

300 Park Ave., Inc. v Café 49, Inc.

2010 NY Slip Op 32469(U)

September 7, 2010

Supreme Court, New York County

Docket Number: 113795/09

Judge: Emily Jane Goodman

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

PRESENT: EMILY JANE GOODMAN
Justice

PART 17

300 Park Avenue, Inc.

INDEX NO. 113795/09

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

- v -

Cafe 49, INC. AND YOUNG DAI LEE
A/K/A YOUNG DAI LEE

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

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

attached

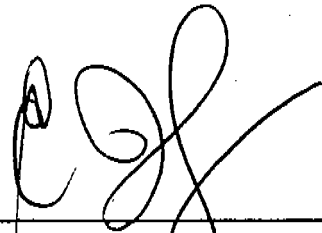
is decided as

FILED

SEP 10 2010

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 9/7/10



J.S.C.

EMILY JANE GOODMAN
NON-FINAL DISPOSITION

Check one: FINAL DISPOSITION

Check if appropriate: DO NOT POST

REFERENCE

SUBMIT ORDER/JUDG.

SETTLE ORDER /JUDG.

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 17

-----X

300 PARK AVENUE, INC.,

Plaintiff,

Index No. 113795/09

-against-

CAFÉ 49, INC. and YOUNG DAI LEE a/k/a
YONG DAI LEE,

Defendants.

-----X

Emily Jane Goodman, J.S.C:

In this action involving a dispute over damages owed to plaintiff 300 Park Avenue, Inc. (300 Park), stemming from a landlord-tenant proceeding, 300 Park seeks summary judgment on its complaint, and the dismissal of defendants Café 49, Inc.'s (Café 49) and Young Dai Lee a/k/a Yong Dai Lee's (Lee) affirmative defenses and counterclaim.

I. Background

300 Park is the owner of premises located at 300 Park Avenue, Manhattan, New York (premises). Café 49 was the tenant of commercial space in the premises, pursuant to a lease dated June 12, 1998 (Lease), for a term to expire June 30, 2010. Lee executed a Guaranty of Lease (Guaranty) for all sums which might become payable to 300 Park under the Lease. Notice of Motion, Ex. F.

300 Park commenced a summary non-payment proceeding in Civil

Court in June 2009, entitled *300 Park Avenue, Inc. v Café 49, Inc.*, Index No. 063915/09, which was resolved by a Stipulation of Settlement, dated June 18, 2009 (Stipulation) (*id.*, Ex I), which was then "so ordered" by the court. The Stipulation provided that (1) 49 Café admitted its default under the Lease, and agreed to a termination date effective June 18, 2009; (2) 300 Park was granted a final judgment of possession (Judgment of Possession) of the premises and a warrant of eviction (Warrant); (3) 300 Park was entitled to a money judgment in the amount of \$264,859.97 (Civil Court Judgment), which included attorneys' fees or \$19,796.74, but did not include certain rent charges that had yet to be billed; and (4) that 300 Park would stay execution of the Judgment of Possession, Warrant and Civil Court Judgment, dependant on 49 Café's adherence to the terms of the Stipulation. 49 Café also agreed that it had no defenses with respect to the Civil Court Judgment. Pursuant to the Stipulation, Lee agreed to be jointly and severally liable to 300 Park, as guarantor, for any failure to comply with the Lease or Stipulation.

49 Café's default under the Stipulation, occasioned by its failure to pay rents when due, resulted in the vacatur of the Stipulation's stay of execution of the Judgment of Possession, Warrant, and Civil Court Judgment. 300 Park recovered possession of the premises on July 23, 2009. The premises have not been re-let.

300 Park now seeks to recover against 49 Café a money judgment for damages under the Civil Court Judgment (first cause of action), significant damages and other expenses post-dating the Civil Court Judgment (Post-Judgment Damages) (second cause of action), and for attorneys' fees due under the Stipulation and Lease (third cause of action). 300 Park seeks a money judgment against Lee individually as guarantor, obligated both jointly and severally under both the Lease and the Stipulation.

49 Café's answer contains affirmative defenses of lack of personal jurisdiction and constructive eviction, and a counterclaim for return of its security deposit, which is in the form of a \$175,000 letter of credit.

II. Discussion

"The proponent of a motion for summary judgment must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law." *Dallas-Stephenson v Waisman*, 39 AD3d 303, 306 (1st Dept 2007), citing *Winegrad v New York University Medical Canter*, 64 NY2d 851, 853 (1985). Upon proffer of evidence establishing a prima facie case by the movant, "the party opposing a motion for summary judgment bears the burden of 'produc[ing] evidentiary proof in admissible form sufficient to require a trial of material questions of fact.'" *People v Grasso*, 50 AD3d 535, 545 (1st Dept 2008), quoting *Zuckerman v City of New York*, 49 NY2d 557, 562 (1980).

If there is any doubt as to the existence of a triable issue of fact, summary judgment must be denied. *Rotuba Extruders v Ceppos*, 46 NY2d 223 (1978); *Gross v Amalgamated Housing Corporation*, 298 AD2d 224 (1st Dept 2002).

Defendants' defense to this motion is basically an appeal to the court's equitable powers and sense of fairness. Defendants declare that 40 Café has always been a model tenant; has made numerous valuable improvements to the premises over the years; has served the public admirably over the years, and that it tried to bargain in good faith with 300 Park when 49 Café experienced difficulties as a result of the recent worldwide financial downturn. Defendants press that 300 Park, instead of acting in an understanding manner, "played hardball" with defendants (Lee Aff., ¶ 7), when it insisted on being paid in full to the end of the Lease's term. Defendants protest that 300 Park is "gouging" 49 Café (*id.*, ¶ 10), and unfairly attempting to bankrupt Lee, when, apparently, they do not have to do so.

Defendants also claim that the improvements which were allegedly made to the premises by defendants¹ should be taken into account when assessing any sums due to 300 Park; that 300

¹While defendants claim that they left 300 Park with a "first class, built out establishment" with "workmanship of the highest quality" at the termination of 49 Café's tenancy (Lee Aff., ¶ 17), 300 Park claims that it recovered the premises in less than stellar shape, and submits a bill indicating an expenditure of \$10,000 to clean the space.

Park's failure to mitigate damages by re-letting the premises should also be considered in assessing any award against defendants; and that the amount of damages 300 Park seeks for attorneys' fees is "nonsensical." *Id.*, ¶ 23. Defendants charge 300 Park with acting in an unconscionable manner, and with "filthy" hands. *Lee Aff.*, ¶ 24.

The determination of this matter is not one involving equity; it is a matter of contract interpretation. Stipulations are a form of contract (*Grand Manor Health Related Facility, Inc. v Hamilton Equities Inc.*, 65 AD3d 445 [1st Dept 2009]) and, as with all contracts, will be interpreted in line with the perceived intent of the parties, as "gleaned from the plain meaning of the words used by the parties." *Linsalato v Guittari*, 59 AD3d 682, 683 (2d Dept 2009).

The Lease and Stipulation entitles 300 Park to the amount of the Civil Court Judgment, requiring the grant of summary judgment to 300 Park on its first cause of action. 300 Park is entitled to judgment on its second cause of action for Post-Judgment Damages, except that the Court finds that despite counsel's professional standing, its request for \$42,883.39 in legal fees in connection with a non-complex housing court case, is denied and the amount awarded is \$22,000 based on the Court's review of counsel's bills and the work described in paragraph 21 of the reply affirmation.

Defendants admit that they agreed in the Stipulation to be liable for all rents and costs due until the end of the Lease term (*id.*, ¶¶ 7, 8), although they declare this to be unfair. Although defendants seek an offset against damages for the value of alleged improvements made, plaintiff correctly observes that the Lease provides that permanent and non-permanent installations and improvements left in the premises are abandoned and become property of the landlord. The Stipulation has similar language. 300 Park has also made a prima facie claim for recovery against Lee personally under the Guaranty and Stipulation, by a presentation of these documents, and the failure to pay thereunder. *Royal Commercial Corp. v Kotrulya*, 304 AD2d 742 (2d Dept 2003). Although defendants argue that the Guaranty limits Lee's exposure to sums due through eviction, rather than to the end of the Lease's term, (Guaranty, ¶ 1) this provision requires that the tenant "delivers possession of said premises together with all keys thereto to Owner." Nothing submitted indicates that keys were returned or that possession was "delivered" as opposed to recovered. In any event, page 13 of the Stipulation provides that Lee "personally guarantees the payment of all sums due to Petitioner or that may become due to Petitioner pursuant to the terms and conditions of this stipulation or (as applicable) the terminated Lease." Defendants entered into all of the documents of their own free will, and although 300 Park

could be seen as "playing hard ball" it is not required, as a matter of equity, to give up any of the rights it obtained as a signatory to valid agreements.

300 Park is also entitled to attorneys' fees for the prosecution of this action, pursuant to the Lease and Stipulation, although not in the amount of \$41,474.61. Based on the Court's review of the papers submitted in this action, where the legal work has been minimal (with the most amount of work being done in connection with this motion), summary judgment on the third cause of action is granted in the amount of \$15,000.

Defendants do not address or oppose the striking of their affirmative defenses. In any event, defendants have waived any jurisdictional dispute under CPLR 3211 (e), and there are no grounds upon which to find a constructive eviction.

Defendants' counterclaim is also dismissed. 300 Park is entitled to retain 49 Café's security interest, under the terms of the Lease. Accordingly, it is

ORDERED that the motion for summary judgment brought by plaintiff 300 Park Avenue, Inc. is granted; and it is further ORDERED that plaintiff submit a proposed Judgment on notice. This Constitutes the Decision and Order of the Court.

Dated: September 7, 2010

FILED
SEP 10 2010
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