

75 Commercial, LLC v Sung An
2022 NY Slip Op 30311(U)
January 31, 2022
Supreme Court, New York County
Docket Number: Index No. 650076/2021
Judge: Frank P. Nervo
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. FRANK NERVO PART 04

Justice

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75 COMMERCIAL, LLC

Plaintiff,

- v -

SUNG AN,

Defendant.

-----X

INDEX NO. 650076/2021
MOTION DATE 12/27/2021
MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39 were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER .

Plaintiff moves to reargue this Court's decision of November 30, 2021.

The purpose of reargument is to provide "a party an opportunity to establish that the court overlooked or misapprehended relevant facts or misapplied principles of law" (Foley v. Roche, 68 AD2d 558, 567 [1st Dept 1979]; see CPLR § 2221[d][2]). "Its purpose is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided" (id.). Nor is reargument a proper forum to present arguments different from those originally asserted (William P. Pahl Equip. Corp. v. Kassis, 182 AD2d 22 [1st Dept 1992] lv. dismissed in part and denied in part 80 NY2d 1005 [1992]).

Here, plaintiff contends that the Court misapprehended the pertinent facts of this matter and should therefore grant reargument. The Court finds that it misapprehended the facts related to the commercial lease at issue, and the obligations of the parties thereto. Accordingly, reargument is granted, and upon reargument the Court issues the instant decision and order.

Plaintiff's affidavit in support of its motion seeking summary judgment in lieu of complaint alleges that the lease terminated on November 4, 2020, but that "pursuant to paragraphs 18 and 66 of the Lease, the amount due from Lucky Organic for any period of time in which it holds over possession of the Premises after termination of its Lease is at least equal to the Fixed Rent due under the lease" (NYSCEF Doc. No. 3 at footnote 1). However, conspicuously absent from plaintiff's affidavit in support is proof, or even an allegation, that Lucky Organic has continued to occupy the space following the alleged termination of its lease. Thus, there is, at a minimum, a question of fact as to whether Lucky Organic, and its guarantors, are liable for rent following November 4, 2020, as a holdover tenant.

Furthermore, defendant asserts a defense to the allegations, to wit, the Mayor's moratorium on personal guarantees of commercial leases due to the

COVID pandemic (NYSCEF Doc. No. 14 at p. 1, ¶ 2). Plaintiff may not recover against an individual guarantor during the period of legislative tolling in 2020 and 2021 (see NYC Administrative Code § 22-1005 “A provision in a commercial lease or other rental agreement ... that provides for ... natural persons who are not the tenant under such agreement to become, upon the occurrence of a default ... personally liable for payment of rent, utility expenses or taxes owed by the tenant shall not be enforceable ... between March 7, 2020 and June 30, 2021”). Plaintiff here seeks to recover precisely what is forbade by NYC Administrative Code § 22-1005.

Again, the Court is constrained to note that plaintiff has failed to identify all pending related actions as evinced by its disclosure, for the first time in its notice of appeal of this Court’s prior decision, of a pending matter with the commercial tenant Luck Organic Cleaners, NY Index No. 650059/2021, (NYSCEF Doc. No. 38).

Accordingly, it is

ORDERED that plaintiff’s motion for leave to reargue is granted; and it is further


ORDERED that upon reargument, plaintiff's motion for summary judgment in lieu of complaint is denied, as above; and it is further

ORDERED that the action is dismissed as seeking to enforce a guarantee of a commercial lease's rent against a natural individual as expressly forbidden by NYC Administrative Code § 22-1005; and it is further

ORDERED that plaintiff shall affix a copy of this decision and order to all further pleadings filed in all tribunals seeking the recovery of unpaid rent from defendant or any guarantor of Lucky Organic; and it is further

ORDERED that any request relief not expressly addressed herein has nevertheless been considered and is hereby denied.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

<u>1/31/2022</u> DATE					 FRANK MERVO, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	<input checked="" type="checkbox"/>	GRANTED IN PART
				<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT
				<input type="checkbox"/>	REFERENCE