Index No: 08295/2008

SHORT FORM ORDER

Supreme Court - State of New York
IAS PART 6 - SUFFOLK COUNTY

Mot. Seq.: 008 MD
009 MD

PRESENT:
Hon. RALPH T. GAZZILLO
A.J.S.C.

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CORPORATE COURTHOUSE CENTER, LLC

Plainitff(s),

-against-

RICHARD SCHULMAN, et.al.,

Defendant(s),
----------X

Upon the following papers numbered 1 to 70 read on this motion (mot seq. 008); Notice of Motion and supporting papers numbered 1-16; ; Affidavit in Opposition and supporting papers numbered 17-41, Defendants' Order to Show Cause and supporting papers (mot seq. 009) numbered 42-67; Affirmation in Opposition and supporting papers numbered 68-70, it is

ORDERED that the defendants' motion (mot seq. 008) pursuant to CPLR §2221 is denied in all respects, and it is further

ORDERED that the defendants' Order to Show Cause (mot seq. 009) seeking a stay of this Court's Order dated November 30, 2011, is denied as moot, and it is further

ORDERED that the Plaintiff is directed to prepare a bill of costs and a proposed judgment for submission to the Court at the time of the inquest with space provided for the inclusion of attorney's fees, and costs and disbursements which are calculated by the Suffolk County Clerk; and it is further

ORDERED that prior to commencing the inquest, it is anticipated that the plaintiff will present to the Court satisfactory proof of timely and appropriate notifications to the defendant(s) of the date, time, and place of the proceeding, including any adjournments thereof, and it is further

ORDERED that movant is directed to forthwith file a Note of Issue and Certificate of Readiness, pursuant to 22 NYCRR § 202.21, and submit all appropriate calendar fees in order to place this matter on the Inquest Calendar; and it is further

ORDERED that an inquest regarding damages is scheduled for July 8, 2014, at 9:30 a.m. in the courtroom of the undersigned, located at One Court Street, Riverhead, New York, 11901 at which time, plaintiff is expected to produce all documentary evidence and/or testimony regarding damages, and it is further

ORDERED that counsel of the plaintiff shall serve a copy of this Short Form Order upon the Calendar Clerk of the Court, and it is further

ORDERED that counsel for movant shall serve a copy of this order with Notice of Entry upon counsel for all other parties pursuant to CPLR §§2103(b)(l), (2) or (3), within thirty (30) days of the date the order is entered *as well as the Calendar Clerk by regular mail* and thereafter file the affidavit(s) of service with the Clerk of the Court

Plaintiff, Courthouse, is the owner of premises located at 320 Carlton Ave., Central Islip, NY. On October 30, 2001, Lan Associates, by its president, Richard Schulman, entered into a lease with plaintiff for a unit in the building known as Suite 3800. The lease commenced on December 1, 2001with a term of seven (7) years and two months, until January 31, 2009.

The lease provided for the payment of rent and utilities. The annual rent for the fourth year of the lease covering the period of time from December 1, 2004 through December 1, 2005 was $141,109.85. For the fifth year covering the period of time from December 1, 2005 through December 1, 2006, the annual rent was $146,163.15. For the sixth year of the lease, the annual rent was $151,418.57.

After Schulman failed to pay the rent for the premises for April 2005 and continuing through March of 2007, plaintiffs served a termination notice upon defendants alleging the failure to pay rent in the total amount of $40,740.91. The notice called for vacating the premises by April 5, 2007. However, on April 3, 2007, defendants obtained a stay of the termination notice by order of this Court (Weber, J.) and a further order (Tanenbaum, J.) dated August 31, 2007, which granted a Yellowstone Injunction in order to permit the tenants to cure their default.

The latter order also authorized plaintiffs to commence a holdover proceeding in order to recover possession of the premises. Plaintiff thereafter commenced a summary proceeding in the District Court, Suffolk County. On October 9, 2007, the parties entered into a written stipulation settling the District Court matter. Pursuant to its terms the tenant agreed to vacate the premises by December 31, 2007 and to make certain payments to Courthouse. Pursuant to Paragraph 16 of the stipulation, Courthouse reserved its right to recover money arrears in the form of rent or other monies owed. Plaintiff commenced this action in February 2008.

In an Order dated February 23, 2009, this Court granted plaintiff's motion to dismiss the counterclaim and affirmative defenses filed by Richard Schulman and denied defendant's motion for summary judgment (seeking to dismiss the claims against the individual defendant). Defendant appealed said order which appeal was perfected in November of 2009. While the appeal was *sub judice* Schulman sought a stay of all proceedings pending the appeal. That application was denied. Then, in January of 2010, Schulman again moved for summary judgment seeking dismissal of the plaintiff's third cause of action. Plaintiff thereafter moved to amend its complaint to include Lan Solutions and Lan NC as defendants. Defendant opposed the application. On or about June 1, 2010 the Appellate Division affirmed this Court's February 23, 2009 order. On June 23, 2010 this Court issued an amended order which denied Schulman's second summary judgment motion and granted plaintiff's application to amend the complaint. Schuman filed an appeal of the amended order which appeal was perfected in March of 2011. In the meantime, Schulman answered the amended complaint including the same counterclaim and affirmative defenses which had been dismissed by this Court in the first motion for summary judgment. However, shortly after serving the second answer, and following receipt of a letter from plaintiffs indicating that the counterclaim and affirmative defenses were frivolous in light of the Court's prior decision, defendants served an amended answer removing five affirmative of the affirmative defenses that had been previously dismissed by the Court but adding two new affirmative defenses and leaving the counterclaim. In response, the plaintiff moved to dismiss the counterclaim and the two new affirmative defenses.

In August of 2010, during the time that the motion practice outlined above was being conducted, plaintiff served numerous discovery requests on the defendants. Having received no response from the defendants, in October 2010 and again in November of 2010, plaintiff sent "good faith" letters to the defendants seeking to move the matter forward. Defendants thereafter failed to appear at a December 3, 2010 compliance conference. The defendants moved for a protective order on February 3, 2011.

Following the submission of a motion by defendant of a protective order, at a compliance conference held February 18, 2011, the parties entered into a stipulation which was so-ordered by the Court. The stipulation required, among other things, that the defendant provide the plaintiff which certain documents demanded in discovery on or before March 18, 2011. The stipulation further stated that if there was a failure to comply with the terms of the stipulation would result in "Defendant's Answer .... shall, automatically, without further notice, be deemed stricken and plaintiff's counsel may schedule an inquest by *letter* application to the Court ...".

Thereafter on March 24, 2011, in accordance with the terms of the parties' February 18, 2011 "so-ordered" stipulation and due to defendant's failure to comply with the directives of the stipulation, plaintiff's counsel wrote to the Court, advising that defendants had failed to comply with the terms of the February 18, 2011 stipulation and requesting that an inquest be scheduled. That letter was copied to the defendant's counsel as required by the stipulation. Defendant's responded by objecting to the scheduling of the inquest by letter dated March 25, 2011, which plaintiff responded to by letter dated March 28, 2011. Defendant again wrote to the Court on

March 29, 2011 and plaintiff responded thereto on the same day. Thereafter, on September 22, 2011, the Court issued an order which recognized that defendants had not complied with the February 18, 2011 stipulation, acknowledged that the answer was stricken and accordingly scheduled an inquest on the matter for October 19, 2011. On October 7, 2011, the Court received further correspondence from the defendant seeking to have the Court "recall" its September 22, 2011 order. On October 21, 2011, the Court issued yet another order denying defendant's letter request and indicating that the proper mechanism through which to seek renewal or reargument of a prior order was by motion. This motion ensued.

In the meanwhile, the defendant's appeal from the Court's denial of its second motion for summary judgment was dismissed and the defendant's appeal from the Court's order dated September 22, 2011 setting the matter down for an inquest in accordance with the terms of the parties' stipulation was denied (November 9, 2011). The instant motion, which sought a stay of the inquest, was made by the defendant. The order to show cause dated January 3, 2012 (Whelan, J.) denied defendant's request that the inquest, which had been rescheduled (pursuant to Short Form Order dated November 30, 2011) to January 20, 2012 following denial of defendant's application for a stay in the Appellate Division.

Defendant did not dispute that it has failed to fully comply with the mandates of the February 18, 2011 so-ordered stipulation. Specifically, as of March 18th, 2011 defendant had not fully responded to the plaintiff's interrogatories or document requests numbered 7-17, 23, 25 and 26. Accordingly, an inquest was scheduled as was agreed to in the parties' self-executing, "so-ordered" stipulation.

As noted, the history of this matter is littered with delay. Notwithstanding the efforts of the Court and others, time and again the defendants have resisted attempts to timely resolve what appears to be a relatively uncomplicated matter. Indeed, the defendants have apparently opted to misconstrue and /or ignore the documented, undisputable facts of this case as well as the events of this litigation's long and troubled history. Moreover, as is consistent with their posture and obvious by this motion, they have chosen to ignore a clear and simple fact: they entered into a stipulation where they agreed to provide certain information *and* agreed that their failure to comply would result in severe consequences. Since then, and rather than continue to converse with the plaintiff so as to ensure their obligations under the stipulation were satisfied, the defense apparently chose to rely upon the plaintiff to advise as to its satisfaction with the proffered documents. Compounding that, they then waited for the critical date contained in the stipulation to pass before communicating further. All this was despite the fact the sole responsibility for their obligations rested with them and knowing that unfaithfulness to that responsibility chanced exposure to a severe and immediate but agreed upon consequence. Stated otherwise, their acts and omissions were at best careless, but in any event at their obvious peril. As to the seriousness of the remedy, it was chosen and agreed to by both sides. The plaintiff, a party to the stipulation, has the right to have it enforced.

Upon this backdrop the defendant, pursuant to CPLR §2221, now seeks renewal and/or reargument and/or reconsideration of this Court's September 22, 2011 order. From an examination of all papers presented, the Court finds that it has not overlooked nor misapprehended any factual matter, legal authority or, most importantly, the terms of the February 18, 2011 so-ordered stipulation. Thus, the Court stands by the prior Short Form Order in all respects (see, CPLR §2221(d)). Moreover, defendant has not offered new facts or a change in the law that would affect the prior determination (see, CPLR §2221(e)).

Accordingly, defendants' motions are denied.

Dated: 5/5/14

Hon. Ralph T. Gazzillo
Acting Justice of the Supreme Court

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