

274 Madison Co. LLC v Ramsundar

2018 NY Slip Op 31354(U)

June 28, 2018

Supreme Court, New York County

Docket Number: 151246/2018

Judge: Robert D. Kalish

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: Hon. _____ Robert D. KALISH
Justice

PART 29

274 MADISON COMPANY LLC,

INDEX NO. 151246/2018

Plaintiff,

MOTION DATE 4/16/18

- v -

MOTION SEQ. NO. 001

SILVION RAMSUNDAR,

Defendant.

NYSCEF Doc Nos. 1-16 were read on this motion for summary judgment in lieu of complaint.

Motion by Plaintiff 274 Madison Company LLC pursuant to CPLR 3213 for summary judgment in lieu of complaint in favor of Plaintiff against Defendant Silvion Ramsundar (“Ramsundar”) is granted.

BACKGROUND

Plaintiff commenced the instant action for summary judgment in lieu of complaint on February 8, 2018, by e-filing a summons, a memorandum of law in support, and a request for judicial intervention. On March 15, 2018, Plaintiff e-filed an affidavit of service indicating that Defendant was served with process pursuant to CPLR 308 (2). On March 26, 2018, Plaintiff filed an amended notice of motion and the instant motion papers.

Plaintiff submits an affidavit in support from Ms. Eileen Diaz. Ms. Diaz states that she is an agent and bookkeeper for Abramson Brothers, Plaintiff’s management company. Ms. Diaz further states that Plaintiff owns the building located at 274 Madison Avenue, New York, New York (the “Building”). Ms. Diaz then states that Defendant has defaulted on a stipulation of settlement and a confession of judgment by failing to make agreed-upon payments.

Ms. Diaz states that Plaintiff filed an action in the Supreme Court of the State of New York, New York County, on June 6, 2012, titled *274 Madison Company LLC v Silvion Ramsundar*, index no. 153425/2012 (the “Prior Action”). (See aff of Diaz, exhibit C.) In the Prior Action, Plaintiff alleged that it leased room 801 of the Building to Manhattan Egoscue, LLC (“Egoscue”) for a five-year term commencing January 1, 2006, and terminating December 31, 2010. Plaintiff further alleged that Egoscue agreed to pay certain base rent and additional rent on a monthly basis. Plaintiff further alleged that Ramsundar executed a limited guaranty whereby Ramsundar personally guaranteed payment and performance of Egoscue’s obligations under the lease. Plaintiff amended the complaint in the Prior Action on or about September 4, 2012, to add

Egoscue as a defendant. (Aff of Diaz, exhibit D.) Plaintiff alleged that Egoscue violated the terms of the lease by vacating the Building during the lease term while owing rent to Plaintiff.

On March 30, 2016, the motion court in the Prior Action granted Plaintiff's motion pursuant to CPLR 3212 for summary judgment against Ramsundar and Egoscue, jointly and severally, on the issue of liability, and referred the matter to a special referee to hear and determine the issue of the amount of rent, additional rent, and attorneys' fees owed to Plaintiff from Ramsundar and Egoscue.

Ms. Diaz states that, on May 26, 2016, the parties in the Prior Action settled the matter by means of a so-ordered stipulation requiring that Ramsundar pay \$75,000.00 to Plaintiff (the "Stipulation"). (Aff of Diaz, exhibit A.) By the terms of the Stipulation, a payment of \$20,000.00 was due on June 9, 2016, payments of \$3,000.00 a month were due on the fifth day of each month beginning July 5, 2016, and two final payments of \$6,500.00 were due on September 5, 2017, and October 5, 2017. Ramsundar also executed an Affidavit of Confession of Judgment, dated June 29, 2016, for a judgment in the amount of \$92,108.86. (Aff of Diaz, exhibit B.)

Ms. Diaz states that Ramsundar paid \$56,000.00 toward the settlement sum of \$75,000.00 but did not make the July 2017 and August 2017 payments of \$3,000.00 per month or the September 2017 and October 2017 payments of \$6,500.00 per month. Ms. Diaz then states that, pursuant to the Stipulation, Plaintiff served a Seven Calendar Day's Notice of Default with Opportunity to Cure on or about November 2, 2017. (Aff of Diaz, exhibit F.) Ms. Diaz further states that Ramsundar has not paid the \$19,000.00 balance of the settlement sum of \$75,000.00. Ms. Diaz then states that, as a result, based upon the Confession of Judgment, \$36,108.86, the amount of the Confession of Judgment, \$92,108.86, less Ramsundar's previous payment of \$56,000.00 to Plaintiff, is due and owing to Plaintiff from Ramsundar.

Plaintiff has also requested a hearing date to determine Plaintiff's reasonable attorney's fees and costs or leave to submit fees and costs by affidavit or affirmation and proof thereof. The Court notes that, pursuant to paragraph 8 of the Stipulation, "Defendants shall pay \$375.00 in addition to the payment due as reasonable legal fees." (Aff of Diaz, exhibit A, at 3. [¶ 8].)

On March 27, 2018, Ramsundar appeared in the action and e-filed a Self-Represented Written Answer and Verification. Ramsundar left the General Denial line unchecked. Ramsundar then wrote, "I suffer from seizures and lost my job driving a car. I have no money to pay the remain[in]g balance. I am a 9/11 survivor suffering from post injuries."

DISCUSSION

CPLR 3213 provides, in pertinent part, that "[w]hen an action is based upon an instrument for the payment of money only or upon any judgment, the plaintiff may serve with the summons a notice of motion for summary judgment and the supporting papers in lieu of a complaint." A settlement agreement may constitute an instrument for the payment of money. (*Park Union Condominium v 910 Union St., LLC*, 140 AD3d 673, 673 [1st Dept 2016].)

“To obtain summary judgment it is necessary that the movant establish his cause of action or defense sufficiently to warrant the court as a matter of law in directing judgment in his favor, and he must do so by tender of evidentiary proof in admissible form.” (*Zuckerman v City of New York*, 49 N.Y.2d 557, 562 [1980]. [internal quotation marks and citation omitted].) “Once this showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution.” (*Giuffrida v Citibank Corp.*, 100 N.Y.2d 72, 81 [2003].) “On a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party.” (*Vega v Restani Constr. Corp.*, 18 N.Y.3d 499, 503 [2012] [internal quotation marks and citation omitted].) In the presence of a genuine issue of material fact, a motion for summary judgment must be denied. (See *Rotuba Extruders v Ceppos*, 46 N.Y.2d 223, 231 [1978]; *Grossman v Amalgamated Hous. Corp.*, 298 A.D.2d 224, 226 [1st Dept 2002].)

Based upon a review of the parties’ submissions in this matter, the Court finds that Ramsundar agreed to pay Plaintiff \$75,000.00 in accordance with the Stipulation which settled the Prior Action. The Court finds further that Ramsundar paid \$56,000.00 to Plaintiff. The Court finds further that Ramsundar then defaulted on the payment schedule as set forth in the Stipulation and failed to cure based upon Plaintiff’s November 2, 2017 notice of default to Ramsundar as contemplated in the Stipulation.

As such, the Court finds that, based upon the Confession of Judgment, Ramsundar owed \$92,108.86 to Plaintiff, \$56,000.00 of which was paid previously, leaving a balance of \$36,108.86 due and owing to Plaintiff from Ramsundar. The Court finds further that Plaintiff is not entitled to any further determination of attorney’s fees beyond the \$375.00 contemplated in the Stipulation.

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CONCLUSION

Accordingly, it is

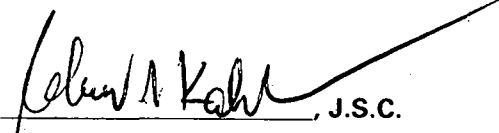
ORDERED that the motion by Plaintiff 274 Madison Company LLC pursuant to CPLR 3213 for summary judgment in lieu of complaint in favor of Plaintiff against Defendant Silvion Ramsundar is granted; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of Plaintiff and against Defendant in the sum of \$36,483.86, with interest from November 9, 2017, at the rate of 9.00% per annum, to the date of the decision and order on this motion, and thereafter at the statutory rate, as calculated by the Clerk, together with costs and disbursements, as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that, within 20 days of entry, Plaintiffs shall serve a copy of this order with notice of entry upon Defendant and upon the Clerk, who is directed to enter judgment in favor of Plaintiff and against Defendant in the sum of \$36,483.86, with interest from November 9, 2017, at the rate of 9.00% per annum, to the date of the decision and order on this motion, and thereafter at the statutory rate, as calculated by the Clerk, together with costs and disbursements, as taxed by the Clerk upon submission of an appropriate bill of costs.

The foregoing constitutes the decision and order of the Court.

Dated: June 28, 2018
New York, New York


J.S.C.
HON. ROBERT D. KALISH
J.S.C.

- 1. Check one:.....
- 2. Check if appropriate:..... MOTION IS:
- 3. Check if appropriate:.....

- CASE DISPOSED NON-FINAL DISPOSITION
- GRANTED DENIED GRANTED IN PART OTHER
- SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE