

Stuart Weitzman Holdings, LLC v N.Y. Park N. Salem Inc.
2016 NY Slip Op 30205(U)
February 3, 2016
Supreme Court, New York County
Docket Number: 160269/2015
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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STUART WEITZMAN HOLDINGS, LLC,

Plaintiff,

Index No. 160269/2015

-against-

DECISION/ORDER

N.Y. PARK N. SALEM INC.,

Defendant.

-----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.....	1
Notice of Cross Motion and Answering Affidavits.....	2
Affirmations in Opposition to the Cross-Motion.....	3
Replying Affidavits.....	4
Exhibits.....	5

Plaintiff commenced the instant action against defendant seeking damages for breach of a commercial lease agreement. Plaintiff now moves for an order pursuant to CPLR § 3215 granting it default judgment against defendant. Defendant cross-moves for an order pursuant to CPLR §§ 3012(d), 2004 and 2005 extending its time to appear and plead or compelling plaintiff to accept its untimely served answer and pursuant to CPLR § 602(b) removing the non-payment proceeding currently pending between the parties in Civil Court and consolidating the special proceeding with the instant action. For the reasons set forth below, plaintiff's motion is denied and the defendant's cross-motion is granted in part and denied in part.

The relevant facts are as follows. On or about October 29, 2014, plaintiff entered into a commercial lease agreement (the "lease") with defendant for premises located in the twelfth

floor of 30 East 60th Street, New York, New York 10022 (the “premises”), owned by defendant. Plaintiff alleges that, pursuant to the lease, defendant was required to install a new air conditioning unit in the premises sufficient for plaintiff’s use after reviewing plaintiff’s architects’ requirements and that defendant failed to properly install the air conditioning unit. Specifically, plaintiff alleges that defendant constructed the air conditioning unit “much lower in the ceiling” than it should have, requiring plaintiff to alter its construction plans. Plaintiff claims that it was not able to occupy the premises.

On or about July 22, 2015, defendant commenced a non-payment proceeding in the Civil Court of the City of New York based on plaintiff’s alleged failure to pay rent as required by the lease. On or about October 6, 2015, plaintiff commenced the instant action. Plaintiff served the summons and complaint on defendant by delivering copies to Pavia & Harcourt LLP, a law firm which is listed as an agent accepting process on behalf of defendant on the Department of State database, on or about October 7, 2015. Defendant failed to timely answer plaintiff’s complaint. Defendant’s attorney Scott Stone, Of Counsel to Cinotti LLP, claims that the failure to answer was due to the fact that two different law firms, Pavia & Harcourt LLP and Cinotti LLP, represented defendant in different matters, and there was some confusion as to which law firm would represent defendant in the instant action, particularly given plaintiff’s service of process on Pavia & Harcourt LLP.

The court first considers the portion of defendant’s cross-motion for an order pursuant to CPLR §§ 3012(d), 2004 and 2005 extending its time to appear and plead or compelling plaintiff to accept its untimely served answer. Pursuant to CPLR § 3012(d), the court may extend the time of a party to appear or plead in the action or compel the acceptance of a pleading untimely served upon the showing of a reasonable excuse for the delay or default. The court may also

extend the time fixed by any statute, rule or order for doing any act, including the service of a pleading, where good cause is shown pursuant to CPLR § 2004. Pursuant to CPLR § 2005, “the court shall not, as a matter of law, be precluded from exercising its discretion in the interests of justice to excuse delay or default resulting from law office failure.” In determining whether to extend the time to answer pursuant to CPLR § 3012(d), the court may consider such factors as the length of the delay, the party’s attempt to correct the error once discovered, prejudice to the non-moving party and the “public policy favoring the resolution of disputes on their merits.” See *Jones v. 414 Equities LLC*, 57 A.D.3d 65, 81 (1st Dept 2008); *Nason v. Fisher*, 309 A.D.2d 526 (1st Dept 2003).

In the present case, the court extends defendant’s time to serve an answer as defendant has established a reasonable excuse for its delay in answering. The court finds that defendant’s reason for not timely answering based on the confusion as to whether Pavia & Harcourt LLP or Cinotti LLP would represent defendant in the instant action is a reasonable excuse. In addition, the delay was brief and Mr. Stone attempted to correct the error once he received notice of the default by requesting additional time to serve an answer from plaintiff. Moreover, plaintiff has failed to show that it would be prejudiced in any way by the delay.

The court now turns to the portion of defendant’s cross-motion for an order pursuant to CPLR §§ 602(b) removing the non-payment proceeding currently pending between the parties in Civil Court and consolidating the special proceeding with the instant action. The general rule is that consolidation is generally favored by the courts when there are common questions of law and fact unless the party which is opposing the motion can demonstrate that consolidation will prejudice a substantial right. See *Amtorg Trading Corp. v Broadway & 56th Street Associates*, 191 A.D.2d 212 (1st Dept 1993). However, “there is ‘a strong rule against staying a summary

proceeding or removing it, such as for purposes of a consolidation or joint trial with some proceeding in the supreme court or some other superior court (Siegel, NY Prac. Section 577, at 909 [2d ed]).” *Scheff v 230 East 73rd Owners Corp.*, 203 A.D.2d 151, 610 N.Y.S.2d 252 (1st Dept 1994). The First Department “has consistently adhered to the rule stated by Professor Siegel (citation omitted). Only where Civil Court is without authority to grant the relief sought should the prosecution of a summary proceeding be stayed.” *Id.* See also *44-46 W. 65th Apt. Corp. v Stavn*, 3 A.D.3d 440 (1st Dept 2004). Moreover, it is undisputed that the Civil Court is the preferred forum for disputes related to unpaid rent. See *Spain, Jr. v. 325 West 83rd Owners Corp.*, 302 A.D.2d 587 (2nd Dept 2003) (“Civil Court is the preferred forum for landlord-tenant disputes” and the Supreme Court fosters a “disinclination” to remove summary proceedings to this court).

In the present case, the court declines to exercise its discretion to remove and consolidate the Civil Court proceeding with the instant action as the Civil Court has the authority to grant the relief defendant voluntarily sought in that proceeding, a judgment of eviction and an award of unpaid rent.

Accordingly, plaintiff’s motion is denied, the portion of defendant’s cross-motion for an order compelling plaintiff to accept its untimely served answer is granted and the portion of defendant’s cross-motion for an order removing and consolidating the Civil Court proceeding with the instant action is denied. Thus, plaintiff is hereby directed to accept defendant’s answer. This constitutes the decision and order of the court.

Dated:

2/3/16

Enter:

CK
 J.S.C.
 CYNTHIA S. KERN
 J.S.C.