Mr. Alexander failed to pay rent due and owing in January 2004, which resulted in a breach of the lease.

Mr. Alexander's defense of being improperly served is unavailing, because his time to move on this ground was passed. CPLR § 3211 (e). Mr. Alexander's claim that he didn't breach the lease because the parties' prior course of conduct relieved him of his duty to timely pay rent is of no moment because there is no dispute that Mr. Alexander has still failed to pay rent due, to wit, \$33,062.69. Moreover, Mr. Alexander's claim is refuted by plaintiff and is otherwise insufficient to demonstrate a triable issue of fact. Accordingly, plaintiff is entitled to summary judgment on its first cause of action against Mr. Alexander.

Plaintiff has failed to establish that Mr. Alexander damaged the premises beyond normal wear and tear to trigger plaintiff's right to reimbursement for repairs made thereto. Therefore, the motion is denied with respect to the second cause of action.

Plaintiff is, however, entitled to recover its reasonable attorneys fees and costs against Mr. Alexander. The court deems the requested amount, \$500, reasonable and commensurate with the motion practice. Accordingly, plaintiff is entitled to summary judgment on the third claim against Mr. Alexander.

### **Conclusion**

In accordance herewith, it is hereby:

**ORDERED** that plaintiff's motion is granted only to the extent that plaintiff is entitled to summary judgment on its first and third causes of action against defendant

Keith Alexander; and it is further

**ORDERED** that the motion is otherwise denied with prejudice; and it is further

**ORDERED** that the clerk shall enter a money judgment in favor of plaintiff


Related 96<sup>th</sup> Street Assoc. L.P. and against defendant Keith Alexander for the total sum of \$33,562.69 representing unpaid rent due and owing in the amount of \$33,062.69 plus reasonable legal fees and costs in the amount of \$500).

Any requested relief not expressly addressed herein has nonetheless been considered by the court and is hereby expressly denied.

This shall constitute the decision and order of the Court.

Dated: New York, New York  
December 4, 2009

So Ordered:

  
\_\_\_\_\_  
HON. JUDITH J. GISCHE, J.S.C.

**FILED**  
DEC 08 2009  
NEW YORK  
COUNTY CLERK'S OFFICE