

Augenbaum v Prince Plaza Dev. Corp.

2019 NY Slip Op 30156(U)

January 15, 2019

Supreme Court, New York County

Docket Number: 654512/2016

Judge: Debra A. James

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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. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

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YEHOASHUA AUGENBAUM,

Plaintiff,

- v -

INDEX NO. 654512/2016
MOTION DATE 06/12/2018
MOTION SEQ. NO. 002

PRINCE PLAZA DEVELOPMENT CORP. and ALBERT NIGRI,

Defendants.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59

were read on this motion to/for REARGUMENT/RENEWAL.

ORDER

Upon the foregoing documents, it is

ORDERED that the motion of defendants for leave to reargue the motion of plaintiff for summary judgment on the complaint for breach of the Settlement Agreement dated November 21, 2014 is DENIED, but to the extent that defendants move to renew, such motion is GRANTED; and it is further

ORDERED that, the Court vacates its prior order, dated November 3, 2017, and denies plaintiff's motion for summary judgment on the complaint; and it is further

ORDERED that the parties are directed to appear for a preliminary conference in IAS Part 59, Room 331, 60 Centre Street, on February 12, 2019, 9:30 AM.

DECISION

The Settlement Agreement of November 14, 2014 states in pertinent part:

In the event the Tenant renews or extends the Lease for a term and at a rent in lieu of the option periods and rent set forth in the Lease, defendants shall notify Plaintiff in writing promptly after such renewal, shall notify Plaintiff in writing (sic) of receipt Tenant's first payment of rent under such renewal, and within 30 days of receipt of Tenant's first payment to rent under such renewal pay to Plaintiff a sum of 3% of the total amount of rent payable over the term of each such renewal or extension. Defendants shall provide plaintiff with a copy of the renewed or extended Lease and all other documents pursuant to which such rental or extension was effected, including but not limited to the rent schedule for such renewal or extension. By way of example only, in the event Tenant renews the Lease for a three year term at an annual rent of \$150,000 within 30 days of the receipt by defendant of Tenant's first payment of rent defendants shall pay to plaintiff the sum of \$13,500.

On the motion at bar, defendants now present new evidence in the form of a Stipulation of Settlement dated July 19, 2017 in Prince Plaza Development Corp. v Home Sweet Furniture Corp., Index No. L&T 66173/17, New York Civil Court, County of Kings (L&T Stipulation). In such Stipulation, Home Sweet Home Furniture Corp. agreed that it owed a current balance of rent and additional rent, including for the month of July, in the amount of \$76,445.05. As the L&T Stipulation states that the monthly rent was \$11,139.45, Home Sweet Home Furniture Corp. was in arrears as of January 2017. Since Home Sweet Home Furniture

did not make its first payment of rent as of January 1, 2017, as required as a condition of renewal under the Stipulation of Settlement between the parties at bar, defendants contend that no renewal option to Home Sweet Home Furniture Corporation was offered to Home Sweet Home Furniture Corporation after January 1, 2017.

The court judicially notices that the electronic court files show that the papers on the prior motion were fully submitted on March 20, 2017. Therefore, as the L&T Stipulation did not exist at that time, the court will consider such new evidence on this motion.

There is no dispute that in accordance with the Stipulation of Settlement between the parties at bar, plaintiff was paid a commission for the one-year renewal of the lease between defendants and Home Sweet Home Furniture as of February 1, 2015, and that such renewal gave Home Sweet Home Furniture Corporation one option to renew the lease for an additional nine years, conditioned upon Home Sweet Home Furniture being current on its rent as of January 1, 2016¹. Coupled with the new evidence that under the L&T Stipulation, as of January 1, 2017, Home Sweet Home Furniture Corporation owed rent at a monthly base rent rate higher than that set forth in the nine year renewal option,

¹ Plaintiff contends that the phrase “currently in default” means that Home Sweet Home Furniture Corporation entered a nine-year renewal lease commencing on February 1, 2016, as of January 31, 2015. Such interpretation vitiates the condition, an unreasonable reading of such provision.

there is a question of fact whether there was any renewal lease between Home Sweet Home Furniture Corporation and defendants as of February 1, 2016, for which plaintiff would be owed a commission, which must be resolved at trial.

This court agrees with plaintiff that to the extent that defendants seek to reargue, their reargument motion is untimely. See CPLR 2221(d)(3).

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| <u>1/15/2019</u> | | | <u>DEBRA A. JAMES, J.S.C.</u> |
| DATE | | | |
| CHECK ONE: | <input type="checkbox"/> CASE DISPOSED | <input type="checkbox"/> DENIED | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION |
| | <input type="checkbox"/> GRANTED | | <input checked="" type="checkbox"/> GRANTED IN PART |
| APPLICATION: | <input type="checkbox"/> SETTLE ORDER | | <input type="checkbox"/> OTHER |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN | | <input type="checkbox"/> FIDUCIARY APPOINTMENT |
| | | | <input type="checkbox"/> REFERENCE |