

**CP Assoc. LLC v Concourse Plaza Family Dental
LLC**

2020 NY Slip Op 33875(U)

November 20, 2020

Supreme Court, New York County

Docket Number: 654307/2020

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART IAS MOTION 14

Justice

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INDEX NO. 654307/2020

CP ASSOCIATES LLC,

MOTION DATE 11/19/2020

Plaintiff,

MOTION SEQ. NO. 001

- v -

CONCOURSE PLAZA FAMILY DENTAL LLC, GODRICK
TAYLOR

**DECISION + ORDER ON
MOTION**

Defendant.

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

were read on this motion to/for DISMISSAL.

The motion to dismiss by defendants is denied and the cross-motion by plaintiff to require defendants to pay rent pendent lite during the pendency of this action is granted.

Background

Plaintiff (the landlord) seeks to recover unpaid rent from defendants (the tenant and a guarantor). Defendants operate a dentist’s office in the Bronx. Plaintiff alleges that defendants stopped paying rent in October 2019 and have not made the required payments to this day (except for December 2019 and March 2020).

Defendants move to dismiss on the ground that the instant action is barred by various executive orders signed by the governor relating to the ongoing global pandemic. Defendants assert that plaintiff cannot seek the eviction of a commercial tenant under Executive Order 202.64 and that compels dismissal of this case.

In opposition and in support of its cross-motion, plaintiff claims that defendants stopped paying prior to the pandemic. It points out that defendants' business is considered essential under the terms of the workforce reduction orders issued by the governor. In other words, defendants were permitted to remain open. Plaintiff also points out that it does not seek to evict defendants at this time and it merely wants money damages. It also contends that the executive order applies only to "proceedings," which implies it affects only matters in New York County Civil Court.

Plaintiff also contends that defendants should be required to pay rent *pendente lite* directly to the landlord during the pendency of this action. It argues that the lease does not allow the tenant to withhold rent under any circumstances and it does not contain a force majeure clause.

In opposition to the cross-motion, defendants insist that the dental practice is located in a mall and, therefore, was subject to in-person restrictions under the various executive orders and local laws.

In reply to its cross-motion, plaintiff maintains that defendants have not asserted that they do not owe the rent plaintiff seeks and they do not deny that dental practices are considered essential businesses.

Discussion

The Court denies defendants' motion to dismiss. Plaintiff's causes of action do not seek eviction of defendants from the premises and, therefore, the instant case does not violate any executive orders. Plaintiff is permitted to pursue this case and seek damages arising out of the tenant's failure to pay the rent.

The Court also grants the cross-motion. A “court has broad discretion in awarding use and occupancy pendente lite” (*Alphonse Hotel Corp. v 76 Corp.*, 273 AD2d 124, 124, 710 NYS2d 890 (Mem) [1st Dept 2000]). Here, the Court finds that awarding this relief is appropriate under the circumstances. The fact is that defendants stopped paying rent many months prior to the start of the ongoing pandemic. And, because of the pandemic, plaintiff may be delayed in obtaining the ultimate relief it seeks. Moreover, defendants do not contest any allegations about the default or how much they owe.

The Court is well aware of the hardships that the pandemic has inflicted on small businesses across New York City. The fact is that the defendants stopped paying rent in October 2019, almost six months before the pandemic gripped the city. For this dentist, who never had to stop seeing patients at all, to use the pandemic as an excuse rings hollow and is an affront to the actual suffering of the many restaurants and businesses which were no longer able to pay their rent because of the pandemic.

The Court also observes that to the extent defendants point to Administrative Code § 22-1005 (which bars recovery against individual guarantors under certain circumstances), this case is inapplicable. The default here occurred long before the time period provided for in that provision (Administrative Code of City of New York § 22-1005[2] [stating that this provision only applies to defaults that occur between March 7, 2020 and March 31, 2021]).

Accordingly, it is hereby

ORDERED that the motion by defendants to dismiss is denied and they are directed to answer pursuant to the CPLR; and it is further

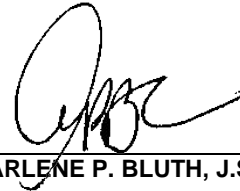
ORDERED that the cross-motion by plaintiff for an order directing defendants to pay rent and additional rent is granted and defendants shall pay \$10,974.41 (which is comprised of

\$9,258.58 of rent and \$1,715.82 and additional rent) per month to plaintiff throughout the pendency of this action, including making a payment for November 2020.

Remote Conference: March 2, 2021.

11/20/2020

DATE



ARLENE P. BLUTH, 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