

Latchford Realty, LLC v Blaleh
2010 NY Slip Op 33729(U)
March 24, 2010
Supreme Court, New York County
Docket Number: 112257/2010
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT. **HON. EILEEN A. RAKOWER**

PART 15

Index Number : 112257/2010

LATCHFORD REALTY, LLC

vs

ELI BLALEH

Sequence Number : 001

SUMMARY JUDGMENT

INDEX NO. 112257/10

MOTION DATE _____

MOTION SEQ. NO. 001

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	
1	_____
2	_____
3	_____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE WITH THE ACCOMPANYING MEMORANDUM DECISION.

FILED

MAR 30 2011

NEW YORK COUNTY CLERK'S OFFICE

Dated: 3/29/11


HON. EILEEN A. RAKOWER

Check one: FINAL DISPOSITION NON-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 15

-----X
LATCHFORD REALTY, LLC,

Plaintiff,

Index No.
112257/10

Seq No.: 001

- against -

Decision and
Order

FILED

ELI BLALEH a/k/a EILI BLALEH,

MAR 30 2011

Defendants.

-----X
HON. EILEEN A. RAKOWER, J.S.C. **NEW YORK**
COUNTY CLERK'S OFFICE

Plaintiff brings this action for breach of a lease guaranty to recover \$120,297.36 from defendant Eli Blaleh a/k/a Eili Blaleh ("Blaleh"). In its second cause of action, plaintiff seeks legal fees in the amount of \$8500.00. Plaintiff now moves for summary judgment on the complaint, pursuant to CPLR 3212. Blaleh opposes.

On or about November 1, 2005, plaintiff entered into a lease agreement with M& E Sportswear, Inc. ("M&E") for lease of the "entire building located at 57-05 Myrtle Avenue, Ridgewood, NY," for a term of ten years. A Rider containing a rent schedule is appended to the lease. The lease required a \$16,000.00 security deposit. The lease agreement is signed by Blaleh, as the Chief Executive Officer of M&E. Blaleh also signed, in his personal capacity, a "Lease Guaranty" on November 3, 2005.

Plaintiff, in support of its motion, submits: the summons and complaint; a Notice of Appearance and Answer Pro Se; a copy of the deed to the subject property; a copy of the lease agreement; a printout from the NYS Department of State, Division of Corporations; a copy of the guaranty; a copy of a document titled "Statutory Three Days' Notice to Pay Rent;" a letter from Jacob Azoulay, Esq. to plaintiff; a statement

of rent owed, dated July 1, 2009; a letter from plaintiff to Blaleh; an accounting of plaintiff's attorney's services; and the affidavit of Noah Rifkin, member of an accounting firm and managing agent of plaintiff.

Plaintiff asserts that M & E defaulted under the lease by failing to pay rent. Plaintiff served M&E with a Three Day Notice To Pay Rent on May 8, 2009. Thereafter M&E's attorney sent plaintiff a letter, dated July 2, 2009, which stated that M&E was "tendering possession and the keys" to the premises. It is undisputed that the last month's rent paid was February, 2009. Plaintiff now seeks payment pursuant to the Lease Guaranty.

Blaleh does not dispute that he is liable for rental arrears. However, Blaleh asserts that he does not owe the amount demanded. Blaleh, in opposition, submits: a letter from plaintiff to Blaleh, dated January 9, 2009; a copy of his answer; and copies of two checks. Plaintiff points to the January 9, 2009 letter, as evidence that plaintiff agreed to a rent abatement for the period of January through April 2009. Pursuant to the letter, the monthly rent should have been reduced by \$1,240.00 in each of those months.

The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law. That party must produce sufficient evidence in admissible form to eliminate any material issue of fact from the case. Where the proponent makes such a showing, the burden shifts to the party opposing the motion to demonstrate by admissible evidence that a factual issue remains requiring the trier of fact to determine the issue. The affirmation of counsel alone is not sufficient to satisfy this requirement. (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]). In addition, bald, conclusory allegations, even if believable, are not enough. (*Ehrlich v. American Moninger Greenhouse Mfg. Corp.*, 26 N.Y.2d 255 [1970]). (*Edison Stone Corp. v. 42nd Street Development Corp.*, 145 A.D.2d 249, 251-252 [1st Dept. 1989]).

"On a motion for summary judgment to enforce a written guaranty, all that the creditor need prove is an absolute and unconditional guaranty, the underlying debt, and the guarantor's failure to perform under the guaranty." (*City of New York v. Clarose Cinema Corp.*, 256 AD2d 69, 71 [1st Dept., 1998]).

The guaranty here states that Blaleh:

absolutely, irrevocably and unconditionally guarantees to the Owner . . . (i) the full prompt performance and observance of all terms, covenants, conditions and agreements provided in the Lease to be performed and observed by Tenant, with the same force and effect and as if Guarantor had been a signatory thereto, jointly and severally liable thereunder with Owner up to the Surrender Date . . . ; and (ii) the full and prompt payment, through and including the "Surrender Date" . . . of all expenses that may arise in connection with or as a consequence of the non-payment, non-performance or non-observance thereof (including but not limited to reasonable attorneys' fees and disbursements).

Under the definition of "Surrender Date," the guaranty states that the tenant shall have paid:

to Owner an amount equal to 12 times the applicable Base Rent and Additional Rent (as defined in the Lease) calculated prospectively from the Surrender Date.

Plaintiff submits the affidavit of Noah Rifkin, who affirms that he is a member of an accounting firm that serves as M&E's managing agent. Mr. Rifkin states that he has first hand knowledge of M&E's default, and the extent of the amount of rental arrears owed by M&E. Additionally, plaintiff submits an invoice showing the unpaid rent amount, and the accumulation of rent after the default. Blaleh does not deny, either in his answer, or in opposition to the within motion, that he signed the unconditional guaranty, or that M & E defaulted on its rental payments. Thus, plaintiff has established its prima facie entitlement to judgment and Blaleh fails to raise an issue of fact as to his liability.

Blaleh argues that the plaintiff failed to account for the rental abatement agreement in computing the amount of arrears.

The rent abatement letter states, in relevant part:

Provided that you are not in default under the lease, the owner has agreed to a rent abatement of \$1,240 per month for the months of January through April 2009. . . [t]he foregoing notwithstanding, there shall be no rent abatement if there is an uncured default under the lease.

M&E was not in default when the parties entered the agreement in January 2009. M&E paid, and plaintiff accepted, the agreed amount of \$7,000.00 in both January and February of 2009. However, M&E's failure to pay rent beginning in March 2009, constituted an uncured default, thereby nullifying the agreement going forward.

Wherefore it is hereby

ORDERED that the motion is granted and the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendant Eli Blaleh a/k/a Eili Blaleh, in the amount of \$117,817.36, together with interest at the rate of 9% per annum from August 1, 2009, until the date of entry of judgment, as calculated by the Clerk, and thereafter at the statutory rate, plus attorneys' fees in the amount of \$8,500.00, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: March 24, 2010



EILEEN A. RAKOWER, J.S.C

FILED

MAR 30 2011

**NEW YORK
COUNTY CLERK'S OFFICE**