

West-Chambers St. Assoc., LLC v Mesbah
2019 NY Slip Op 33147(U)
September 25, 2019
Supreme Court, New York County
Docket Number: 651907/2018
Judge: Nancy M. Bannon
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: <u>HON. NANCY M. BANNON</u> <p style="text-align: right; margin-right: 50px;"><i>Justice</i></p> <p style="text-align: right; margin-right: 50px;">-----X</p> <p>WEST-CHAMBERS STREET ASSOCIATES, LLC, 200 CHAMBERS, LLC</p> <p style="text-align: center; margin-left: 100px;">Plaintiff,</p>	PART IAS MOTION 42EFM INDEX NO. <u>651907/2018</u> MOTION DATE <u>6/6/2019</u> MOTION SEQ. NO. <u>001</u>
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- v -

BEHNAZ MESBAH, as Executor of the Estate
of SIAVASH S. OKHRAVI a/k/a STEVE OKHRAVI a/k/a
STEVEN OKHRAVI and PINNACLE MEDICAL, P.C.,

Defendant.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29
were read on this motion to/for SUMMARY JUDGMENT.

In this action to recover, *inter alia*, unpaid rent and additional rent from defendant Pinnacle Medical, P.C. a former tenant, and defendant Behnaz Mesbah, as Executor of the Estate of Siavash S. Okhravi, the lease guarantor, the plaintiffs, 200 Chambers LLC, and its predecessor in interest, plaintiff West-Chambers Associates, LLC, move for summary judgment against both defendants pursuant to CPLR 3212. No opposition was submitted. By an order dated July 17, 2019, the answer of defendant Pinnacle Medical, P.C. was stricken for failure to appear by counsel (CPLR 321[a]) at multiple conferences. In their answer, the defendants admitted that Behnaz Mesbah was the executor of the estate of Siavash S. Okhravi. Counsel for defendant Behnaz Mesbah was relieved by order dated April 24, 2019.

On a motion for summary judgment, the moving party must make a *prima facie* showing of its entitlement to judgment as a matter of law by submitting evidentiary proof in admissible form sufficient to establish the absence of any material, triable issues of fact. See CPLR 3212(b); Jacobsen v New York City Health & Hosps. Corp., 22 NY3d 824, 833 (2014); Alvarez v Prospect Hosp., 68 NY2d 320, 324 (1986); Zuckerman v City of New York, 49 NY2d 557, 562 (1980). Once such a showing is made, the opposing party, to defeat summary judgment, must

raise a triable issue of fact by submitting evidentiary proof in admissible form. See Alvarez, supra, at 324; Zuckerman, supra, at 562. Here, the plaintiffs have met their burden on the motion as to both defendants, by submitting the pleadings, the signed subject lease and guaranty agreements, real estate tax statements, common charge invoices and water bills, and an affidavit of Frances Delgario, managing director of the managing agent of the property, Jack Resnick & Sons, Inc.

It is well settled that a lease is a contract which is subject to the same rules of construction as any other agreement. See George Backer Mgt. Corp. v Acme Quilting Co., Inc., 46 NY2d 211 (1978); 1009 Second Avenue Assocs. v New York City Off-Track Betting Corp., 248 AD2d 106 (1st Dept. 1998); New York Overnight Partners, L.P. v Gordon, 217 AD2d 20 (1st Dept. 1995). Thus, a written lease “agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms.” Greenfield v Philles Records, Inc., 98 NY2d 562, 569 (2002); see MHR Capital Partners LP v Presstek, Inc., 12 NY3d 640 (2009); Ashwood Capital, Inc. v OTG Management, Inc., 99 AD3d 1 (1st Dept. 2012); 150 Broadway N.Y. Associates, LP v Bodner, 14 AD3d 1 (1st Dept. 2004). The plaintiffs have met their burden on the cause of action in the complaint alleging breach of contract against defendant Pinnacle, since its proof establishes, *prima facie*, (1) the existence of a contract, (2) the plaintiff’s performance under the contract; (3) the defendant’s breach of that contract, and (4) resulting damages. See Morpheus Capital Advisors LLC v UBS AG, 105 AD3d 145 (1st Dept. 2013).

With proof in admissible form, the plaintiffs established, *inter alia*, that the former tenant, defendant Pinnacle signed a lease with the plaintiff West-Chambers Associates on June 28, 2010, for a ten-year term, vacated the subject commercial premises approximately two years prior to expiration of the lease term, on May 8, 2018, and owed \$119,575.68 in unpaid rent and additional rent as of that date. The space remained vacant after Pinnacle Medical P.C. vacated. The plaintiffs also established that, pursuant to the lease terms, defendant Pinnacle Medical, P.C. also owed rent for June 2018, in the sum of \$29,968.65 and from July 1, 2018, through February 28, 2019, the month the instant action was commenced, in the sum of \$245,130.64. The plaintiffs thus seek \$394,674.97 from Pinnacle in rent. The plaintiffs also seek and have established entitlement to additional rent of \$13,049.95 in real estate taxes, \$3,286.76 in common charges and \$91.89, for water charges, for a total of \$411,103.57. In failing to oppose the motion, defendant Pinnacle has failed to raise any triable issue of fact.

Furthermore, “[w]here a guaranty is clear and unambiguous on its face and, by its language, absolute and unconditional, the signer is conclusively bound by its terms absent a showing of fraud, duress or other wrongful act in its inducement.” Citibank, N.A. v Uri Schwartz & Sons Diamonds Ltd., 97 AD3d 444, 446-447 (1st Dept. 2012), quoting National Westminster Bank USA v Sardi's Inc., 174 AD2d 470, 471 (1991). The terms of the subject limited guaranty agreement are clear, unambiguous, absolute and unconditional. By failing to oppose the motion, the defendants have failed to show any fraud, duress or other wrongful act on the part of the plaintiffs, or otherwise raise any triable issue of fact. See Alvarez, supra, at 324; Zuckerman, supra, at 562. The plaintiffs’ proof establishes that the defendant guarantor is liable for \$119,575.68 in rent, calculated through May 8, 2018, the date Pinnacle vacated the premises, as per the terms of the guaranty. The plaintiffs also established that the defendant guarantor owes the same amounts in additional rent - \$13,049.95 in real estate taxes, \$3,286.76 in common charges and \$91.89, for water charges - for a total of \$136,004.28.

Finally, the plaintiffs have established that they are entitled to attorney’s fees under the lease terms but they have not submitted billing records, invoices or other proof to support any amount. Thus, that branch of the motion may be renewed on proper papers, if done within 30 days of the date of entry of this order.

Accordingly, it is

ORDERED that the plaintiffs’ motion for summary judgment is granted to the extent indicated, and it is further,

ORDERED that the Clerk shall enter judgment in favor of the plaintiffs and against the defendant Pinnacle Medical, P.C. in the sum of \$411,103.57, plus costs and statutory interest from July 1, 2017, and it is further

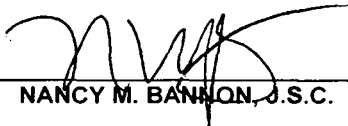
ORDERED that Clerk shall enter judgment in favor of the plaintiffs and against the defendant Behnaz Mesbah, as Executor of the Estate of Siavash S. Okhravi, in the sum of \$136,004.28, plus costs and statutory interest from July 1, 2017, and it is further

ORDERED that the plaintiffs' application for attorney's fees is denied without prejudice to renew on proper papers, within 30 days of the date of entry of this order, and it is further,

ORDERED that the compliance conference previously scheduled for December 5, 2019, is canceled.

This constitutes the Decision and Order of the court.

9/25/2019
DATE


NANCY M. BANNON, J.S.C.

HON. NANCY M. BANNON

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: