

Symphony House LLC v Caracuel
2021 NY Slip Op 32286(U)
October 27, 2021
Supreme Court, New York County
Docket Number: Index No. 651863/2021
Judge: Laurence L. Love
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LAURENCE LOVE **PART** **63M**

Justice

-----X

SYMPHONY HOUSE LLC

Plaintiff,

- v -

JOSEPH CARACUEL,

Defendant.

-----X

INDEX NO. 651863/2021

MOTION DATE 8/26/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23

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

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

Plaintiff commenced the instant action by filing a summons and complaint on March 22, 2021, seeking to recover for alleged breaches of a lease agreement. On April 9, 2021, defendant interposed an answer containing nine affirmative defenses and a counterclaim alleging harassment as defined in New York City Administrative Code §27-2005(d). Plaintiff now moves for summary judgment on its complaint pursuant to CPLR 3212 and for dismissal of defendants' affirmative defenses and counterclaim pursuant to CPLR 3211(b).

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 (1st 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, plaintiff submits the affidavit of Brett Greenberg, the Executive Managing Director of Jack Resnick & Sons, Inc, the managing agent of plaintiff, together with the relevant lease and lease extensions which establish as follows: Plaintiff is the landlord of the premises known as and located at 235 West 56th Street, New York, NY, Apartment, 41-R. Plaintiff, as landlord, and Joseph Caracuel, as tenant, entered into a lease agreement, dated as of February 20, 2014, to lease Apartment 41-R (the "Premises"), for a period commencing March 1, 2014 through February 28, 2016, which lease period was further extended by a Lease Extension, dated as of March 9, 2020 extending the lease period through February 28, 2021 at a monthly rent of \$4,200.00. Defendant failed to pay said rent for the months of May, 2020 through March, 2021, when defendant vacated the Premises. Defendant owes to Plaintiff in the total sum of \$43,490.40, comprised of Monthly Rent in the amount of \$46,200.00 less the security deposit in the amount of \$2,709.60. A review of defendant's affirmative defenses reveals that aside from those defenses relating to the Covid-19 pandemic are boilerplate, containing no specificity and those relating to Covid-19 do not constitute defenses to this action. As such, plaintiff has established a *prima facie*

entitlement to summary judgment and dismissal of defendant's affirmative defenses and counterclaim.

In opposition, defendant, Joseph Caracuel submits an affidavit which establishes that on or about April 24, 2020, defendant e-mailed plaintiff that he needed to vacate the apartment, but that plaintiff refused to release him from the lease. Said affidavit further alleges that defendant vacated the premises sometime in May, 2020, however same fails to establish an issue of fact as it is undisputed that defendant was present in the apartment on February 28, 2021 and had furniture in the premises until March, 2021. Defendant's assertion that plaintiff's motion is improper as it was mistakenly noticed as a motion made pursuant to CPLR 3213 is similarly without merit as same was made after the joinder of issue and is unambiguously a summary judgment motion.


ORDERED that the plaintiff's motion for summary judgment on the complaint herein is granted and the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendants in the sum of \$43,490.00, with interest at the rate of 9% per annum from the date of May 1, 2020, until the date of the decision on this motion, and thereafter at the statutory rate, as calculated by the Clerk, costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that defendants' affirmative defenses are hereby dismissed; and it is further

ORDERED that an assessment of damages against defendant is directed on the issue of attorney's fees, and it is further

ORDERED that a copy of this order with notice of entry be served by the movant upon the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who is directed, upon the filing of a note of issue and a certificate of readiness and the payment of proper fees, if any, to place this action on the appropriate trial calendar for the assessment hereinabove directed; and it is further

ORDERED that such service upon 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).

<u>10/27/2021</u> DATE					 LAURENCE LOVE, J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					OTHER
					REFERENCE