

10 W. 56th St., LLC v John Barrett W. 56th St., LLC

2020 NY Slip Op 31300(U)

April 30, 2020

Supreme Court, New York County

Docket Number: 652106/2017

Judge: Nancy M. Bannon

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. NANCY M. BANNON PART IAS MOTION 42EFM

Justice

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10 WEST 56TH STREET, LLC,
Plaintiff,

- v -

JOHN BARRETT WEST 56TH STREET, LLC,
and JOHN BARRETT HOLDINGS, LLC
Defendant.

INDEX NO. 652106/2017
MOTION DATE 02/26/2020, 02/26/2020
MOTION SEQ. NO. 001 001

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39

were read on this motion to/for DISMISS DEFENSE.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39

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

In this breach of contract action seeking damages for unpaid rent and additional rent in the sum of \$560,598.54, the plaintiff, owner of real property at 10 West 56th Street in Manhattan, moves pursuant to CPLR 3212 for summary judgment on the complaint as against the defendants, former commercial tenant and guarantor on the lease, and dismissal of the defendants' affirmative defenses. The defendants oppose the motion. The motion is granted.

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 plaintiff has submitted, *inter alia*, the subject lease and guaranty agreements, the summons and complaint, verified by Roxana Q Girand, an authorized signatory for the plaintiff owner, an affidavit of Girand, the subject lease and guaranty agreements, an affirmation of counsel, and a rent ledger. By this proof, the plaintiff established, *inter alia*, that defendant John Barrett West 56th Street LLC, the tenant, entered into a commercial lease with a term from December 29, 2014, through December 29, 2028, and that defendant John Barrett Holdings, LLC, executed a “good guy” guaranty on the lease, John Barrett signing as principal. The tenant began to default on the lease in 2016, and the owner commenced a nonpayment proceeding in the Civil Court. The tenant vacated the premises in December 2016, without notice to the plaintiff, owing arrears, and while the nonpayment proceeding was pending.

By order of the Appellate Term, First Department, dated January 11, 2017, the plaintiff was awarded a judgment of possession and a money judgment in the sum of \$638,290.34, representing the unpaid rent and additional rent through June 1, 2016. The plaintiff’s proof shows that the defendants’ liability under the lease and guaranty terms totaled \$198,888.88 as of December 2016, when they vacated. The plaintiff reduces the amount sought in the complaint by the earlier money judgment arising from the non-payment proceeding, now demanding \$560,598.54.

The plaintiff’s proof establishes, *prima facie*, the necessary elements of a breach of contract claim: (1) the existence of a contract, (2) the plaintiff’s performance under the contract, (3) the defendants’ breach of that contract, and (4) resulting damages. See Harris v Seward Park Housing Corp., 79 AD3d 425 (1st Dept. 2010). The plaintiff’s proof also establishes that the defendant guarantor was liable for all unpaid rent and additional rent under the terms of the separate guaranty. It is well settled that “[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 defendants have failed to show any fraud, duress or other wrongful act on the part of the plaintiff, or otherwise raise any triable issue of fact as to the guaranty. See Alvarez, supra, at 324; Zuckerman, supra, at 562. Nor have the defendants’ raised any other triable issue to warrant denial of summary judgment on that cause of action or the cause of action for breach of contract.

The defendants are correct, however, in arguing that there can be no recovery on the second cause of action, for quantum meruit, a quasi contract, in light of the parties' express written agreements. The plaintiff's quantum meruit cause of action seeks recovery for the same damages as its cause of action alleging breach of contract. It is, therefore, subject to dismissal as duplicative of that claim. See Sebastian Holdings, Inc. v Deutsche Bank, AG., 108 AD3d 433, 433 (1st Dept 2013).

The plaintiff also seeks summary judgment on its third cause of action seeking contractual attorneys fees, and has established entitlement to that relief. Attorneys' fees are recoverable, where, as here, there is a specific contractual provision for that relief. See Flemming v Barnwell Nursing Home and Health Facilities, Inc., 15 NY3d 375 (2010); Coopers & Lybrand v Levitt, 52 AD2d 493 (1st Dept. 1976). However, no documentation or affirmation supporting any particular award is submitted. Thus, that portion of the motion is granted and the plaintiff may submit supplemental papers within 60 days of the date of this order.

In their answer, the defendants list 33 affirmative defenses, all without any detail or factual allegations. Thus, that portion of the plaintiff's motion that seeks dismissal of the affirmative defenses is granted. See U.S. Bank Natl. Assoc. v Ahmed, 174 AD3d 661 (2nd Dept. 2019); Manufactures Hanover Trust Co. v Restivo, 169 AD2d 413 (1st Dept. 1991).

Accordingly, it is hereby

ORDERED that the plaintiff's motion for summary judgment pursuant to CPLR 3212 is granted on the first, third and fourth causes of action of the complaint, and the motion is otherwise denied, and it is further,

ORDERED that the Clerk shall enter judgment in favor of the plaintiff and against the defendants, jointly and severally, in the principal sum of \$560,598.54, plus costs and statutory interest from January 1, 2017, and it is further

ORDERED that the plaintiff may submit supplemental papers on the third cause of action, seeking contractual attorney's fees, within 60 days of the date of this order, and upon notification to the Part Clerk of any such filing.

This constitutes the Decision and Order of the court.


NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

4/30/2020
DATE

NANCY M. BANNON, 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