

<b>92nd &amp; 3rd Assoc., L.L.C. v Biglari</b>
2022 NY Slip Op 31449(U)
April 29, 2022
Supreme Court, New York County
Docket Number: Index No. 654717/2020
Judge: Sabrina Kraus
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. SABRINA KRAUS PART 57TR

*Justice*

-----X

92ND AND 3RD ASSOCIATES, L.L.C.

Plaintiff,

- v -

ATOOSA BIGLARI,

Defendant.

-----X

INDEX NO. 654717/2020

MOTION DATE 04/12/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12

were read on this motion to/for JUDGMENT - MONEY

**BACKGROUND**

Plaintiff commenced this action seeking alleged monies owed in rent, late and legal fees in connection with a lease between the parties for the premises located at 205 East 92nd Street, New York, New York 10128, apartment 11K (Premises).

The summons and complaint were filed on September 25, 2020.

On or about February 24, 2020, the parties entered into a stipulation of settlement wherein the defendant agreed to pay the following: (a) \$25,417.95 on or before February 26, 2021; and (b) \$34,174.78 (representing March 2021 rent in the sum of \$8,756.83 plus \$25,417.95 as partial payment of the Arrears and Legal Fees) on or before March 15, 2021; and (c) \$34,174.78 (representing April 2021 rent in the sum of \$8,756.83 plus \$25,417.95 as partial payment of the Arrears and Legal Fees) on or before April 15, 2021.

Plaintiff asserts defendant only made the first payment of \$25,417.95.

### **PENDING MOTION**

On April 12, 2022 plaintiff moved for a judgment in the amount of \$104,477.85, representing rent arrears due through August 31, 2021, based upon defendant's default under the stipulation. Plaintiff also requests legal fees in the amount of \$5450.50.

Defendant failed to appear or submit opposition.

### **DISCUSSION**

Stipulations of settlement are binding, favored by the court, and not lightly cast aside. *Hallock v. State of New York and Power of Authority of the State of New York*, 64 N.Y.2d 224 (1984).

In support of the motion for a default judgment, plaintiff submits the affirmation of Alex B Pia, Esq (NYSCEF Doc 6); the affidavit of Senay Mekonen, employed by plaintiff (NYSCEF Doc 7); invoices for legal fees (NYSCEF Doc 8); and a rent ledger (NYSCEF Doc 9).

Plaintiff has established entitlement to a judgment in the amount of \$50,835.90, as due under the stipulation of settlement.

The summons and complaint sought rent arrears in the amount of \$62,032.33, representing rent due through September 2020. In the stipulation of settlement, defendant acknowledged owing rent through February 2021. Plaintiff acknowledges that the first payment of \$25,417.95 was made. In event of default, paragraph seven (7) of the stipulation provides

In the event of default of payment as set forth in paragraphs 3 and/or 5 of this Stipulation, Plaintiff shall be entitled to move by motion on eight (8) days' notice, for and be granted a monetary judgment for all Arrears, Legal Fees, ongoing rent, additional rent and fees due through the date of entry of the monetary judgment. Defendant hereby waives any defense she may have to entry of such judgment.

Although the stipulation provided defendant would pay on going rent in addition to the payment of arrears, plaintiff is not entitled to a default judgment for rents that were not due at the time the stipulation of settlement was entered into. The defendant may waive some defenses to the entry of a default judgment, however defendant's right to raise warranty of habitability claims are not waived prospectively.

As to plaintiff's application for additional legal fees in the amount of \$5450.50, the stipulation is ambiguous as to whether this claim was waived. It is unclear if the legal fees referenced in paragraph seven (7) refer to the legal fees included in the stipulated amount of \$76,253.85 or additional legal fees in the event of a default. It is well settled that, any ambiguity will be construed against the drafter (*Schron v. Troutman Sanders LLP*, 97 A.D.3d 87, 93 [1st Dept. 2012]). In addition the court takes into consideration that the defendant appeared *pro se* and the stipulation was executed outside of court and not allocated on the record.

Plaintiff reserves the right to seek rent arrears from March 2021 and fees associated with those rents in a new civil action.

### CONCLUSION

Wherefore, it is hereby

ORDERED plaintiff's motion is granted; and it is further

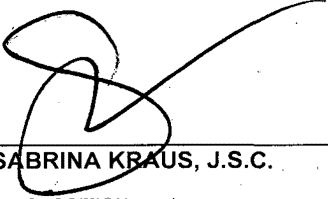
ORDERED plaintiff is awarded a judgment in the amount of \$50,835.90 and it is further

ORDERED that the clerk shall enter judgment accordingly; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on defendant and the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk 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](http://www.nycourts.gov/supctmanh)); and it is further

This constitutes the decision and order of the court.

<u>4/29/2022</u> DATE			 SABRINA KRAUS, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE