

Man 441 LLC v Yu Qiong Zhong

2013 NY Slip Op 33339(U)

April 15, 2013

Sup Ct, New York County

Docket Number: 652787/2011

Judge: Cynthia S. Kern

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: CYNTHIA S. KERN
J.S.C. Justice

PART _____

Index Number : 652787/2011
MAN 441 LLC
vs.
YU QIONG ZHONG
SEQUENCE NUMBER : 001
DISMISS ACTION

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

is decided in accordance with the annexed decision.

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

Dated: 4/15/13

CK, J.S.C.

CYNTHIA S. KERN

- 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 55

-----x
MAN 441 LLC.,

Plaintiff,

Index No.652787/2011

-against-

DECISION/ORDER

YU QIONG ZHONG, ET AL.,

Defendants.

-----x
HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Affirmations in Opposition to the Motion	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u> </u>

Plaintiff has commenced the present action against defendants to recover unpaid rent. Defendants have brought the present motion to dismiss the complaint on the ground that plaintiff has failed to join a necessary party and the complaint fails to state a cause of action. For the reasons stated below, the motion to dismiss is denied.

The relevant facts are as follows. Plaintiff is the owner of the premises known as 18 Delancey Street, pursuant to a bargain and sale deed. It purchased the property in 2011. When plaintiff purchased the property in 2011, it obtained an assignment of leases for all of the tenants of the building. It also obtained an assignment of rent arrears due from the tenants which

provided that it is authorized to recover any and all "rent arrears due from any tenant" of the premises prior to July 2011. Plaintiff's predecessor in interest leased the store premises in the building consisting of the first floor and basement to defendant Zhong for a period of five years commencing on August 15, 2008 and terminating on August 14, 2013. Paragraph 39 of the lease provides that the covenants in the lease will bind and inure to the benefit of the owner and tenant and their respective successors.


Defendants' motion to dismiss the complaint on the ground that movant has failed to name a necessary party, the prior landlord who was the signatory to the lease, is denied. Plaintiff has the right to commence this action to recover rent arrears pursuant to the agreement it entered into with the prior landlord whereby the prior landlord assigned the right to plaintiff to recover rent arrears owed by the tenants in the premises. However, the plaintiff can only recover rent to the extent that it is due. If defendants have a valid defense to a claim for the payment of rent, they can assert it in this action. This includes any defense that defendants have based on their claim that the prior landlord consented to their vacating the premises prior to the expiration of the lease. If defendants can establish that there was a consent to their early departure of the premises, this would constitute a valid defense to any claim for rent arrears. Moreover, defendants can assert any claims they have under the lease as the assignment of the lease explicitly provides that it is an assignment of the rights and the duties and obligations.

Defendants' motion to dismiss the complaint on the ground that it fails to state a cause of action is also denied. They claim that plaintiff is not entitled to maintain this action because plaintiff never entered into any agreement with defendants for the payment of rent. However, as previously stated, plaintiff and the prior landlord entered into an agreement assigning to plaintiff

the right to recover rent arrears and also entered into an assignment of leases.

Based on the foregoing, the motion to dismiss is denied. This constitutes the decision and order of the court.

Dated: 4/15/13



J.S.C.

CYNTHIA S. KERN
J.S.C.