

408 Webster Assn., LLC v McGinnis

2019 NY Slip Op 30480(U)

January 2, 2019

Supreme Court, Queens County

Docket Number: 705395/16

Judge: Janice A. Taylor

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This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE JANICE A. TAYLOR IAS Part 15
Justice

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408 WEBSTER ASSOCIATION, LLC,

Plaintiff(s),

Index No.:705395/16

Motion Date:10/2/18

- and -

Motion Cal. No.:49

Motion Seq. No: 1

BRIAN MCGINNIS and MAXINE GOMEZ,

Defendant(s).

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The following papers numbered 1 - 9 read on this motion by defendant Maxine Gomez for an order dismissing the complaint or, in the alternative, granting summary judgment.

	<u>Papers Numbered</u>
Notice of Motion-Affirmation-Exhibits-Service.....	1 - 4
Affirmation in Opposition-Exhibits-Service.....	5 - 7
Reply Affirmation-Service.....	8 - 9

Upon the foregoing papers it is **ORDERED** that the motion is decided as follows:

This is an action for breach of contract. It is uncontested that, on or about January 25, 2013, defendant Brian McGinnis and plaintiff executed a lease for the property located at 396 East 199th Street, Apartment 52, Bronx, New York. It is also uncontested that defendant Maxine Gomez ("Gomez") signed a guaranty for the subject lease.

Defendant Gomez now moves, pursuant to CPLR §3211(a)(7) for dismissal of the complaint against her. The movant asserts that plaintiff has failed to state a cause of action against her. It is well-settled that a motion made pursuant to CPLR §3211(a)(7) can only be granted if, from the pleadings' four corners, factual allegations are not discerned which manifest any cause of action cognizable at law. In furtherance of this task, the court liberally construes the complaint, accepts as true the facts

alleged in the complaint and any submissions in opposition to the dismissal motion, and accords the plaintiff the benefit of every possible favorable inference (See, *511 W. 232nd Owners Corp. v. Jennifer Realty Co.*, 98 N.Y.2d 144 [2002]).

A review of the instant complaint reveals that plaintiff has stated cognizable causes of action against defendant Gomez. New York courts have ruled that, in deciding a motion made pursuant to CPLR §3211(a)(7), a court will decide whether a complaint makes out any cognizable cause of action, not whether a plaintiff will ultimately win on the merits of the allegations contained therein (see, *Stukuls v. State of New York*, 42 NY2d 272 [1977]; *Jacobs v. Macy's East*, 262 AD2d 607 [2d Dept. 1999]). Accordingly, that portion of the instant motion which seeks dismissal of the complaint, pursuant to CPLR §3211(a)(7) is denied.

Defendant Gomez's motion, pursuant to CPLR §3212, for summary judgment and dismissal of the complaint is also denied. CPLR §3212(b) requires that for a court to grant summary judgment the court must determine if the movants' papers justify holding as a matter of law, that the cause of action or defense has no merit. The evidence submitted in support of the movants must be viewed in the light most favorable to the non-movant (see, *Grivas v. Grivas*, 113 A.D.2d 264, 269 [2d Dept. 1985]; *Airco Alloys Division, Airco Inc. v. Niagara Mohawk Power Corp.*, 76 A.D.2d 68 [4th Dept. 1980]; *Parvi v. Kingston*, 41 N.Y.2d 553, 557 [1977]).

CPLR §3212 also mandates that a motion for summary judgment must be supported by the pleadings, an affidavit from someone with knowledge of the facts, and any other available proof (see, *CPLR §3212*).

In support of the instant motion, defendant Gomez states that, although she initially agreed to guaranty the subject lease agreement, she informed representatives for the plaintiff of her intention to rescind her guaranty at the expiration of the one year lease. Defendant Gomez states that, on or around December, 2013, she contacted the property manager for the plaintiff and stated that she was no longer able or willing to be the guarantor for any renewals of the subject lease. Thus, the movant asserts that, her contractual relationship with the parties ended in January, 2014, following the expiration of the original lease. However, a review of the guaranty reveals that it states, in relevant part,

The Guarantor understands and acknowledges that the Owner would not rent the subject apartment to the Tenant unless he/she guaranteed the Tenant's performance of all monetary and non-monetary obligations pursuant to the lease. The

Guarantor further agrees that this guaranty shall remain and continue in full force and effect during any subsequent renewal, change or extension of the lease, and any period of occupancy beyond the lease or renewal term for an aggregate period not to exceed 25 years. (Guaranty, Paragraph three).

Although the movant asserts that she sought to be released as guarantor, she has not offered this court any evidence that plaintiff actually agreed to release her as guarantor. Thus, defendant Gomez has not demonstrated that no material issues remain as to her liability in this action. Accordingly, the instant motion is hereby denied in its entirety.

Dated: January 2, 2019



JANICE A. TAYLOR, J.S.C.

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FILED
JAN 10 2019
COUNTY CLERK
QUEENS COUNTY