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| Central Constr. Mgt., LLC v Tropez Leasehold, L.L.C. |
| 2020 NY Slip Op 31477(U) |
| May 15, 2020 |
| Supreme Court, New York County |
| Docket Number: 157956/2018 |
| Judge: Debra A. James |
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DEBRA A. JAMES

PART IAS MOTION 59EFM

Justice

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INDEX NO. 157956/2018

CENTRAL CONSTRUCTION MANAGEMENT, LLC,

MOTION DATE 10/22/2018

Plaintiff,

MOTION SEQ. NO. 002

- v -

TROPEZ LEASEHOLD, L.L.C., NEIL COHEN, ALEJO SASSO, MANUELA CATTANEO, EDOUARD RUELLE, MARIA RUELLE, JOHN SUNG WHAN KIM, YOUNG MI KIM, NAHID ISHAGHOFF, ELLEY CHENG, HARRY YEH, CAROL GOLDENBERG, MATHIEU GOLDENBERG, HILLARY SUTCHIN, ROSEMARY EHLE, JOHN EHLE, BRUCE HOROWITZ, TE PIAO KING, LYDIA KING, JESUS PENA, BEATRIZ PENA, CAROL LEIMAS, MARIA REGO, ANTONIO REGO, GARY SEGAL, PHILIP MAGLI, SHAHRZAD MIRAFZALI, RONG WANG, HONG LU, ALICIA CONILL, ANNA ENG, MELINDA ENG, GABRIEL SALGO, ROBERT GRAY, ANN GRAY, RAMIT SHAKDHER, RAINA SHAKDHER, DANA SCHWARTZ BOS, ELIZABETH METZ, ROBERT METZ, IRINA SHIFRIN, MARCO YANEZ, LINDA YANEZ, HANG JA KIM, ARASH MOGHADDAM, JOHANNA MOGHADDAM, ERIK DETIGER, JOSEPH MANGINI, BIJAN SAFAI, VERA SAFAI, HENRY EPPS, JOHN CUCCIA, HENRY FULLER, ATIDA STEIN, DANIEL HAYKIN, CASSIE HAYKIN, MING LI, XIUYAN WANG, JIA QIN, JULIE SUK, YOUNGJAE LEE, MANUEL BARNATAN, ROSA DE BARNATAN, KRAIG TUBER, BRITTANY TUBER, SALLY OLEON, LYDIA HESS, GILBERT THURSTON, MARY THURSTON, RENEE WARD, FRANK WARD, ERIK DETIGER, JACK FRONTELA, TERESA FRONTELA, MARTIN DOUGLASS, JOSEPH FEGHALI, NORMA FEGHALI, PEGGY BERNSTEIN, WILLIAM KRIDEL, TAO LING, PEI WANG, EVELYN SUSSMAN, PAOLA SPAWN VISCOGLIOSI, MARC VISCOGLIOSI, LAN TIN MOK, CHAUN YIN LIN, ALLAN BLUMENTHAL, NIRMAL NIGWEKAR, RADHIKA HULYALKAR, JOHN HAAF, MAY HAAF, SANDRA SHOHET, HARON SHOHET, RENEE SCHWARTZ, FRANK WARD, BARRY SCHNEIDER, JUDITH SCHNEIDER, ADRIANA CUPELLO, ANNABELLE CUPELLO, FAINA SHAFIR, ANATOLY SHAFIR, SHARON DAGAN, GABRIEL DAGAN, SOLA KAYE, CAROLE HORDON, HARRIS HORDON, SUNRISE 64 CORPORATION, WILLIAM KAPITO, JULIE KAPITO, DANA POOLE, MALCOLM POOLE, KATE DEBEVOISE, PARVIN ZOMORODY, NISHAKAR KAMBOJ, MANISHA KAMBOJ, THOMAS MAYER, JERRI MATER, JESSICA HERMAN, DAVID ALTABEF, POLINA SHENDEROV, VARSHA

**DECISION + ORDER ON
MOTION**

MAHTANI, NATHAN ZORMAN AS TRUSTEE, JAMES IP, JESSICA IP., SHUNICHIRO OGATA, ALEX GINSBURG, KEN SASAKI, CHIZUKO UENO, DAMIANOS SIOKIS, MILTON FISHMAN, ELLEN PINTO, RICHARD WORONOFF, INA WORONOFF, MONICA VOLDSTAD, CONRAD VOLDSTAD, SARA KIM, HYUNG SOON KIM, CHRISTOPHER FIORE, TANNAZ FIORE, MORGAN RABACH, MARK FITZGERALD, YVONNE SERPHOS DE CASTRO, RENE DE CASTRO, SSTROPEZ LEASEHOLD, L.L.C., MICHAEL WOLIN, KRISTOFER KELLER, YIXIN KELLER, HILMA SIEGEL, HAROLD SIEGEL, LUBA HANZ, EZRA HANZ, JASON SENZON, MARISSA SENZON, PATRICIA BAPTISTE, MELISSA RAUBVOGEL, DOUGLAS ALLEN, GRACE LEE, JANINA FEILER, NORBERT FEILER, BERG GOKBERK, NARCISSE GOKBERK, HANG JA KIM, LAURA BIENENFELD LIVING TRUST, IRA GRUNTHAS AS TRUSTEE, LOUIS SILVERMAN AS TRUSTEE, THE SEGAL FAMILY 2011 IRREVOCABLE TRUST, RHODA RAFFAELLI, STEVEN KAHN, KAREN KAHN, LARRY TAUBE, MARIA TAUBE, PRIYANK GUPTA, REETU GUPTA, JARED RABINOWITZ, SHARON FISHER, NICOLE SLAVIN-PHILIPS, ADAM LEVINE, KERRI LEVINE, ANNABELLE HENDRICKS SCHWARZ, GEORGE SCHWARZ, JOHN MULLIGAN, VALERIE MULLIGAN, HELEN SPINDEL, RUBEN MARCIANO, SANDRA MARCIANO AKA SANDRA KRIEF, ETHAN LEONARD, VICTORIA GITTERMAN LEONARD, ANDREW SCHECK, ALI GERSH, CORINNE HYAMS, LAWRENCE HYAMS, JUDY CAPRA, STEVEN BRANDIS, ELLEN ENKER, ALISA SCHULMAN, KARIN DANBY, SUSAN SCHUYLER, COCO TIAN, HU TAN, KAIYOU NING, JACK STERN, MICHELE BOULUD, SACHIKO TAKAYASU, JOAN WOHLSTETTER, JULIAN BROWER, SHEILA BROWER, MICHAEL KOLB, YU HIS TSAI, ZUN PAO TSAI, MARINA BORDIN JAUREGUI, DAVID JAUREGUI, SHIRLEY SAN-SHINLIU, ARIEL AGAMI, ISAAC AGAMI, ISABEL SHAHIN, GERALD SHAPIRO, MARIE SHAPIRO, XINFANG WANG, JERRY XIAOJUN CHANG, TAO TIAN, UNI CREAGAN, BARRY CREGAN, THEODORE COHEN, CLAUDIA KATZ, WADIH JORDAN, TOSHIO SUZUKI, RITSUKO SUZUKI, PAO-HSIA YEH, SHIU HANG LAI, SUSAN CHU LAI, AUDREY YUEN-MEI LAI, NIDHI SINHA, DEEP KUMAR, JUDITH PREMSELAAR, MIHEE KIM, NIVA GRILL, JOSEPH ANGEL, TANYA DELMAZIO, JULIE EFFRON, IRENE EFFRON, NITYA RAJ, PRITHVI RAJ, CHENG YUAN YEH AS TRUSTEE, NEDA KHOOBYAR, CHRISTOPHER KLEIN, GERALD TEPLITZ, BARBARA TEPLITZ, STANLEY BLOCH, ABIGAIL BLOCH, RAYMOND PALMER, JUDITH KAHN, KRISTINA MUSSER GITTERMAN, THOMAS GITTERMAN, KRISTEN GOLDBERG, ANDREW GOLDBERG, ESTHER DROR, MANASHE DROR, SUSAN KURLAND, RIVKA FRIEDMAN, MARVIN FRIEDMAN, JAIME MATEUS-TIQUE, MATHIAS COHEN, MARILEE GREENWALD, JAMES GREENWALD, NATHAN SERPHOS, ROBERT BERRETTA, AMY BERRETTA,

VICTORIA DANILEVSKAIA-LAU AS TRUSTEE, CARYN RESNICK AS TRUSTEE, STEVEN RESNICK AS TRUSTEE, CHERYL MOSS, PAUL MOSS, STEPHANIE MOSS, ALEXANDRA MOSS, NADINE FRENETTE, PAUL FRENETTE, MENT JOHNSON, JESSE JOHNSON, ANDREA CARDAMONE, KEVIN BARTH, URSULA NEUMAN, LAWRENCE NEUMAN, ALISA SCHULMAN, PAUL SCHULMAN, CHERYL BARNES, JACLYN BARNES, BRUCE CAPPELS, WALTER PFAEFFLE, YAACOV AMAR, SANDRA GOTTLIEB, ROBERT GOTTLIEB, THE JOINT REVOCABLE TRUST OF FREDERICK M. JOSEPH AND KATHERINE K. JOSEPH, JACOB ROTHSHILD, HANNAH ROTHSHILD, JEANINE FRUMENTI, CARMEN OLLER, JOSEPH ABRAMS, SHARON APPELMAN, ROY APPELMAN, MARC BOUAZIZ, JONATHAN WEISS, FRANCESCA SIMONS, STELLA HABER GARSON AS TRUSTEE, STELLA HABER GARSON LIVING TRUST, JOE BASTADJIAN, AGNES CASTEL, CHARLES MILLER, AMY MILLER, HADAS COHEN, LIAV COHEN, HADASA KOCHWA AS TRUSTEE, PEDRO ROXAS, REGINA ROXAS, JUDITH HELLMAN, MARC ZEITOUN, FRANCES BERWICK, EBRAHIM MOUSSAZADEH, DAVID MOUSSAZADEH, EILEEN PEREZ, ANTONIO PEREZ, VLADIMIR SLIZNOV, GAIANE DALAKIAN, VICTORIA ESHAGHIAN, MOUSSA ESHAGHIAN, HOLLY HORN AS TRUSTEE, HOLLY L. HORN REVOCABLE TRUST, JESSICA CHIU IP, JAMES IP, DANIELLE COHEN, GREGG COHEN, MARIA TERESA E. BIENVENIDA LIVING TRUST, SYLVIE DURHAM, ELLA LEVINE, NATHAN LEVINE, MICHAEL SCHNEIDER, JAMES CREMONINI, ADELE CREMONINI, JOHN PASSONI, DOLORES PASSONI, REBECCA GINZBURG, BEVERLY RICHMAN PRUTKIN, CRISTINA SENIOR DE PERALES, DIEGO PERALES DE STEFANO, I-FONG SUN LEHMAN, ROY LEHMAN, HAROLD WEIDMAN, MARK SARETSKY, SALEEM MUQUADDAM, SARA MUQUADDAM, AVA INES PESSINA, FREDERIC MARSAT, KATHRYN BUTTERS, NICOLE LAMESCH, FERNAND LAMESCH, PHYLLIS WESTBERG, SARA HUANG, JEFFREY VALANE, BARBARA BASKIN AKA BARBARA ELOWITZ, ERIC ELOWITZ, SARA JANE KASSAB MUQUADDAM, PEIYU ZHOU, HANG YAN, HENRY FEIEREISEN AS TRUSTEE, MIRIAM FEIEREISEN AS TRUSTEE, KEITH LASCALEA, ADAM STRACHER, LAURA BOSCHETTI DE LAYRISSE, MILAGROS COROMOTO BOSCHETTI DE CARBALLO, ISABELLA BOSCHETTI MATEU, MARIA GISELA BOSCHETTI DE TELLERIA, MIGUEL ANGEL BOSCHETTI MATEU, JAMILEH ESHAGHPOUR, RAMIT BHASIN, PAUL RAYBIN, GAIL RAYBIN, LUIS CENENEDESE, CRISTINA SENIOR DE PERALES, JANE MORISON, REGINA PERRETT, JAMIE BUENAVENTURA AS TRUSTEE, MARIA BUENAVENTURA PERRETT AS TRUSTEE, AGP QUALIFIED DOMESTIC TRUST, YVONNE CONDE, BERNABE DE MOLA, PAUL BEKMAN, ALESSIO ROSSI, CRISTINA ALBINO, SYLVIA HADDAD AS TRUSTEE,

HOWARD DOLCH AS TRUSTEE, WILLIAM KALAFATIC, MIRIAM MENDA, CHARLY DARWICH, TAMARA SHULMAN, BARRY BENDES, SHIN SHARMA, ZOE TATKOW, ELLIOT TATKOW, GARY FISHER, CELIA FISHER, XIAOHONG GAO, JOSEPH ASCHNER, HELGA ASCHNER, DENA CASSON, ALIZA YORK, STEPHEN YORK, SAMY NIMROODY, MARJORIE KAPLOWITZ, ADORACION POSONCUY TIDALGO AS TRUSTEE, ADORACION POSONCUY TIDALGO-REVOCABLE TRUST, EHUD GELLER, CATHLEEN CASEY, NEDRA BIEGEL, PARVIS KOHBOD, THE LUPARDI QUALIFIED PERSONAL RESIDENCE TRUST I, VINCENT LUPARDI AS TRUSTEE, ANNA LUPARDI AS TRUSTEE, THE DEANNE I. MEREY IRREVOCABLE TRUST, ST TROPEZ 29B IRRVOCABLE TRUST, 340 EAST 64TH STREET 29C TRUST, ANTONIO RAMIREZ AS TRUSTEE, THE DEANNE I. MEREY IRREVOCABLE TRUST, VERA SAFAI, BIJAN SAFAI, DAVID KINNE, KATHLEEN KINNE, FRANCES HELLER, PEGGY ELLIS, CARLA BERG JOLIS REVOCABLE LIVING TRUST, CARLA JOLIS AS TRUSTEE, ZMIRA GOODMAN, SAEED KOHBOD, MELISSA LEVINE, ALEXANDER LEVINE, SUSAN FELSHMAN, BRUCE FELSHMAN, AMELIA LEE, GST NON-EXEMPT TRUST FBO JULIA V. DIMITRIADIS, WENDY SIMPSON AS TRUSTEE, ROCHELLE ZUDKEWICH, WENDY MELTSNER, RONALD MELTSNER, WILLIAM BRETT, GISELA BRETT, DAVID WOOLLEY, VICTORIA FEUER, SANDEEP PATEL, REGINA MISULOVIN, GEORGE FARRINGTON AS TRUSTEE, ROMANA RADZICKI FARRINGTON AS TRUSTEE, CLAUS PRAMER, PATRICIA MACHADO PRAMER, ADINA OSTAD, FRED OSTAD, NEIL GREENBAUM, THE BOARD OF MANAGERS OF THE ST. TROPEZ CONDOMINIUM

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER

ORDER

Upon the foregoing documents, it is

ORDERED that the defendants' motion to renew is GRANTED;

and it is further

ORDERED that upon such renewal the court adheres to its prior determination that plaintiff's discontinuance of this action renders defendants' application as mooted.

DECISION

The court shall grant the motion to renew its September 21, 2018 Order associated with Motion Sequence No. 1, which was the defendants' motion to dismiss among other relief sought, and upon renewal the court shall adhere to its prior determination.

It is uncontroverted that on September 11, 2018, plaintiff filed pursuant to CPLR 3217(a) to voluntarily discontinue this action and that by stipulation dated September 24, 2018, the parties stipulated to cancel the Notice of Pendency and attached thereto an affirmation of plaintiff's counsel which recited the discontinuance and stated "In light of the discontinuance of this action against Defendants, Plaintiff requests that the Clerk of the Court cancel the Notice of Pendency recorded against the Property [].".

Movants here initially filed an Order to Show Cause to dismiss, among other relief, on August 31, 2018, but the Order to Show Cause (Motion Sequence No. 1) was not signed until September 25, 2018. Originally, this action was pending before another Justice and was transferred to this Part by Order entered September 18, 2018, because of a related Lien Law matter concerning the same subject matter (Index No. 157935/2018).

The court agrees with movants that the Order dated September 21, 2018 could not resolve Motion Sequence No. 1 because the Order to Show Cause had not been signed as of that date and therefore there was no motion sub judice to be resolved. However, as the Order to Show Cause was not signed until September 25, 2018, there was no motion to dismiss pending at the time the plaintiff discontinued the action on September 21, 2018.

On this motion the movants' notably seek not a final adjudication in their favor on the merits of plaintiff's causes of action in the complaint, but rather they seek affirmative relief in the form of attorney's fees and costs. In this case, unlike the cited case of BDO USA, LLP v Phoenix Four, Inc., (113 AD3d 507, 511 [1st Dept 2014]), the parties stipulated to the relief sought by the defendants, the cancellation of the Notice of Pendency, even though there was no stipulation as to the discontinuance of the action which was the basis for the stipulated relief. Therefore, while the defendants did not stipulate to the discontinuance, they benefited from the discontinuance by stipulating to and obtaining all the relief to which they would have been entitled had they prevailed on the now-renewed motion application. As there was no answer served and no counterclaims interposed, there is no basis for affirmative relief on behalf of the defendants. The defendants

knowingly obtained the benefit of plaintiff's discontinuance by avoiding protracted litigation on their motion.

5/15/2020
DATE

Debra A. James
DEBRA A. JAMES, J.S.C.

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| CHECK ONE: | <input checked="" type="checkbox"/> | CASE DISPOSED | <input type="checkbox"/> | DENIED | <input checked="" type="checkbox"/> | NON-FINAL DISPOSITION | <input type="checkbox"/> | OTHER |
| APPLICATION: | <input type="checkbox"/> | GRANTED | <input type="checkbox"/> | | <input type="checkbox"/> | GRANTED IN PART | <input type="checkbox"/> | |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | SETTLE ORDER | <input type="checkbox"/> | | <input type="checkbox"/> | SUBMIT ORDER | <input type="checkbox"/> | |
| | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/> | | <input type="checkbox"/> | FIDUCIARY APPOINTMENT | <input type="checkbox"/> | REFERENCE |