

Karma Props. LLC v Lilok, Inc.
2019 NY Slip Op 31190(U)
April 24, 2019
Supreme Court, New York County
Docket Number: 651385/2017
Judge: Robert R. Reed
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ROBERT R. REED PART 43

Justice

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KARMA PROPERTIES LLC, KPP PROPERTIES LLC, KPP2 PROPERTIES LLC

Plaintiff,

- v -

LILOK, INC., JACQUELINE A. ROGERS,

Defendant.

INDEX NO. 651385/2017

MOTION DATE 08/13/2018

MOTION SEQ. NO. 002

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54

were read on this motion for JUDGMENT - SUMMARY

Upon the foregoing documents, it is ordered that this motion is granted.

Plaintiffs, collectively as landlord, and defendant business entity, Lilok, Inc (Lilok), entered into a lease agreement commencing May 1, 2014. Defendant Jacqueline Rogers (Rogers) entered into a guaranty agreement regarding Lilok's rental obligations which was made a part of the lease. Thereafter, the parties entered into an amendment to the lease, which commenced on April 1, 2015 and extended the lease term to last until March 31, 2017. Plaintiffs filed a non-payment proceeding against Lilok, and in response Lilok vacated the premises on or about February 28, 2017, before the lease expired.

Plaintiffs move, pursuant to CPLR 3211(b) and CPLR 3212, to (1) strike defendant's defenses and counterclaims, (2) for summary judgment in favor of plaintiff against both defendants, and (3) for attorneys' fees. In response to the motion, defendant Rogers alleges that she did not sign the amendment to the lease and the signature purporting to be hers was not authorized by her. Defendant Lilok argues that, during their occupancy of the premises, plaintiff breached their obligation as landlord because there were disruptions to the elevator service, toilet

facilities and electric service which affected the operation of Liloc's business, and argues further that there is an issue of fact regarding the amount of rent due.

The proponent of a motion for summary judgment carries the initial burden of production of evidence as well as the burden of persuasion. *Alvarez v Hospital*, 68 NY2d 320. Thus, the moving party must tender sufficient evidence to demonstrate as a matter of law the absence of a material issue of fact. Once that initial burden has been satisfied, the "burden of production" (not the burden of persuasion) shifts to the opponent, who must now go forward and produce sufficient evidence in admissible form to establish the existence of a triable issue of fact.

Plaintiffs-movants attach as exhibits, a copy of the original signed lease, the amended lease, rental ledger, and an attorney legal charges register. Defendants have not submitted any evidence to rebut plaintiffs' submissions. Plaintiffs have submitted adequate documents to prove prima facie that there was a failure by the defendants to meet their obligations under the lease and guaranty. "Once the lease is executed, the lessee's obligation to pay rent is fixed according to its terms ... Once the tenant abandoned the premises prior to the expiration of the lease, however, the landlord was within its rights under New York Law to do nothing and collect the full rent due under the lease." *Holy Properties Limited, L.P. v Kenneth Cole Productions, Inc.*, 87 N.Y.2d 130. As a result of defendants' failure to meet their obligations under the lease and guaranty, plaintiffs will be entitled to summary judgment on their claims, assuming defendants have not opposed the motion with admissible evidence establishing the existence of an actual controversy.

Regarding defendants' first defense and counterclaim alleging plaintiffs' breach of their collective duties and obligations as landlord, such defense and counterclaim are barred by the explicit language of the lease, and as a consequence, are hereby stricken.

Regarding defendants' second defense and counterclaim alleging negligence, the proffered claim is conclusory and inadequate to raise an issue, and, thus, can be stricken without prejudice to defendants' ability to raise such a claim, supported by factual detail, in a separate civil action. Consequently, the second defense and counterclaim are hereby stricken.

Regarding defendants' third defense and counterclaim, requesting the court order return of defendant Lilok's security deposit, a return of the deposit is only appropriate where all requirements of the lease have been met. In the circumstances present here, the security deposit can be used by plaintiffs for unpaid rental liabilities and other unmet expenses expressly stated in the lease -- which plaintiffs have done here. Thus, the third defense and counterclaim are stricken.

Regarding plaintiffs' request for attorneys' fees, the amount provided in the attorney legal charges register submitted in support of plaintiffs' application does not appear inflated or out of proportion to the nature of the dispute or the amount in controversy. Defendants have presented nothing by way of documentary proof suggesting otherwise. This request, therefore, is granted.

Accordingly, it is

ORDERED that each of the defenses and counterclaims is stricken; and it is further

ORDERED that summary judgment in favor of plaintiffs against defendant Lilok on the first cause of action in the amount of \$38,413.00 is granted; and it is further

ORDERED that summary judgment in favor of plaintiffs against defendant Lilok on the second cause of action in the amount of \$3,855.00 is granted; and it is further

ORDERED that summary judgment in favor of plaintiffs against defendant Rogers on the third cause of action in the amount of \$42,268.00 is granted; and it is further

ORDERED that summary judgment in favor of plaintiffs against defendant Lilok and defendant Rogers on the fourth cause of action for costs and attorneys' fees in the amount of \$7,352.50 is granted; and it is further

ORDERED, therefore, that the Clerk is directed to enter judgment accordingly in favor of plaintiffs and against defendants, jointly and severally, in the amount of \$42,268.00, with interest from February 28, 2017, as taxed by the Clerk, together with an award of attorneys' fees in the amount of \$7,352.50, with interest from November 20, 2017, as taxed by the Clerk, together with the costs and disbursements of this action.

This constitutes the decision and order of the court.

4/24/2019
DATE


CHECK ONE: CASE DISPOSED DENIED

APPLICATION: GRANTED OTHER

CHECK IF APPROPRIATE: SETTLE ORDER REFERENCE

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT

NON-FINAL DISPOSITION SUBMIT ORDER


ROBERT R. REED, J.S.C.