

<b>32nd Jabez, Corp. v Meekang, Inc.</b>
2020 NY Slip Op 33805(U)
November 13, 2020
Supreme Court, New York County
Docket Number: 653156/2014
Judge: Laurence L. Love
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LAURENCE L. LOVE PART IAS MOTION 63M

Justice

-----X

32ND JABEZ, CORP,

Plaintiff,

- v -

MEEKANG, INC. as successor in interest to KAMSA,
CORP.,

Defendant.

-----X

MEEKANG, INC.

Plaintiff,

-against-

JUNG BIN KIM

Defendant.

-----X

INDEX NO. 653156/2014
MOTION DATE 09/23/2020
MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

Third-Party
Index No. 595009/2017

The following e-filed documents, listed by NYSCEF document number (Motion 004) 72, 73, 74, 75, 76,
77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 90, 91, 92, 93, 94, 95, 96

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

Upon the foregoing documents, the motion is decided as follows:

Plaintiff commenced the instant action by the filing of a summons and complaint alleging
various causes of action allegedly arising out of breaches of a commercial lease for a premises
described as 32 West 32nd street, 3rd floor, New York, New York, which plaintiff leased from
defendant. Plaintiff filed motions seeking a default judgment under sequence 001 and 002, which
were denied based upon plaintiff's failure to establish proper service upon defendant. On January
4, 2017, defendant filed an answer with counterclaims and third-party action asserting claims
against Jung Bin Kim as guarantor of the lease. Included with said answer was a copy of a Notice

of Petition, Petition, Answer with Counterclaims and the relevant decision, judgment and warrant of eviction relating to the same lease at issue in this action, filed in New York County Housing Court under Index No. 66221/2014. In a decision dated, July 1, 2014, Meekang, Inc. was granted a warrant of eviction and 32<sup>nd</sup> Jabez Corp.'s counterclaims were dismissed with prejudice based upon their default at trial. Said decision has not been vacated. Based upon same, Meekang, Inc. moved for summary judgment, dismissing plaintiff, 32<sup>nd</sup> Jabez Corp.'s complaint and granting defendant a judgment on its counterclaims and third-party claims under motion sequence 003. In a decision on the record on October 10, 2017, the Hon. Charles E. Ramos, granted the portion of defendant's motion seeking dismissal of plaintiff's causes of action, specifically finding them barred by res judicata and severed defendant's counterclaims and third-party action seeking unpaid rent to an IAS Part. Defendant now moves for summary judgment on its counterclaims and third-party claims.

Summary Judgment should not be granted where there is any doubt as to the existence of a material issue of fact. *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562, 427 N.Y.S.2d 595 (1980). The function of the court when presented with a motion for Summary Judgment is one of issue finding, not issue determination. *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 165 N.Y.S.2d 498 (1957); *Weiner v. Ga-Ro Die Cutting, Inc.*, 104 A.D.2d331, 479 N.Y.S.2d 35 (1<sup>st</sup> Dept., 1984) *aff'd* 65 N.Y.2d 732, 429 N.Y.S.2d 29 (1985). The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law. *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320 (1986); *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 (1985). Summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can

be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to the non-moving party. *Assaf v. Ropog Cab Corp.*, 153 A.D.2d 520 (1st Dep't 1989). Summary judgment will only be granted if there are no material, triable issues of fact *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395 (1957).

In support of its motion, defendant/third-party plaintiff submits the affidavit of Justin McCarthy, the property manager for the Defendant and Third Party Plaintiff, Meekang, Inc., a copy of the relevant lease, a personal guarantee of said lease signed by third-party defendant Jung Bin Kim, a copy of the rent and fees ledger and a complete copy of all of the documents from the underlying commercial landlord and tenant action. Taken together, the documents establish as follows: Meekang leased the commercial premises located at 32 West 32nd Street, 3<sup>rd</sup> Floor, New York, New York to 32<sup>nd</sup> Jabez Corp. pursuant to a commercial lease, personally guaranteed by third-party defendant Jung Bin Kim. Upon Jabez's failure to pay rent, Meekang commenced a commercial non-payment action under Landlord and tenant index number 66221/2014, in Housing Part 52 of the Civil Court of the City of New York, New York County. Jabez appeared in that action and asserted counterclaims before defaulting at trial, where Meekang was granted a judgment of eviction and Jabez's counterclaims were dismissed. Pursuant to the lease, 32<sup>nd</sup> Jabez Corp. is responsible for the payment of rent, reasonable attorney's fees in connection with any litigation to enforce the landlord's rights, utility charges, property taxes, and in the event of default, all of landlord's expenses in re-letting the premises. Defendant further established that plaintiff and third-party defendant have failed to pay a total of \$247,274.23, together with attorneys' fees and costs. As such, defendant has established a *prima facie* entitlement to summary judgment.

In opposition, plaintiff submits only the affidavit Chang I. Kim, originally submitted in support of plaintiff's motion seeking a default judgment, which reiterates plaintiff's claims in this

action, all of which were previously dismissed based upon the doctrine of res judicata. Plaintiff's remaining contentions are supported only by an attorney affirmation and as such are not in admissible form. As such, defendant's motion is hereby granted in its entirety.

ORDERED that the defendant's motion for summary judgment on its counterclaims and third-party claims herein is granted and the Clerk of the Court is directed to enter judgment in favor of defendant and against plaintiff, 32<sup>nd</sup> Jabez Corp and third-party defendant, Jung Bin Kim in the amount of \$247,274.23, jointly and severally together with interest at the rate of 9% per annum from the date of January 4, 2017 until the date of the decision and order on this motion, and thereafter at the statutory rate, as calculated by the Clerk, together with attorneys' fees upon submission of an affirmation of attorney's fees together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.

11/13/2020  
DATE

  
LAURENCE L. LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED  
 GRANTED  DENIED

NON-FINAL DISPOSITION  
 GRANTED IN PART  OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT  REFERENCE