

Traska v Helm

2020 NY Slip Op 31096(U)

April 27, 2020

Supreme Court, New York County

Docket Number: 160523/2017

Judge: James E. d'Auguste

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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. JAMES EDWARD D'AUGUSTE PART IAS MOTION 55EFM

Justice

	X	INDEX NO.	<u>160523/2017</u>
THOMAS TRASKA, DONALD JONES		MOTION DATE	<u>10/16/2019</u>
Plaintiff,		MOTION SEQ. NO.	<u>003</u>

- v -

MARTIN HELM, INNA HELM AKA IVANCHENKO,

**DECISION + ORDER
ON MOTION**

Defendant.

-----X

The following e-filed Documents, listed by NYSCEF Document number (Motion 003) 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 110

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

Upon the foregoing Documents, the motion is resolved as follows:

Background

This action arises out of a sublease between plaintiffs, sublessors, and defendants, sublessees. On June 1, 2004, plaintiffs, Thomas Traska and Donald Jones, entered into a one-year sublease with defendants Martin and Ina Helm. This lease was renewed thirteen times until the final renewal period ended on May 31, 2016. On June 1, 2016, defendants failed to vacate the premises and plaintiffs commenced a holdover action in the New York County Civil Court under Index No. 65705/2016. On July 14, 2016, the action was settled through a stipulation (the "First Stipulation") [NYSCEF Doc. No. 77]. The First Stipulation required that defendants vacate the premises by August 31, 2016. *Id.* Defendants failed to vacate and filed an Order to Show Cause to vacate the First Stipulation.

On January 26, 2017, the parties entered into another stipulation (the "Second Stipulation") [NYSCEF Doc. No. 79] to extend defendants' possession of the subject premises until May 31,

2017. The stipulation stated that if the parties failed to vacate by May 31, 2017, judgment shall be entered for use and occupancy until the last day of the month where the petitioners still had possession. *Id.* Further, the Second Stipulation awarded attorney's fees arising after January 26, 2017 in relation to defendants' possession of the Subject Premises. *Id.* Finally, the stipulation provided that in the event of a default, plaintiff will indemnify all costs, fees, and attorney's fees assessed by the co-op board as a result of defendants' breach of the stipulation. *Id.*

Defendants defaulted on the Second Stipulation. After the default, defendants filed a second *pro se* Order to Show Cause to vacate the Second Stipulation. In response to the second Order to Show Cause, the New York City Civil Court entered judgment for plaintiffs for use and occupancy and legal fees through June 2017 in the amount of \$18,000 [NYSCEF Doc. No. 80]. On July 7, 2017, defendants were evicted from the subject premises.

Plaintiffs now seek summary judgment pursuant to CPLR 3212(a) for the First through Seventh Causes of Action. Further, plaintiffs request a hearing to determine legal fees incurred as a result of the ninth cause of action. Finally, plaintiffs request to sever, without prejudice, plaintiffs' eighth cause of action should the Court grant summary judgment for the first seven causes of action.

Discussion

Summary judgment will be granted if there are no material and triable issues of fact. *Sillman v. Twentieth Century-Fox Film Coro.*, 3 N.Y.2d 395, 404 (1957). Once the moving party has made a *prima facie* showing of entitlement to summary judgment, the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action. *Alvarez v. Prosoect Hosoe.*, 508

N.Y.S.2d 923 (1986). Mere conclusions, expressions of hope, or unsubstantiated allegations or assertions, are insufficient. See *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562, (1980).

Plaintiffs first cause of action seeks \$8,500 in use and occupancy for the month of July 2017. The Court finds that there is no material fact at issue for this claim. It is undisputed that defendants vacated the premises on July 7, 2017. Indeed, defendants do not dispute they owe for use and occupancy for the month of July 2017, but rather, challenge the amount. Plaintiffs contend that they are owed use and occupancy in the amount of \$8,500, the amount provided for in the Second Stipulation. [See, NYSCEF Doc. No. 79]. Defendants claim that the amount should be prorated at \$7,000, the rent amount under the previous leases. The Court disagrees with defendants and finds the amount of use and occupancy to be \$8,500. The language of the Second Stipulation is clear and unambiguous that if defendants' default on the terms of the stipulation they will be subject to a rate of \$8,500 per month and that amount will not be prorated. Defendants did not meet their obligations under the agreement when they failed to vacate the subject premises at the mutually agreed upon date. Therefore, there is no material issue as to the liability for, and amount of, use and occupancy due and owing by defendants. Accordingly, summary judgment is granted to plaintiffs on the first cause of action in the amount of \$8,500.00.

In the second cause of action, plaintiffs seek \$2,250 in moveout fees. This amount represents a \$750 fee for each of the three dates defendants agreed to move out. The first date was at the expiration of the lease on June 1, 2016. The second date reflects the First Stipulation's move out date of August 31, 2016. The third and final date represents the Second Stipulation moving date of May 31, 2017. Rule 26 of the co-op charter states: "A move in/out deposit of \$400.00 and a non-refundable move-in/move out fee of \$750 payable to 32 Gramercy Park Owners Corporation must be submitted to the managing agent at least five-days of the scheduled move." [NYSCEF

Doc. No. 107]. Here, the fee was incurred three separate times for a total of \$2,250. There is no triable issue of fact on the issue of liability or damages, and summary judgment is granted on the second cause of action in the amount of \$2,250.00.

In their third cause of action, plaintiffs seek \$7,000 in moving and storage costs in relation to the eviction. The sublease explicitly states that in the event items are left in the apartment, the “owner may either discard the property or store it at your expense.” [NYSCEF Doc. No. 75]. The Court finds that there is no triable issue of fact as to liability. Defendants’ liability for moving and storage expenses is clear and unambiguous under both the sublease and the Second Stipulation [NYSCEF Doc. No. 79]. In particular, the second stipulation rendered defendants liable to Plaintiffs for “all use & occupancy, fees, costs and expenses in the event of further default” in performing under that Stipulation. *Id.*

As to the issue of damages for the third cause of action, the Court finds that plaintiffs are entitled as a matter of law to \$3,500 of the requested damages. Here, plaintiffs provide an invoice receipt that itemizes the moving and storage of fees from 32 Gramercy Apartment 14D to their facilities. The stated amount on the invoice is \$3,500. [NYSCEF Doc. No. 96]. The itemized receipt also contains defendants’ address, a unique invoice number and the charges marked as paid. *Id.* Accordingly, summary judgment is granted on the issue of liability for the third cause of action and orders that the issue of damages be referred to a special referee.

Plaintiffs fourth cause of action is for \$3,200 allegedly paid by plaintiffs to remove debris from the subject apartment. The Court finds that summary judgment is warranted on the issue of liability. The Second Stipulation explicitly states that defendants will be responsible for any “damage, costs, fees, attorney’s fees or fines” resulting from defendants’ occupancy of the apartment. [NYSCEF Doc. No. 79]. In light of the stipulation, there are no material questions as

to the liability of defendants. Accordingly, summary judgment is granted on the issue of liability for the fourth cause of action. The Court orders that the issue of damages be referred to a special referee to hear and report.

Plaintiffs fifth cause of action seeks payment of \$500 for cleaning fees. The Court finds that summary judgment is appropriate on the issue of liability. Similar to causes of action three and four, the stipulation expressly holds the defendant liable for “fees”. [NYSCEF Doc. No. 79]. Under the plain meaning of the agreement between the parties, defendants cannot escape liability. However, there are questions as to the extent and scope of damages. Thus, the Court orders a special referee to hear and report on the issue of damages for the fifth cause of action.

In their sixth cause of action, plaintiffs seek to recover past legal fees resulting from defendants’ eviction. Here, plaintiffs provide sufficient evidence that the attorney’s fees are recoverable. The Second Stipulation explicitly allows for plaintiff to recover fees. [NYSCEF Doc. No. 79]. Therefore, there is no triable issue of fact as to liability. The Court orders that the issue of damages for the sixth cause of action be referred to a special referee to hear and report.

The seventh cause of action seeks \$1,075 for damages that defendants allegedly caused to a carved keystone female head. Defendants contend that the head was damaged by workers from NABET-CWA Local 11 years ago and reported such to the building. The Court denies summary judgment on the seventh cause of action and severs this claim for further assessment by the Court.

In their eighth cause of action, plaintiffs pray for repayment of alleged renovation and restoration expenses incurred as a result of defendants’ use of the property. The Court denies summary judgement on the eighth cause of action and orders this cause of action severed along with the seventh cause of action.

Finally, the ninth cause of action for legal fees is granted as to liability without opposition and is referred to a special referee to hear and report on damages.

ORDERED, that plaintiffs' motion for summary judgment is granted on the first cause of action in the amount of \$8,500.00.

ORDERED, that plaintiffs' motion for summary judgment is granted on the second cause of action in the amount of \$2,250.00.

ORDERED, that plaintiffs' motion for summary judgment is granted as to liability on the third, fourth, fifth, sixth and ninth causes of action, and the issue of damages is referred to a special referee to hear and report; and it is further

ORDERED, that plaintiffs' motion for summary judgment on the seventh and eighth causes of action are denied, and these causes of action are ordered severed from the action.

All other relief sought in the motion, if any, is denied.

This is the decision and order of the Court.

Settle order directly to Part 55 via email to jszellan@nycourts.gov.

4/27/2020

DATE

JAMES EDWARD D'AUGUSTE, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE