

Piedmont 60 Broad St., LLC v First Capital Real Estate Advisors, LP

2019 NY Slip Op 30911(U)

March 29, 2019

Supreme Court, New York County

Docket Number: 655334/2017

Judge: Anthony Cannataro

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ANTHONY CANNATARO PART IAS MOTION 41EFM

Justice

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INDEX NO. 655334/2017

PIEDMONT 60 BROAD STREET, LLC,

MOTION DATE 12/17/2018

Plaintiff,

MOTION SEQ. NO. 002

- v -

FIRST CAPITAL REAL ESTATE ADVISORS, LP, SUNEET SINGAL

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41

were read on this motion to/for JUDGMENT - DEFAULT.

In this commercial landlord/tenant action, plaintiff Piedmont 60 Broad Street, LLC moves for entry of a default judgment against defendant First Capital Real Estate Advisors, LP and for an inquest to determine the amount of damages, attorneys' fees and expenses due to plaintiff. Plaintiff also seeks summary judgment on its first cause of action as against defendant Suneet Singal; and for summary judgment as to liability on the second, third, and fourth causes of action against Singal.

Defendant First Capital Real Estate Advisors, LP was a commercial office tenant in plaintiff's building located at 60 Broad Street, New York, New York pursuant to a lease between the parties. A lease agreement for the subject premises was entered into on March 4, 2015 between plaintiff as landlord and United Realty Advisors, LP as tenant. First Capital's interest in the lease was assigned to defendant by a consent to

assignment dated March 21, 2016. As an inducement to enter the assignment, Suneet Singal (“guarantor”) guaranteed the performance of all of defendant’s obligations in a written guaranty.

For the months of December 2016 through February 2017, tenant failed to timely pay rent for the premises. Based on that default, plaintiff terminated the lease, commenced a summary holdover proceeding in the Civil Court of the City of New York (Index No. 059887/17), obtained a possessory judgment, and evicted tenant without prejudice to pursuing a plenary action for damages. Plaintiff then commenced this action seeking to recover damages consisting of (1) rent and use and occupancy arrears accruing through the date plaintiff recovered possession; (2) money damages due under the lease based on termination thereof; and (3) attorneys’ fees and expenses.

Plaintiff is entitled to a default judgment as against tenant First Capital Real Estate Advisors. When a corporate defendant fails to appear by attorney as directed by the court and required by CPLR 321(a), a default judgment is proper (*see Mail Boxes Etc. USA, Inc. v Higgins*, 281 AD2d 176 [1st Dept 2001]; *see also World on Columbus, Inc. v L.C.K. Rest. Group, Inc.*, 260 AD2d 323, 324 [1st Dept 1999]). Here, tenant failed to retain and substitute new counsel to represent it in this action for more than three months since its attorney was relieved. Thus, a default judgment will be entered against the corporate tenant.

Plaintiff also moves for summary judgment against Suneet Singal as guarantor.

“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 demonstrate the absence of any material issues of fact” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Once the proponent has met this showing, “the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*Id.*). “On a motion for summary judgment to enforce an unconditional guaranty, the creditor must prove the existence of the guaranty, the underlying debt and the guarantor’s failure to perform under the guaranty” (*Davimos v Halle*, 35 AD3d 270, 272 [1st Dept 2006]).

Plaintiff is entitled to summary judgment against the guarantor on the first cause of action for rent arrears and/or use and occupancy. Plaintiff is also entitled to partial summary judgment as to liability on its second, third, and fourth causes of action for damages, attorneys’ fees, and expenses. The guaranty executed here is attached as Exhibit C to the affidavit of Frances Wright submitted by plaintiff. The underlying debt includes unpaid rent for the period of December 1, 2016 through and including the termination date, as well as holdover use and occupancy from the termination date through the recovery date, totaling \$556,387.30. The underlying debt also includes damages as provided for in Section 19.3 of the lease agreement, which contemplates

that landlord has the right to recover damages from default or termination including additional rent such as real estate tax and electrical charges, to be determined in a hearing.

Plaintiff is also entitled to attorneys' fees and expenses from guarantor as provided for under Section 4 of the guaranty agreement. It is evident that the guarantor has failed to perform under the guaranty, as neither the tenant nor the guarantor has paid any portion of arrears, use and occupancy, damages, attorneys' fees, or expenses. Thus, the guaranty is enforceable, and summary judgment should be granted to plaintiff on the first cause of action and partial summary judgment as to liability for the second, third, and fourth causes of action. Accordingly, it is

ORDERED that the plaintiff's motion for a default judgment against defendant First Capital Real Estate Advisors, LP is granted;

ORDERED that the plaintiff's motion for summary judgment on the first cause of action of the complaint as against defendant Suneet Singal herein is granted on default, and the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendant Suneet Singal in the sum of \$556,387.30, with interest at the rate of 9% per annum from the date of recovery, until the date of the decision 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

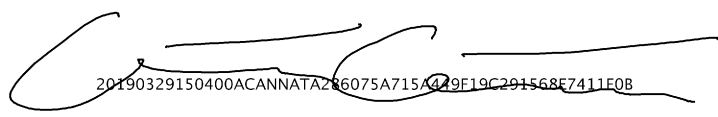
ORDERED that the plaintiff's motion for summary judgment as to liability on the second, third, and fourth causes of action of the complaint against Suneet Singal is granted as to liability; and it is further

ORDERED that an immediate trial on damages, attorneys' fees, and expenses shall be had before the court; and it is further

ORDERED that plaintiff shall, within 20 days from entry of this order, serve a copy of this order with notice of entry upon counsel for all parties hereto 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 before the undersigned; and it is further

ORDERED that such service upon the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

3/29/2019
DATE



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ANTHONY CANNATARO, 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:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE