

NYC Short Lease, LLC. v Bamara, LLC.

2017 NY Slip Op 30123(U)

January 18, 2017

Supreme Court, New York County

Docket Number: 157643-2014

Judge: Joan M. Kenney

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS Part 8

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NYC Short lease, LLC. ,

Plaintiff,

-against-

DECISION AND ORDER
Index Number: 157643-2014
Motion Seq. No.: 004

Bamara, LLC.,

Defendant.

-----X

KENNEY, JOAN M., J.

Recitation, as required by CPLR 2219(a), of the papers considered in review of these motion to strike.

Papers	Numbered
Notice of Motion (Seq. 004), Affirmation, and Exhibits	1-9
Opposition Affirmation	10
Reply Affirmation	11

This action arises from an alleged breach of a short term sublease agreement (Contract) for the space located at 808 Columbus Avenue, Apartment 16A, New York, New York, 10025 (the premises), leased to an entity known as Bamara, LLC.

Plaintiff moves for an order, pursuant to CPLR §3126, striking Defendant’s answer for failing to comply with Plaintiff’s: (1) First Set of Interrogatories to Defendant, (2) Combined Demands, (3) Notice to Obtain Inspection of Documents, and (4) Supplemental Notice for Discovery and Inspection.

FACTUAL BACKGROUND and ARGUMENTS

Plaintiff alleges that on or about December 19, 2013, Defendant entered into a sublease agreement with the Plaintiff for the occupancy of the premises located at 808 Columbus Avenue, Apartment 16A, New York, New York, 10025 for an annual rent of \$90,000.00, payable in monthly installments of \$7,500.00 commencing January 1, 2014 and terminating by its terms on January 1, 2015. Plaintiff’s Exhibit B, Complaint, ¶ 3-4. Plaintiff alleges that the Defendant

occupied the premises but did not pay the rent for the months of January 2014 through June 2014. *Id.*, ¶ 5. Additionally, Defendant allegedly did not pay for the gas and electric charges that they were liable for under Contract. *Id.*, ¶ 7.

The allegation of non-payment has not been disputed herein by the Defendant. Rather, Defendant asserts, without any specificity, that they vacated and surrendered the premises, delivered the key to the Plaintiff and the Plaintiff took dominion and control of the subject premises. Defendant have refused to indicate when they vacated the premises. *Id.*, ¶ 10-11. Defendant alleges that Plaintiff's acceptance of the lease surrender terminated Defendant's rights and obligations under the lease agreement. *Id.*, ¶ 12.

On or about January 18, 2016, Plaintiff served a set of Interrogatories, Combined Demands and Notice to Obtain Inspection of Documents to the Defendant. Plaintiff's Exhibit C. On or about March 1, 2016, Defendant filed answers to Plaintiff's Interrogatories. Plaintiff's Exhibit E. On or about June 15, 2016, Plaintiff served a Supplemental Notice for Discovery and Inspection. *Id.* On September 23, 2016, both sides appeared for a Compliance Conference before this Court, where the Court ordered the Defendant to respond to Plaintiff's three outstanding discovery demands by November 4, 2016. Plaintiff's Exhibit D. On or about November 2, 2016, Defendant filed Responses to Plaintiff's (2) Combined Demands, (3) Notice to Obtain Inspection of Documents, and (4) Supplemental Notice for Discovery and Inspection. Plaintiff's Exhibit E.

On or about November 21, Plaintiff filed a Notice of Rejection on grounds that Defendant's responses to Plaintiff's discovery demands are vague, lack specificity and are devoid of substance. Plaintiff's Exhibit F.

Plaintiff now moves to strike Defendant's answer on grounds that the Defendant has

willfully and deliberately failed and refused to adequately respond to Plaintiff's all four discovery demands, namely Plaintiff's (1) First Set of Interrogatories to Defendant, (2) Combined Demands, (3) Notice to Obtain Inspection of Documents, and (4) Supplemental Notice for Discovery and Inspection.

In opposition, Defendant contends that Plaintiff's motion is moot because Defendant has properly responded to Plaintiff's demands.

In reply papers, Plaintiff argues that Defendant's responses are "inadequate".

DISCUSSION

CPLR 3126 provides that "a court may strike a pleading as a sanction against a party who refuses to obey an order for disclosure. A court may strike an answer only when the moving party establishes a clear showing that the failure to comply is willful, contumacious or in bad faith [internal quotation marks and citations omitted]. *Rodriguez v United Bronx Parents, Inc.*, 70 AD3d 492, 492 (1st Dept 2010)." [T]he party seeking disclosure has the burden to show willfulness by the nondisclosing party" *Sage Realty Corp. v Proskauer Rose L.L.P.*, 275 AD2d 11, 18 (1st Dept 2000).

The Courts are less willing to apply CPLR §3126 sanctions unless a party's actions demonstrate that an order compelling disclosure would be futile. *Diamond State Ins. Co. v Utica First Ins. Co.*, 67 AD3d 613, 613-614 (1st Dept 2008).

This Court finds that while Defendant did not fully comply with the Plaintiff's discovery demands, there is no clear evidence of willful, contumacious or bad faith in failure to fully comply. According to CPLR § 3126 sanctions would not be appropriate.

This Court finds that Defendant's responses to Plaintiff's First Set of Interrogatories and to Plaintiff's Combined Demands are sufficient.

The Court further finds that, Plaintiff's Notice to Obtain Inspection of Documents seeks information about a "defective merchandise", which is not an issue in the current action. Therefore this discovery request is stricken.

This Court also finds that some questions in the Plaintiff's Supplemental Notice for Discovery and Inspection were not adequately answered. Defendant shall respond to questions numbered 1 and 2 of the Plaintiff's Supplemental Notice for Discovery and inspection.

In question numbered 7, Plaintiff is requesting communications wherein Defendant claims that Plaintiff or Plaintiff's agent agreed to early vacatur. It is noted that Defendant claims that it allegedly never stayed in the premises. However, that assertion is irrelevant here because it is undisputed that Defendant executed the sublease agreement dated 12/19/2013 and whether or not Defendant or its "guest" stayed at the premises is of no importance here. The undisclosed "guest" did not execute the subject sublease agreement. Defendant is compelled to provide answers in the form of affidavits for oral communications if there were no written communications between the parties.

Questions numbered 3,4,5,6,8,9, 10,11,12 and 13 in this Supplemental Notice for Discovery and Inspection are stricken as unduly broad, burdensome, seeking irrelevant information and/or vague. Accordingly, it is

ORDERED, that Plaintiff's motion to strike Defendant's answer based on inadequate responses to Plaintiff's discovery requests is denied; and it is further

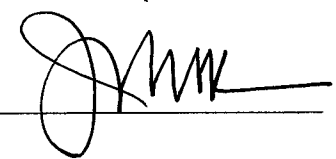
ORDERED, that Defendant is compelled to produce discovery as set forth in the decision no later than February 10, 2017; and it is further

ORDERED, that all discovery be completed no later than February 17, 2017; and it is further

ORDERED that Plaintiff file the Note of Issue and Certificate of Readiness, no later than February 28, 2017.

Dated: January 18, 2017

ENTER:

1/18/17

Joan M. Kenney, J.S.C.