

RHC Operating, LLC v J.A. Vanderbilt, Inc.
2022 NY Slip Op 30235(U)
January 14, 2022
Supreme Court, New York County
Docket Number: Index No. 654124/2020
Judge: Nancy M. Bannon
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. NANCY BANNON PART 42

Justice

-----X

RHC OPERATING, LLC,

Plaintiff,

- v -

J.A. VANDERBILT, INC. and JOHN MEING

Defendants.

-----X

INDEX NO. 654124/2020

MOTION DATE 08/02/2021

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

were read on this motion to/for SUMMARY JUDGMENT.

By this action, the plaintiff, the owner of a commercial property in Manhattan, seeks to enforce a stipulation of settlement (the stipulation) it entered with defendant J.A. Vanderbilt Inc., the tenant, which operated a shop on the subject premises. The plaintiff also names as a defendant in this action John Meing, the personal guarantor on the underlying subject lease. The defendants answered the complaint, in which they assert ten affirmative defenses.

The stipulation, dated November 20, 2019, was entered in settlement of a summary non-payment proceeding brought by the plaintiff in the Civil Court of the City of New York, New York County. The stipulation converted the proceeding into a summary holdover proceeding and provided for the entry of a money judgment against the tenant in the total sum of \$209,583.51, representing the fixed rent and recurring additional rent through the date of the stipulation. The stipulation stayed the execution of the money judgment as well as the issuance of a warrant of eviction through and including March 31, 2021, subject to the tenant: (1) paying all fixed annual rent and recurring additional rent as defined by the lease for November 2019, (2) paying use and occupancy as billed by the plaintiff, in the amount of the fixed annual rent and additional rent as defined by the lease for December 2019, (3) paying use and occupancy as billed by the

plaintiff, for each month from January 15, 2020¹ through March 2021 in the amount of the fixed annual rent and additional rent as defined by the lease, and (4) paying \$10,000.00 per month from January 2020 through February 2021, and \$8,145.07 in March 2021, representing arrears. The stipulation additionally provides that if the tenant fails to timely and fully comply with any terms of the stipulation and such failures remains uncured for five business days, then the stay is deemed immediately vacated and the plaintiff may immediately enforce the money judgment and execute upon the warrant of eviction. According to the plaintiff, the tenant defaulted on its obligations by failing to make the required payments, beginning on December 31, 2019 and has not cured its default. The plaintiff states that the tenant vacated the premises in August 2020.

The plaintiff now moves for summary judgment pursuant to CPLR 3212, seeking judgment on the complaint and the dismissal of the defendants' affirmative defenses. Despite the court's interim order dated June 2, 2021, affording the defendants additional time to oppose the instant motion, the defendants submit no opposition. The motion is granted in part.

On a motion for summary judgment, the moving party must make a *prima facie* showing of its entitlement to judgment as a matter of law by submitting evidentiary proof in admissible form sufficient to establish the absence of any material, triable issues of fact. See CPLR 3212(b); Jacobsen v New York City Health & Hosps. Corp., 22 NY3d 824 (2014); Alvarez v Prospect Hosp., 68 NY2d 320 (1986); Zuckerman v City of New York, 49 NY2d 557 (1980). Once such a showing is made, the opposing party, to defeat summary judgment, must raise a triable issue of fact by submitting evidentiary proof in admissible form. See Alvarez v Prospect Hosp., *supra*; Zuckerman v City of New York, *supra*.

However, in light of the settlement agreement between the plaintiff and the tenant, the plaintiff, is essentially moving pursuant to CPLR 2104 and 3215(i) to enforce the agreement and enter judgment in the unpaid amount, plus interest. The plaintiff has met its burden in part.

It is well settled that “[s]tipulations of settlement are essentially contracts and subject to principles of contract interpretation.” Hotel Cameron, Inc. v Purcell, 35 AD3 153 (1st Dept.

¹ The court notes that it appears there is a typographical error in the stipulation of settlement submitted by the plaintiff inasmuch as it states “January 15, 2019” as opposed to “January 15, 2020.” Since January 2019 predates the execution of the stipulation, it would be impossible for the tenant to have retroactively made timely payments.

2006); see VNB New York LLC v Maidi, 159 AD3d 556 (1st Dept. 2018). Here, the plaintiff has established that the parties' stipulation was a valid agreement, and that defendant J.A. Vanderbilt Inc., the tenant, breached the agreement. Furthermore, "[s]tipulations of settlement are favored by the courts and not lightly cast aside . . . This is all the more so in the case of 'open court' stipulations . . . within CPLR 2104, where strict enforcement not only serves the interest of efficient dispute resolution but also is essential to the management of court calendars and integrity of the litigation process. Only where there is cause sufficient to invalidate a contract, such as fraud collusion, mistake or accident, will a party be relieved from the consequences of a stipulation made during litigation." Hallock v State of New York, 64 NY2d 224, 230 (1984); see also Hawkins v City of New York, 40 AD3d 327 (1st Dept. 2007); Hotel Cameron, Inc. v Purcell, supra City of New York v 130/40 Essex St. Dev. Corp., 302 AD2d 292 (1st Dept. 2003). There is no cause sufficient to invalidate the settlement here. Having failed to oppose the motion, the defendant raises no basis to challenge the stipulation or relieve it from enforcement of the stipulation.

As an initial matter, the court notes that although the notice of motion states that the plaintiff seeks judgment on all causes of action of the complaint, the plaintiff's memorandum of law expressly states that its motion is limited to the "first two causes of action." Indeed, the plaintiff makes no effort to address the third, fourth, and fifth causes of action of the complaint. Therefore, the plaintiff does not meet its burden on the third, fourth, and fifth causes of action. See, e.g., Mashozhera v El Nuevo JB Bakery Inc., 191 AD3d 605 (1st Dept. 2021); Taniou v Sawyers, 104 AD3d 671 (2nd Dept. 2013); Berkeley v Rensselaer Polytechnic Inst., 289 AD2d 690 (3rd Dept. 2001). As such, the branch of the plaintiff's motion seeking judgment on the third, fourth, and fifth causes of action of the complaint is denied.

Turning to the causes of action that the plaintiff does address, the first alleges that the tenant breached the stipulation and seeks to enforce the money judgment entered in the principal sum of \$209,583.51. The second cause of action also alleges that the tenant breached the stipulation and seeks to recover the principal sum of \$172,419.76, representing use and occupancy from December 2019 through August 2020.

On these papers, the plaintiff establishes its entitlement to a judgment on the first cause of action in the sum of \$209,583.51, plus costs and statutory interest from December 31, 2019. The plaintiff claims it is also entitled to judgment on the second cause of action, in the sum of

\$172,419.76 for the tenant's failure to pay use and occupancy from December 2019 through August 2020. Article 4, subsection B and C of the stipulation, provide that the tenant shall timely and fully pay use and occupancy as billed by the plaintiff in the amount of the fixed annual rent and additional rent as defined in the lease. The plaintiff erroneously states that an itemization of this sum is annexed as Exhibit B. No such itemization is submitted. Exhibit B contains the subject stipulation of settlement. The plaintiff does not submit any proof of bills sent to the tenant, or any ledger or other documentation supporting its calculation of the \$172,419.76. As such, the plaintiff has failed to demonstrate its entitlement to relief on the second cause of action.

Further, to the extent that the plaintiff seeks judgment against defendant Meing based on the stipulation, it has not met its burden. Defendant Meing was not a party to the stipulation, and is never mentioned in the stipulation. The plaintiff claims that on November 20, 2019, "in order to induce [it] to execute the [s]tipulation, [defendant Meing] executed a guaranty in [the plaintiff's] favor," which absolutely and unconditionally guaranteed to the plaintiff, among other things "the prompt and full performance and observance by [the] [t]enant . . . of [the] [t]enant's obligation to pay the [a]rrears . . . and to perform all other obligations of [the] [t]enant accruing under the [s]tipulation." The plaintiff erroneously states that the guaranty, which it says was signed in November 2019, is annexed to its papers as Exhibit C. However, the submission labelled as Exhibit C contains the defendant Meing's guaranty of the lease, dated June 5, 2001. No "stipulation guaranty," as denominated by the plaintiff, is submitted. Thus, on these papers, the plaintiff has failed to establish its entitlement to relief as against defendant Ming.

To the extent that the plaintiff seeks attorney's fees on this motion, its application is denied as it has submitted no proof in support of any fees incurred.

The defendants' affirmative defenses, with the exception of the ninth affirmative defense, which invokes NYC Administrative Code 22-1005 (L.L. 2020/55, 5/26/2020) ("The Guaranty Law"), are dismissed on the grounds asserted by the plaintiff in its memorandum of law. The Guaranty Law bars enforcement of personal guaranties on commercial leases under certain conditions and if the alleged liability arose between March 7, 2020 and September 30, 2020, the period of onset of the COVID-19 public health emergency. While defendant Meing may not ultimately prevail on this defense (see e.g., iPayment, Inc. v Silverman, 192 AD3d 586, 587 [1st Dept. 2021]), it is not dismissed at this juncture.

Accordingly, and upon the foregoing papers, it is

ORDERED that the plaintiff's motion for summary judgment pursuant to CPLR 3212 is granted (i) on the first cause of action and the plaintiff is awarded judgment in the amount of \$209,583.51, plus costs and statutory interest from December 31, 2019, and (ii) to the extent that the defendants' first, second, third, fourth, fifth, sixth, seventh, eighth, and tenth affirmative defenses are dismissed, and the motion is otherwise denied; and it is further


ORDERED that the Clerk shall enter judgment in favor of the plaintiff and against defendant J.A. Vanderbilt, Inc. only, in the sum of \$209,583.51, plus costs and statutory interest from December 31, 2019; and it is further

ORDERED that the parties shall immediately confer, commence discovery, and appear for a preliminary conference on February 24, 2022 at 11:00 am, to be held via Microsoft Teams, instructions to be provided by the Part 42 Clerk; and it is further

ORDERED that the plaintiff shall serve a copy of this decision and order with notice of entry upon the defendants within 10 days; and it is further

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision and Order of the court.


NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

01/14/2022
DATE

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART