

1670 Third LLC v SG Pizza, Inc
2022 NY Slip Op 31329(U)
April 21, 2022
Supreme Court, New York County
Docket Number: Index No. 656092/2020
Judge: Laurence Love
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LAURENCE LOVE PART 63M

Justice

-----X

1670 THIRD LLC,

Plaintiff,

- v -

SG PIZZA, INC, STEFANO GRIMALDI, XYZ
CORPORATION,

Defendant.

-----X

INDEX NO. 656092/2020

MOTION DATE 4/20/2022

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63 were read on this motion to/for AMEND CAPTION/PLEADINGS.

Upon the foregoing documents, the Decision and Order on plaintiff's motion seeking to amend the caption in this action and seeking an Order of Ejectment and defendants' cross-motion seeking to vacate a default judgment in this action is as follows:

In an Order dated, June 2, 2021, this Court granted plaintiff's motion seeking a default judgment against defendants and directed that an assessment of damages be held against said defendants. Plaintiff now moves to amend the caption, substituting for all purposes 1670 Third Avenue Owner LLC as the plaintiff in this action in place and stead of 1670 Third LLC and seeks an Order of Ejectment and defendants cross-move to vacate the default judgment, alleging that they were not properly served in this action.

In granting the prior motion, this Court found that On November 11, 2020, Stefano Grimaldi was served pursuant to CPLR 308(1), on November 17, 2020, plaintiff served the summons and complaint upon SG Pizza, Inc pursuant to CPLR § 311(1) and further found that on June 1, 2014, plaintiff's predecessor and SG Pizza, Inc. entered into a lease agreement for the

premises known as 1670 Third Avenue, New York, New York 10128, Ground Floor and Basement and that said lease was personally guaranteed by Stefano Grimaldi.

To vacate a judgment, a defendant must demonstrate both a reasonable excuse for its default and the existence of a meritorious defense to the action, *Presbyterian Hosp. in City of New York v New York Cent. Mut. Ins. Co.*, 277 AD2d 299 (2d Dept, 2000). In support of its cross-motion, defendants submit an affidavit which alleges that service upon both defendants was improper. Such arguments are unavailing as defendant appeared by attorney to defend this action. On February 3, 2021, defendants' attorney submitted an application for adjournment requesting that plaintiff's motion for a default judgment, then returnable on February 4, 2021, be adjourned to March 25, 2021. Said application was granted. Thereafter, the parties submitted a stipulation further adjourning plaintiff's motion to April 29, 2021, on which date it was submitted, and thereafter granted, without opposition. As such, defendants' objections to service are unfounded. Defendants' allegations that their pizzeria was affected by the Covid-19 pandemic also do not serve to establish a meritorious defense to this action as same is not a defense to a commercial lease. As such, defendants' motion must be denied.

In support of its motion, plaintiff submits documentation that in January 2021, 1670 Third LLC sold the Building to 1670 Third Avenue Owner, LLC. As part of the sale, 1670 Third LLC assigned all the tenant leases, rents and litigations (including this action) to Owner, including the lease for SG Pizza, Inc. It is further undisputed that defendants have not paid rent for over two years and as such, plaintiff is entitled to an Order of Ejectment.

Plaintiff may contact the part clerk to set a date for inquest.

ORDERED that defendants' motion is DENIED in its entirety; and it is further

ORDERED that the motion is granted, and that 1670 Third Avenue Owner, LLC be substituted as plaintiff in the above-entitled action in the place and stead of the plaintiff, 1670 Third LLC, without prejudice to any proceedings heretofore had herein; and it is further

ORDERED that all papers, pleadings, and proceedings in the above-entitled action be amended by substituting the name of as plaintiff in the place and stead of 1670 Third LLC, without prejudice to the proceedings heretofore had herein; and it is further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to amend their records to reflect such change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and 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); and it is further

ORDERED that the motion of plaintiff for summary judgment on the first cause of action for ejectment is granted; and it is further

ADJUDGED that plaintiff is entitled to possession of 1670 Third Avenue, Ground Floor Store and Basement, New York, New York as against defendant SG Pizza, Inc., and the Sheriff of the City of New York, County of New York, upon receipt of a certified copy of this Order and Judgment and payment of proper fees, is directed to place plaintiff in possession accordingly; and it is further

ADJUDGED that immediately upon entry of this Order and Judgment, plaintiff may exercise all acts of ownership and possession of 1670 Third Avenue, Ground Floor Store and

Basement, New York, New York, including entry thereto, as against defendant SG Pizza, Inc.; and it is further

ORDERED that the balance of the above-entitled action relating to recovery of damages is severed and continued; and it is further

4/21/2022
DATE


LAURENCE LOVE, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED		

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

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
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<input type="checkbox"/>	SUBMIT ORDER
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CHECK IF APPROPRIATE:

<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN
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<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE
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