

Sherman Holding Corp. v Eastern Funding LLC

2020 NY Slip Op 31865(U)

June 10, 2020

Supreme Court, New York County

Docket Number: 655840/2018

Judge: Debra A. James

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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. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

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SHERMAN HOLDING CORP.,

Plaintiff,

- v -

EASTERN FUNDING LLC, and KKSA GROCERY INC.,

Defendants.

-----X

INDEX NO. 655840/2018

MOTION DATE 06/25/2019

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37

were read on this motion to/for

DISMISS

ORDER

Upon the foregoing documents, it is

ORDERED that the motion of defendant Eastern Funding LLC to dismiss the complaint herein is granted to the extent that a declaratory judgment shall be made in favor of such defendant; and it is further

ADJUDGED and DECLARED that defendant Eastern Funding LLC is entitled to a declaration that its rights in the assets in the subject leasehold premises (the Equipment) in which such defendant has a perfected security interest are superior to the rights of plaintiff Sherman Holding Corp., whose rights in the Equipment are subordinate thereto; and it is further

ORDERED that defendant Eastern Funding LLC is entitled to such declaratory judgment in its favor and against plaintiff, with

costs and disbursements to such defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of such defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendant; and it is further

ORDERED that the caption be amended to reflect the final judgment entered in favor of defendant Eastern Funding LLC, and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh)); and it is further

ORDERED that, pursuant to CPLR 3211(f), the remaining defendant shall serve and file an answer to the complaint within

twenty (20) days of service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to appear in IAS Part 59, 60 Centre Street, Room 331, either on the court approved video platform, or, if court operations permit, in person, for a preliminary conference on August 18, 2020, 10 A.M.

DECISION

Defendant lender Eastern Funding LLC (Eastern Funding) moves to dismiss the second cause of action, the only one asserted it against it, in the complaint. Plaintiff-landlord opposes the motion.

In its second cause of action, plaintiff seeks a declaration that Eastern has no security interest in equipment in the premises leased by plaintiff to lessee KKSA Grocery.

The court finds that movant Eastern has satisfied its burden under CPLR 3211 (a)(1) by proffering a "Landlord and Lender Agreement" between plaintiff and Eastern dated April 13, 2016 (the Agreement), which states in Paragraph 1(A) that the Landlord "Subordinates to Lender any and all rights which Landlord now has or may have in and to those assets that are subject to Lender's perfected security interest (the "Equipment")."

Having contractually acknowledged Eastern Funding's superior security interest and there being no allegation in the

complaint that the Agreement is not valid and enforceable, the defendant is entitled to a declaration in its favor. See Hillside Property Owners Association, Inc. v the Salanter Akiba Riverdale Academy, 45 AD2d 683, (1st Dept. 1974) ("However, since this was an action for declaratory judgment, it was error to dismiss the complaint and a declaration of the parties' rights should have been made.")

<u>6/10/2020</u> DATE					<u><i>Debra A. James</i></u> DEBRA A. JAMES, J.S.C.			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED			<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE