

10839 Associates v 10839 Associates

2014 NY Slip Op 30987(U)

April 7, 2014

Supreme Court, New York County

Docket Number: 151506/2012

Judge: Andrea Masley

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This opinion is uncorrected and not selected for official publication.

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

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10839 ASSOCIATES,

Plaintiff,

Index No.: 151506/2012

- against -

ONE SOURCE PRINTING & GRAPHICS, INC.
a/k/a ONE SOURCE VISUAL MARKETING SOLUTIONS,
Defendant.

ORDER/DECISION
HON. ANDREA MASLEY

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Plaintiff landlord 10839 Associates moves pursuant to Judge Coin's October 1, 2012 order finding liability and directing an inquest on damages. Landlord seeks damages of \$1,713,381.70.

Defendant tenant One Source Printing and Graphics Inc., signed a commercial lease with landlord that terminates on December 31, 2021. The lease states that tenant is liable for damages until the lease terminates in 2021 regardless of whether the tenant occupies the space. Landlord seeks damages for two different periods of time. The first is from November 2011 until April 2012, when the property was completely vacant. The second is from May 2012 through October 2013 during which time the space had been re-let.

For the period when the space was vacant, landlord is awarded \$279,854.26. This amount is comprised of rent due between November 2011 and April 2012 plus yearly taxes, as permitted by the lease, less a partial payment made in February 2012.

Landlord is awarded \$824,054.38 for rent and yearly taxes between May 2012 and October 2013, less rent collected from three new tenants at the premises. The above amount for unpaid rent between November 2011 and April 2012 is calculated as follows:

November 2011	Base rent of \$22,988.87	\$22,988.87
December 2011	Base rent of \$51,500.00	\$51,500.00
January – April 2012	Base rent of \$53,045.00	\$212,180.00

	per month X 4 months	
January 2012	Taxes of \$3,019.55	\$3,019.55
February 2012	Payment	(\$9,834.16)
TOTAL		\$279,854.26

The above amount for unpaid rent between May 2012 and October 2013 was

calculated as follows:

May 2012 – December 2012	Base rent of \$53,054.00 per month X 8 months	\$424,360.00
January 2012 – October 2013	Base rent of \$54,613.00 per month X 10 months	\$546,130.00
Less rent paid by new tenant Golf Manhattan from February to October 2013	Base rent of \$8,000 x 9 months	(\$72,000.00)
Less rent paid by new tenant Janou Pakter, LLC from March to October 2013	Base rent of \$5,111.75 X 8 months	(\$40,894.00)
Less rent paid by new tenant Middlegate from July to October 2013	Base rent of \$8,386.67 x 4 months	(\$33,546.68)
TOTAL		\$824,054.38

Landlord seeks interest under the lease for unpaid rent in the amount of 16% annually or 1.33% monthly. CPLR 5001 permits prejudgment interest for breach of contract claims. When a money judgment is awarded for nonpayment of rent, a plaintiff is entitled to prejudgment interest stipulated in the lease. *Solow v Bradley*, 273 AD 2d 75, 76 (1st Dept 2000). Banking Law § 14-A limits interest rates calculated under GOL § 5-501 up to 16% per year.

Here, the lease provides that tenant pay interest at the rate of 1.5% percent per month. This exceeds the interest rate set forth in GOL § 5-501 and plaintiff is limited to interest on the unpaid rent to 1.33% per month from November 2011. Landlord is awarded \$181,191.13 for interest on the unpaid rent pursuant to the lease agreement. The amount above was calculated as follows:

MONTH	RENT	1.33% MONTHLY INTEREST	CUMULATIVE INTEREST PER MONTH
November 2011	\$22,988.87	\$306.44 X 23 months	\$7,048.12
December 2011	\$51,500.00	\$686.50 X 22 months	\$15,103.00
January 2012	\$53,045.00 plus \$3,019.55 yearly tax	\$747.34 X 21 months	\$15,694.14
February 2012	\$53,045.00	\$707.08 X 20 months	\$14,141.60
March 2012	\$53,045.00	\$707.08 X 19 months	\$13,434.52
April 2012	\$53,045.00	\$707.08 X 18 months	\$12,727.44
May 2012	\$53,045.00	\$707.08 X 17 months	\$12,020.36
June 2012	\$53,045.00	\$707.08 X 16 months	\$11,313.28
July 2012	\$53,045.00	\$707.08 X 15 months	\$10,606.20
August 2012	\$53,045.00	\$707.08 X 14 months	\$9,899.12
September 2012	\$53,045.00	\$707.08 X 13 months	\$9,192.04
October 2012	\$53,045.00	\$707.08 X 12 months	\$8,484.96
November 2012	\$53,045.00	\$707.08 X 11 months	\$7,777.88
December 2012	\$53,045.00	\$707.08 X 10 months	\$7,070.80
January 2013	\$54,613.60	\$728.00 X 9 months	\$6,552.00
February 2013	\$46,613.60*	\$621.36 X 8 months	\$4,970.88
March 2013	\$41,501.85**	\$553.22 X 7 months	\$3,872.54
April 2013	\$41,501.85	\$553.22 X 6 months	\$3,319.32
May 2013	\$41,501.85	\$553.22 X 5 months	\$2,766.10
June 2013	\$41,501.85	\$553.22 X 4 months	\$2,212.88
July 2013	\$41,501.85	\$553.22 X 2 months	\$1,659.66
August 2013	\$33,115.18***	\$441.43 X 2 months	\$882.86
September 2013	\$33,115.18	\$441.43 X 1 month	\$441.43
October 2013	\$33,115.18	N/A	\$0.00
TOTAL			\$181,191.13

* Golf Manhattan, LLC began paying rent

** Janou Parkter, LLC began paying rent

*** Middlegate Insurance Agency, LLC began paying rent

Landlord seeks "re-letting expenses as liquidated damages" including brokerage

commissions in the amount of \$90,350.98 and construction costs in the amount of \$320,126.48. Article 18(C) of the lease provides that landlord is entitled to liquidated damages for expenses it incurs in connection with re-letting for “legal expenses, reasonable attorneys’ fees, brokerage, advertising, and for keeping the premises in good order or preparing the same for re-letting.”

Landlord is awarded \$90,350.98 for brokerage fees under the lease. Landlord incurred and paid the following brokerage commissions:

Tenant	Amount
Golf Manhattan, LLC	\$33,482.94
Janou Pakter, LLC	\$21,801.34
Middlegate Insurance Agency, LLC	\$35,066.71
TOTAL	\$90,350.98

However, the court finds that the construction costs of \$320,126.48 are impermissible liquidated damages which are outside the scope of the lease. Preparing a commercial space for re-letting involves cleaning, painting, repairing all aimed at a “white box” suitable for renting. Here, landlord significantly changed the space to prepare it for re-letting by erecting walls, replacing ducts, and installing insulation, electrical and plumbing elements where none had been before. According to the invoices provided to the court, landlord also installed a dishwasher, hot water heater, carpets, “custom built” cabinets, pocket doors, countertops, and relocated radiators. This exceeds preparations for re-letting under the plain meaning of this clause. Further, landlord cites no authority to the court to interpret the clause otherwise. Based on the invoices attached to the motion, landlord is awarded \$22,646.01 (\$7,403.50 + \$8,165.63 + \$7,076.88) for actually preparing the commercial space.

Finally, landlord seeks attorneys’ fees in the amount of \$17,804.63. Landlord is directed to appear for a hearing on April 25, 2014 at 9:30 am.

Accordingly, it is

ORDERED, that landlord shall have judgment against tenant in the amount of \$1,398,096.60.

Dated: April 7, 2014

ENTER:


Andrea Masley, JSC