

Andrew S. Lee DBA NISC, Inc. v Roumeliotis

2013 NY Slip Op 30007(U)

January 2, 2013

Sup Ct, New York County

Docket Number: 110748/11

Judge: Saliann Scarpulla

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SCANNED ON 1/7/2013
SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Saliann Scarpulla
Justice

PART 19

Index Number : 110748/2011

LEE, ANDREW S.

VS.

ROUMELIOTIS, EVANGELOS

SEQUENCE NUMBER : 003

SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is determined in
accordance with the accompanying
decision/order.

FILED
JAN 04 2013
NEW YORK
COUNTY CLERK'S OFFICE

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

Dated: 1/2/13

(Signature), J.S.C.
SALIANN SCARPULLA

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 19

-----X
ANDREW S. LEE DBA NISC, INC.,

Plaintiff,

Index No.: 110748/11
Submission Date: 10/17/12

- against-

EVANGELOS ROUMELIOTIS AND RICHARD
SKVARIC,

DECISION AND ORDER

Defendants.

-----X
For Plaintiff:
Hsu Law Associates, PLLC
136-31 41st Avenue, Suite 8A
Flushing, NY 11355

For Defendant Evangelos Roumeliotis:
Weinstein, Kaplan & Cohen, P.C.
1325 Franklin Avenue, Suite 210
Garden City, NY 11530

Papers considered in review of this motion for summary judgment.

- Notice of Motion 1
- Aff in Opp 2
- Reply 3

FILED

JAN 04 2013

NEW YORK
COUNTY CLERK'S OFFICE

HON. SALIANN SCARPULLA, J.:

In this action to recover unpaid rent, plaintiff Andrew S. Lee dba NISC, Inc.

("Lee") moves for summary judgment on his complaint.

On or about March 26, 2007, Lee entered into a lease agreement with defendants Evangelos Roumeliotis ("Roumeliotis") and Richard Skvaric ("Skvaric") and Emmanuel Cris¹ (collectively referred to as "tenants") to lease commercial space at 197 Bedford Avenue, ground floor store, in Brooklyn for a term beginning April 1, 2007 and ending

¹ Lee commenced a separate action against Emmanuel Cris in Supreme Court under Index No.: 102420/11, and pursuant to a stipulation executed by the parties on April 19, 2012, judgment was entered against Cris on May 7, 2012 in the amount of \$257,062.16.

March 31, 2012. Shortly thereafter, the tenants formed a corporation, Small Giants, Inc. d/b/a Blackbird Parlour, under which a bar was to operate at the premises.

In 2008, Lee commenced a landlord/tenant proceeding in Housing Court against Small Giants, Inc. alleging that certain rent was unpaid. On or about June 1, 2011, Lee and Small Giants, Inc. entered into a stipulation in Housing Court in which Small Giants, Inc. agreed to pay \$232,264.00 in unpaid rent owed to Lee. The Housing Court entered judgment in that amount in favor of Lee. In 2011, Lee regained control of the premises.

Lee then commenced this action seeking to recover the unpaid rent from Roumeliotis and Skvaric. Roumeliotis answered the complaint, denied all material allegations and asserted various affirmative defenses and counterclaims.

Lee now moves for summary judgment on his complaint, arguing that in paragraph 62 of the lease agreement, Roumeliotis and Skvaric agreed to personally guarantee the lease and therefore, they are responsible for paying the amount owed in unpaid rent. Lee further maintains that Roumeliotis and Skvaric entered into a stipulation in Housing Court, whereby they agreed to pay the amount owed in unpaid rent.

In opposition, Roumeliotis first argues that Lee's motion is premature because discovery has not yet been completed. Roumeliotis further submits an affidavit in which he maintains that on May 30, 2007, tenants executed an Assignment of Lease whereby they assigned all individual liability, as well as the guarantee, over to Small Giants, Inc. He further claims that in or about May 2009, he was ousted from Small Giants, Inc. and a

Stock Purchase Agreement and Assignment and Assumption Agreement executed by him reflected his removal from the corporation. He maintains that he executed those agreements in exchange for Lee's assurance that he would be released from any and all liability under the lease.²

In reply, Lee claims that Roumeliotis' argument that the tenants were released from liability pursuant to an Assignment of Lease is without merit because that Assignment of Lease did not release the guarantors' obligations.

Discussion

A movant seeking summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law and offer sufficient evidence to eliminate any material issues of fact. *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985). Once a showing has been made, the burden shifts to the opposing party to demonstrate the existence of a triable issue of fact. *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986); *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980).

In support of his motion, Lee contends that tenants owe the amounts due in unpaid rent pursuant to the personal guarantee in the lease agreement and pursuant to a stipulation executed by the parties in Housing Court, whereby tenants agreed to pay the amount owed in unpaid rent. However, the Court notes that Lee fails to mention that the individual tenants were not parties to the Housing Court action. Further, Lee fails to inform the court

² According to Roumeliotis, Lee wanted him removed from Small Giants, Inc. so that Lee could step into Roumeliotis' shoes in the corporation.

that the tenants executed an Assignment of Lease on May 30, 2007, thereby transferring certain rights and liabilities to Small Giants, Inc. In an affidavit, Roumeliotis explains that the parties executed the Assignment on May 30, 2007, intending to assign all individual liability under the lease agreement, including any personal guarantees, to Small Giants.

Based on the evidence presented, including the lease agreement, the May 30, 2007 Assignment of Lease, and the affidavits of the parties, the court finds that issues of fact exist as to whether liability and the guarantee were assigned to Small Giants, Inc. pursuant to the May 30, 2007 Assignment or whether the tenants are responsible to Lee for the amount owed in unpaid rent.

In accordance with the foregoing, it is hereby

ORDERED that the plaintiff Andrew S. Lee dba NISC, Inc.'s motion for summary judgment on his complaint is denied.

This constitutes the decision and order of the Court.

Dated: New York, New York
~~December~~, 2013
January 2

FILED
ENTER.
JAN 04 2013
NEW YORK
COUNTY CLERKS OFFICE
Saliann Scarpulla, J.S.C.