

Springprince, LLC v Elie Tahari, Ltd.

2018 NY Slip Op 32922(U)

November 14, 2018

Supreme Court, New York County

Docket Number: 653698/18

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
Part 57**

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SPRINGPRINCE, LLC

Plaintiff(s)

Index no. 653698/18

-against-

DECISION/ORDER

ELIE TAHARI, LTD.,

Motion Seq. No. 1

Defendant(s)

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Recitation, as required by CPLR §2219(a), of the papers considered on the review of this motion for summary judgment

PAPERS

NUMBERED

Notice of Motion and Affidavits and Exhibits Annexed	1
Answering Affidavits and Exhibits Annexed	2
Replying Affidavits and Exhibits Annexed	3

Upon the foregoing cited papers, the Plaintiff's (hereinafter defined) motion for summary judgment is granted only to the extent that judgment is entered in the amount of \$169,103.55 in respect of the rental income due under the Lease (hereinafter defined) but is denied as to attorney's fees.

Reference is made to a Standard Form of Lease (the **Original Lease**), dated March 8, 2004, by and among Frits De Knecht and the Estate of Wouter F. Carmans d/b/a F & W Management Company and Tahari Stores WFC, Inc. (the **Tenant**) for 417 West Broadway, New York, New York, as amended by a certain First Lease Amendment Agreement (the **First Amendment**; the Original Lease, as amended by the First Amendment, hereinafter collectively, the **Lease**), dated November 1, 2009 by and among Frits De Knecht and the Estate of Wouter F. Carmans d/b/a F & W Management Company and Tahari Stores WFC, Inc.

Section 98 of the Lease (the **Good Guy Guaranty**) provides:

The Tenant under the lease is Tahari Store WFC, Inc., an affiliate of Elie Tahari Inc. Elie Tahari Inc. by corporate resolution attached, hereby agrees to give a limited corporate guarantee for the rental payments on the Lease. This guarantee shall be for the rental payments due and owing by the Tenant, Tahari Store WFC, Inc. from the date of any non-payment of rent until the date the Tenant or any subtenant or assignee gives up possession of the premises. The limited corporate guarantee for the rental obligation shall cease on the date the Tenant, or any assignee of the Tenant delivers the keys and vacant possession of the premises to the Owner.

The Tenant defaulted under the Lease by failing to pay the rent from January, 2018 through and including July, 2018.

Reference is also made to a letter (the **July 23rd Letter**), dated July 23, 2018, from Gary Fallon, Esq. as attorney for Tahari Store WFC, Inc. and Elie Tahari, Ltd. to Frits De Knecht on behalf of Spring Prince, LLC, Spring Prince, LLC, 419 West Broadway, New York, New York 10012 and Mr. Elie Tahari, ET 417 West Broadway LLC, c/o Elie Tahari Ltd., 501 Fifth Avenue, 2nd Floor, New York, New York 10017. The July 23rd Letter provides as follows:

I am the attorney for the tenant Tahari Store WFC, Inc. which operates the retail store located at 417 West Broadway, New York, as well as Elie Tahari Ltd., the guarantor of the lease originally dated March 8, 2004. (emphasis added)

This letter is to advise you as Owners and Landlords of the Property that the tenant will vacate the premises no later than July 31, 2018 at which time the keys and vacant possession will be delivered to Owner/Landlord. The keys will be delivered to and signed for by ET 417 West Broadway LLC, c/o Elie Tahari Ltd., 51 Fifth Avenue, 2nd Floor, New York, New York 10017. Thereupon the "Good Guy Guarantee" of Elie Tahari Ltd. Shall cease as provided in paragraph 98 of the Lease. (emphasis added).

Following a series of transfers of the Property, Spring Prince LLC (the **Plaintiff**) and ET 417 West Broadway, LLC became fifty percent (50%) tenants in common of the Property.

The Plaintiff now seeks to recover 50% of the unpaid rental payments from the Eli Tahari, Inc. (the **Guarantor**) and legal fees in respect of its 50% tenant in common interested.

In its opposition papers, the Guarantor argues that (i) because the Guarantor never agreed to guaranty the obligations set forth in the First Amendment, the Guarantor is relieved of its obligations under the Lease and (ii) the Plaintiff lacks standing as a co-tenant in common. These arguments are problematic. Significantly, the First Amendment decreased not increased the Tenant's (re: the Guarantor's) obligations. To wit, the First Amendment provided for a substantial reduction in the rent. Therefore, the obligation sought to be enforced against the Guarantor is less than the Guarantor had under the Original Lease. In addition, pursuant to the July 23rd Letter, Mr. Fallon acknowledged on behalf of the Guarantor that the Good Guy Guaranty was in effect and that the obligation under the Good Guy Guaranty would terminate according to its terms when the tenant moved out. And, with respect to standing, as a 50% tenant in common owner, the Plaintiff has standing and only seeks 50% of the defaulted rental payments and legal fees.

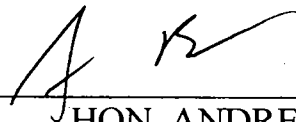
Finally, at oral argument, the Guarantor argued that the Guarantor has the defenses of the Tenant under the Lease, Section 90 of the Lease provides for a 5 day cure period following notice in the event of a monetary default and that the Plaintiff failed to meet its burden for summary judgment in that they have not included with papers indication that the notice was served in accordance with Section 79 of the Rider which required that notice be given by certified mail return receipt requested. The argument however is equally unavailing. The Guarantor's obligation under the Guarantor was for payment of the rent when due. The cure period does not alter the fact that the rent was due on a particular date. Put another way, the Guarantor's obligation does not stem from the failure to cure a default. The Guarantor's obligation stems from the date of non-payment – not, by way of example, the date of non-payment “following any applicable notice and cure period”.

However, nowhere in the Good Guy Guaranty does the Guarantor guaranty the payment of attorney's fees. Accordingly, summary judgment is granted only to the extent of the defaulted rental payments and denied as to the payment of attorney's fees.

ORDERED that the Clerk of the Court is directed to enter judgment in favor of the plaintiff and against the Guarantor in the sum of \$169,103.55 with interest at the rate of nine percent (9%) per annum from July 31, 2018, as calculated by the

Clerk, together with the costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs and that the Plaintiff have execution thereof.

November 14, 2018



HON. ANDREW BORROK
J.S.C.