

Cinfiors, Ltd. v Siegel
2013 NY Slip Op 32231(U)
September 18, 2013
Sup Ct, New York County
Docket Number: 156375/2012
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK
HON. EILEEN A. RAKOWER NEW YORK COUNTY

Index Number : 156375/2012
CINFIORS, LTD.
vs
STEPHEN MILLER SIEGEL,
Sequence Number : 001
SUMMARY JUDGMENT

PART 15

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) 1, 2, 3
Answering Affidavits — Exhibits No(s)
Replying Affidavits No(s)

Upon the foregoing papers, it is ordered that this motion is

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION IN MOTION SEQUENCE

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

Dated: 9/18/13

HON. EILEEN A. RAKOWER S.C.

- 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: PART 15

-----X
CINFIORS, LTD.,

Plaintiff,

- against -

STEPHEN MILLER SIEGEL, ARCHITECT, P.C.,
f/k/a STEPHEN MILLER SIEGEL,
ARCHITECTS, P.C.,
a/k/a STEPHEN MILLER SIEGEL
ARCHITECTS, P.C.,
and STEPHEN MILLER SIEGEL,

Defendants.
-----X

Index No.
156375/2012

**DECISION
and ORDER**

Mot. Seq. 001

HON. EILEEN A. RAKOWER, J.S.C.

This is an action to recover rent and damages due under a Lease, dated March 26, 2010, entered between Plaintiff Cinfiors, Ltd. ("Plaintiff") and Defendant Stephen Miller Siegel, Architect, P.C. f/k/a Stephen Miller Siegel, Architects, P.C., a/k/a Stephen Miller Siegel Architects, P.C. ("SMS Architect") and a Guaranty of that Lease executed by Stephen Miller Siegel ("Siegel").

Plaintiff commenced this action by filing a Summons and Complaint on September 14, 2012. Defendants interposed an answer on November 19, 2012 with the following affirmative defenses: lack of proper jurisdiction, lack of personal jurisdiction, unclean hands, and collateral estoppel.

Plaintiff now moves for an Order granting summary judgment in Plaintiff's favor, dismissing Defendants' affirmative defenses, directing the Clerk to enter judgment against SMS Architect in the principal amount of \$131,934.77 plus interest and against Siegel in the principal amount of \$93,287.00, plus interest, and severing Plaintiff's claims for attorneys' for separate determination.

The first cause of action of the Complaint seeks recovery against SMS Architect for the sum of \$93,287.00 in rent and additional rent due, plus interest,

under the Lease through April 2012, the month in which SMS Architect was evicted. The second cause of action seeks recovery against SMS Architect for damages from May 2012 through September 14, 2012, the date this action was commenced, plus interest.

The third cause of action seeks recovery against Siegel under the Guaranty for the same amount sought against SMS Architect in the first cause of action - the sum of \$93,287.00 plus interest.

In support of its motion for summary judgment, Plaintiff submits the attorney affirmation of Robert A. Sternbach and the affidavit of Julius J. Cinque, President of Plaintiff. Attached to Cinque's affidavit is a copy of the Lease and Guaranty.

As set forth in Cinque's affidavit, by lease dated March 26, 2010, Plaintiff, as Landlord, demised to defendant SMS Architect, as Tenant, commercial premises located on the 1127 Second Avenue side of the Property. In connection with the Lease, defendant Siegel executed a Guaranty, in which he absolutely and unconditionally guaranteed the prompt and full performance of all the covenants, terms, provisions, conditions and agreements required to be performed by defendant SMS Architect under the Lease, until such time as SMS Architect vacated the Premises and delivered vacant possession thereof to Plaintiff.

SMS Architect thereafter failed to make any payment of rent or additional rent due under the Lease beginning in October 2011. Plaintiff commenced a summary nonpayment proceeding, which resulted in the issuance of a warrant of eviction on March 30, 2012 and SMS Architect's eviction from the Premises by the New York Court City Marshall on April 25, 2012.

As set forth in Cinque's affidavit, based on the terms of the lease, SMS Architect's unpaid fixed rent from October 2011 through April 2012, totals \$79,469.90. Furthermore, as provided under the Lease, interest at the rate of 1.5% per month becomes due on any payment more than 5 days late and based on Plaintiff's calculations, SMS Architect is liable to Plaintiff for interest through April 2012 in the total sum of \$10,737.45. As further set forth in Cinque's affidavit, SMS Architect also defaulted in its obligation to surrender the Premises "broom clean" and to remove its property and Plaintiff incurred costs of \$3,079.65 as a result.

As further set forth in Cinque's affidavit, Plaintiff also seeks recovery for against SMS Architect for rent from May 1, 2012 through September 14, 2012, the date the action was commenced, in the sum of \$38,647.77. Cinque avers that from May 1, 2012 through the date of the Complaint, SMS Architect became liable to

Plaintiff for damages in the sum of \$60,669.75, and that Plaintiff has applied the sum of \$22,091.04 deposited by SMS Architect as security in partial satisfaction of the damages. Plaintiff further states that it has re-let the Premises to Walking On Wood, and that Walking on Wood's obligation to pay fixed rent commenced on September 1, 2012.

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]).

“The elements of a breach of contract claim are formation of a contract between the parties, performance by the plaintiff, the defendant's failure to perform, and resulting damage.” (*Flomenbaum v New York Univ.*, 71 A.D. 3d 80, 91 [1st Dept. 2009]).

“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])

Here, through Cinque's affidavit and the annexed documents, Plaintiff has established a prima facie case on liability against Defendants for breach of the Lease and Guaranty based on their failure to pay rent owed and additional damages. Defendants do not oppose.

Wherefore it is hereby

ORDERED that Plaintiff's motion for summary judgment is granted to the extent provided herein without opposition; and it is further

ORDERED that the Clerk enter judgment in favor of plaintiff Cinfiors, Ltd., as against defendant Stephen Miller Siegel, Architect, P.C. f/k/a Stephen Miller Siegel, Architects, P.C., a/k/a Stephen Miller Siegel Architects, P.C., in the amount

of \$131,934.77, together with interest as prayed for allowable by law until the date of entry of judgment (at the rate of 9% per annum from September 14, 2012), as calculated by the Clerk, and thereafter at the statutory rate, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further,

ORDERED that the Clerk enter judgment in favor of plaintiff Cinfiors, Ltd., as against defendant Stephen Miller Siegel in the amount of \$93,287.00, together with interest as prayed for allowable by law until the date of entry of judgment (at the rate of 9% per annum from September 14, 2012), as calculated by the Clerk, and thereafter at the statutory rate, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further,

ORDERED that the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that an assessment of damages is directed as to reasonable attorneys' fees; and it is further

ORDERED that said assessment shall take place on Tuesday, 10/29/13, at 2 pm at 80 Centre Street, Room 327.

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

Dated: 9/18/13


EILEEN A. RAKOWER, J.S.C.