

Harlington Realty Co. LLC v Gotham W. Realty LLC

2022 NY Slip Op 30178(U)

January 19, 2022

Supreme Court, New York County

Docket Number: Index No. 452456/2021

Judge: Laurence L. Love

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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. LAURENCE LOVE PART 63M

Justice

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INDEX NO. 452456/2021

HARLINGTON REALTY CO. LLC,
Plaintiff,

MOTION DATE 10/14/2021

MOTION SEQ. NO. 001

- v -

GOTHAM WEST REALTY LLC, SAMUEL COHEN, YARON COHEN

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29

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 the filing of a summons and complaint on April 13, 2021, seeking to recover against defendant, Gotham West Realty, LLC and against Samuel Cohen and Yaron Cohen, as guarantors, for alleged breaches of a commercial lease. Defendants interposed an answer on June 4, 2021, containing six affirmative defenses and counterclaims seeking application of a security deposit in the amount of \$7,956.75 and legal fees. Plaintiff now moves for an Order pursuant to CPLR § 3212, granting Plaintiff summary judgment, awarding plaintiff a judgment for the rent and additional rent for the period from January 1, 2020 through January, 2022 in the amount of \$52,733.62, dismissal of defendant's counterclaims and, and an inquest to determine reasonable attorney's fees.

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 David Magier, a member of plaintiff, together with the relevant lease, personal guarantees, subsequent lease and ledger, which establish as follows: On or about February 1, 2017, Harlington Realty Co., LLC ("Harlington") leased commercial premises located at 82-60 through 82-74 Austin Street, Kew Gardens, New York (the "Premises") to defendant Gotham West Realty LLC ("Gotham"), as tenant, subject to the terms of a Lease and Rider for a term beginning February 1, 2017, and ending January 31, 2022. Pursuant to said lease, Gotham is liable in the event of default for all rents due through the end of the lease term, together with attorney's fees and the costs of reletting the Premises. Samuel Cohen and Yaron Cohen (the "Cohens") each executed a Personal Guaranty of the Lease. Pursuant to the lease, Tenant is required to pay Landlord monthly fixed rent for the Premises for the period of January, 2020, at the rate of \$2,652.25 per month, for the period of February 1, 2020 through

January 30, 2021, at the rate of \$2,731.82 per month and for the period of February 1, 2021 through January 30, 2021, at the rate of \$2,813.77 per month ("Fixed Rent"). Gotham left the premises on or about June 26, 2020, having paid none of the outstanding rent. The premises were re-let on March 1, 2021 and said tenant began paying rent after concessions on August 1, 2021 at a base rent of \$2,000.00 per month, leaving a shortfall of \$813.77 per month. As such, Tenant owes a total of \$52,733.62 in rent and related charges through the end of the lease, together with attorney's fees, interest and costs. After applying the security deposit of \$7,956.75, plaintiff has established a *prima facie* entitlement to judgment in the amount of \$44,776.87.

In opposition, defendants submit the affidavit of Yaron Cohen, which alleges that defendants were unable to use the basement and was not given a one-month rent credit for installing a new storefront at the outset of the lease. The Court notes that there is no supporting documentation for either claims. Further, "[t]he obligation to pay rent pursuant to a commercial lease is an independent covenant, and thus, cannot be relieved by allegations of a landlord's breach, absent an express provision to the contrary." *Universal Communications Network, Inc. v. 229 W. 28th Owner, LLC*, 85 A.D.3d 668, 669 (1st Dep't 2011). The subject lease specifically prohibits such set-offs. Defendants' pandemic related defenses are not raised in defendants' answer nor are they raised in opposition to the instant motion. As such, defendants have failed to raise an issue of fact precluding summary judgment.

ORDERED that the plaintiff's motion for summary judgment on its first and third causes of action is GRANTED and the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendants, jointly and severally, in the amount of \$44,776.87, together with interest at the rate of 9% per annum from the date of January, 2021 until the date of the decision and order on this motion, and thereafter at the statutory rate, as calculated by the Clerk, together with costs

and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that an assessment of damages against defendant is directed on plaintiff's remaining causes of action for 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)].

1/19/2022
DATE


LAURENCE LOVE, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: