

30 W.S. L.L.C. v Andrews
2018 NY Slip Op 31992(U)
June 20, 2018
Supreme Court, New York County
Docket Number: 156112/2017
Judge: David B. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAVID BENJAMIN COHEN

PART 58

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30 W.S.L.L.C.,
Plaintiff,

INDEX NO. 156112/2017

MOTION DATE 12/8/2017

- v -

MOTION SEQ. NO. 001

PETER ANDREWS, GREGORY PALMER

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37

were read on this application to/for Judgment - Summary

Upon the foregoing documents, it is

The following facts are undisputed. Plaintiff and Dreambuilder Investment, LLC ("Tenant") entered into a lease on October 20, 2008 and later extended by amendment on January 25, 2010. The payments of the lease were guaranteed by defendants Andrews and Palmer and extended with the amendment. Tenant defaulted and plaintiff commenced a summary proceeding. The parties settled that action and consented to judgment in the amount of \$224,000 and commenced this action seeking \$106,837.75 after taking into consideration certain payments.

Summary judgment is a drastic remedy that should not be granted where there exists a triable issue of fact (Integrated Logistics Consultants v. Fidata Corp., 131 AD2d 338 [1st Dept 1987]; Ratner v. Elovitz, 198 AD2d 184 [1st Dept 1993]). On a summary judgment motion, the court must view all evidence in a light most favorable to the non-moving party (Rodriguez v. Parkchester South Condominium Inc., 178 AD2d 231 [1st Dept 1991]). The moving party must show that as a matter of law it is entitled to judgment [Alvarez v. Prospect Hosp., 68 NY2d 320

324 [1986]). The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]). After the moving party has demonstrated its *prima facie* entitlement to summary judgment, the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring a trial (*Zuckerman v City of New York*, 49 NY2d 557 [1980]). The Appellate Division recently held that a plaintiff seeking summary judgment succeeded in making “a *prima facie* showing for rent arrears accruing. . .by submitting the original lease. . .and a detailed statement documenting outstanding rent arrears” (*Dee Cee Assoc. LLC v 44 Beehan Corp.*, 148 AD3d 636, 641 [1st Dept 2017]).

Plaintiff has established through the submission of the exhibits to this motion, including but not limited to, the lease, guaranty, amendment to lease, rent ledger and the affidavit of Amalia P. Sylkes, *prima facie* entitlement to summary judgment. Therefore, plaintiff has successfully made its requisite *prima facie* showing.

Thus, to defeat summary judgment, defendants have the burden to demonstrate by admissible evidence the existence of a factual issue requiring a trial (*see Zuckerman*, 49 NY2d at 557). Defendants has failed to do so. Defendants have not submitted any evidence disputing the calculation of rent at issue or showing that the water bill and real estate taxes were incorrectly calculated. Instead, defendant questioned whether plaintiff applied the security deposit to cover the amount owed. First, the Stipulation of Settlement in the nonpayment case clearly that Tenant had no other claims arising out of the lease and if a claim exists, it waives such claims. Further, that stipulation was the “complete agreement” with respect to the dispute surrounding the lease.

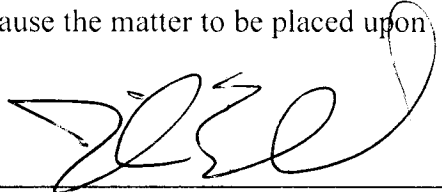
In addition, the opposition is completely devoid of any disputed facts. As found by the Court in *Dillenberger v Fifth Avenue Owners Corp.*, "...mere conclusory allegations regarding the existence of questions of fact are insufficient to defeat a motion for summary judgment" (155 AD2d 327 [1st Dept 1989]). Therefore, defendants have failed to meet their required burden demonstrating evidence of existing factual issues.

Finally, plaintiff's motion for attorneys fees is granted to the extent of setting the matter down for a fees hearing in front of a special referee. Accordingly, it is therefore

ORDERED that plaintiff is granted summary judgment and the Clerk is directed to enter judgment in favor of plaintiff and against defendants Andres and Palmer in the sum of \$106,837.75, for rent and additional rent, and interest from July 1, 2017 at the statutory rate, as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk; and it is further

ORDERED that that plaintiff's cause of action seeking attorney's fees is granted to the extent of setting down the issue for a hearing. A hearing is granted to determine the amount of fees to be awarded. Plaintiff shall cause the matter to be placed upon the calendar for such trial. Plaintiff shall, within 20 days from the date of this order, serve a copy of this order upon (counsel for) all parties hereto by regular mail and upon the Clerk of the General Clerk's Office (60 Centre Street, Room 119) and shall serve and file with said Clerk a note of issue and statement of readiness and shall pay the fee therefor, and said Clerk shall cause the matter to be placed upon the calendar for such trial.

6/20/2018
DATE



DAVID BENJAMIN COHEN, J.S.C.
HON. DAVID B. COHEN
J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	
	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	DO NOT POST

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<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	FIDUCIARY APPOINTMENT

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<input type="checkbox"/>	REFERENCE
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