

<b>Smilen Realty 155 LLC v Fedorova</b>
2022 NY Slip Op 32082(U)
June 27, 2022
Supreme Court, Kings County
Docket Number: Index No. 522707/2019
Judge: Ingrid Joseph
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

At an I.A.S Term, Part 83 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 27<sup>th</sup> day of June, 2022.

PRESENT: HON. INGRID JOSEPH, J.S.C  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

-----X  
SMILEN REALTY 155 LLC,

Plaintiff,

-against-

GANNA FEDOROVA and PETER JONES,

Defendants.  
-----X

Index No.: 522707/2019

**DECISION & ORDER**

**Recitation, as required by CPLR § 2219(a), of the papers considered in the review of the defendants' motion.**

<u>Papers</u>	<u>NYSCEF Nos.</u>
Order to Show Cause and Affidavits/Affirmations Annexed.....	50-68
Affirmation in Opposition Papers.....	70-75
Reply to Opposition Papers.....	77

Upon the foregoing papers, Defendants, Ganna Fedorova ("Ms. Fedorova") and Peter Jones ("Mr. Jones"), move (MS#1) for an order pursuant to CPLR § 3212 granting partial summary judgment against Plaintiff, Smilen Realty 155 LLC ("Smilen") dismissing all of Smilen's causes of action.

The landlord, Smilen commenced this action seeking to correct a typographical error<sup>1</sup> in tenants, Ms. Fedorova and Mr. Jones' Renewal Lease, dated April 16, 2019 ("Renewal Lease").

<sup>1</sup> Reforming the Renewal Lease to reflect monthly rent in the amount of \$2,148.76 and the preferential rent in the amount of \$1,800.00 instead of the Renewal Lease's current monthly rent of \$1,110.65.

for 155 Hancock Street, Apt. 5A, Brooklyn, New York 11216 ("Apartment 5A"), due to mutual mistake and unilateral mistake and for an award of legal fees<sup>2</sup>.

In support of their motion, Ms. Fedorova and Mr. Jones submitted a copy of the Renewal Lease, which was signed by both the tenants and the landlord. The Renewal Lease indicated two options to renew the lease<sup>3</sup>. The tenants selected the option that provided for a renewal term of two (2) years, which would commence on August 1, 2019 and terminate on July 31, 2021, at a monthly rent of \$1,110.65. In addition, the Renewal Lease specifically stated that it became a binding lease renewal when signed by the owner and returned to the tenants. Furthermore, an affidavit executed by Ms. Fedorova was submitted wherein she stated among other things that prior to receiving the Renewal Lease, neither she nor Mr. Jones had any communication with Smilen concerning the terms of the Renewal Lease, that nothing in the Renewal Lease stood out to them as an error and that they were under the impression that the Renewal Lease embodied the terms Smilen intended to offer for renewing their original lease.

In opposition, Smilen submitted the apartment lease for Apartment 5A, the term of said lease was from August 1, 2018 to July 31, 2019 ("Original Lease"). The Original Lease stated among other things that the monthly rent for Ms. Fedorova and Mr. Jones shall be \$2,117.00, however, they would be charged a preferential rent of \$1,800.00 for that term. In addition, Smilen submitted a copy of the Renewal Lease for Apartment 4A, dated June 18, 2019 ("Apartment 4A's Renewal Lease"). Apartment 4A's Renewal Lease was for a two (2) years, with the term commencing on October 1, 2019 and terminating on September 30, 2021, at a monthly rent of \$1,110.65. Furthermore, Smilen submits the affidavit of Austin Benschler ("Mr. Benschler"), an employee of J. Wasser & Co., the corporate managing agent of Smilen. Mr.

<sup>2</sup> In an amount to be determined at trial, but in no event less than \$10,000.00

<sup>3</sup> The first option was for a renewal term of one (1) year at a monthly rent of \$1,099.81 and the second option was for a renewal term of (2) years at a monthly rent of \$1,110.65.

his affidavit that around the time the Renewal Lease for Apartment 5A was created, J. Wasser & Co. switched their computer software for managing buildings and as a result, the monthly rent amount for Apartment 4A was mistakenly entered into the information for Apartment 5A, and that on September 9, 2019, upon noticing a typographical error in the Renewal Lease, he and other representatives of Smilen communicated the error to Ms. Fedorova and Mr. Jones in an attempt to get them to sign a “corrected” renewal lease, however, as of the execution of Mr. Benscher’s affidavit on January 11, 2022, the tenants have not signed the “corrected” renewal lease.

On a motion for summary judgment, the moving party must “make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Xiang Fu He v Troon Mgt., Inc.*, 34 NY3d 167, 175 [2019], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; see also *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]; *Zuckerman v City of New York*, 49 NY2d 557 [1980]). In order for the court to grant summary judgment it must clearly appear that no triable issue of fact is presented (see *Miceli v Purex Corp.*, 84 AD2d 562 [2d Dept 1981]; see also *Moskowitz v Garlock*, 23 AD2d 943 [3d Dept 1965]).

It is well settled that “a written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms” (*Greenfield v. Philles Records*, 98 NY2d 562, 569 [2002]). The terms of a contract is unambiguous if the language it uses has a definite and precise meaning, unattended by danger of misconception in the purport of the agreement itself, and concerning which there is no reasonable basis for a difference of opinion (*Fernandez v. Price*, 63 AD3d 672, 275 [2d Dept 2009]; see *Breed v. Insurance Co of N. Am.*, 46 NY2d 351, 355 [1978]). “The construction and interpretation of an unambiguous written

contract is an issue of law within the province of the court, as is the inquiry of whether the writing is ambiguous in the first instance. If the language is free from ambiguity, its meaning may be determined as a matter of law on the basis of the writing alone without resort to extrinsic evidence” (*Law Offs. of J. Stewart Moore, P.C. v. Trent*, 124 AD3d 603 [2d Dept 2015]).

Procedurally, there is a “heavy presumption that a deliberately prepared and executed written instrument [manifests] the true intention of the parties” (*Backer Mgt. Corp. v. Acme Quilting Co.*, 46 NY2d 211, 219 [1978]) and a correspondingly high order of evidence is required to overcome that presumption (*Id.*, at 219-220). Reformation should not be “granted for the purpose of alleviating a hard or oppressive bargain” (*Id.*). Under long accepted principles one who signs a document is, absent fraud or other wrongful act of the other contracting party, bound by its contents (*Florence v Merchants Cent. Alarm Co.*, 51 NY2d 793, 795 [1980]). An action to reform a written agreement rests upon the theory that the parties came to an understanding, but in reducing it to writing, through mutual mistake, or through mistake on one side and fraud on the other, omitted some provision agreed upon, or inserted one not agreed upon. The object of such an action is to so change the instrument, as written to conform it to the agreement, as made, by inserting the provision omitted, or striking out the one inserted by mutual mistake. Reformation may not be granted upon a probability nor even upon a mere preponderance of evidence, but only upon a certainty of error. A mere claim of mutual mistake does not establish the fact. Where there is no evidence sufficient to raise the issue of mutual mistake, it becomes evident that the plaintiff at a trial cannot meet the standard of proof required to warrant the equitable relief of reformation.

Ultimately, the proponent of reformation based on mutual mistake must demonstrate the particulars of the actual agreement intended by the parties, based on the particularized allegations

in the complaint (*Chimart Assoc. v Paul*, 66 NY2d 570, 574 [1986]; *George Backer Mgt. Corp. v Acme Quilting Co.*, 46 NY2d 211, 220 [1978]). Here, Defendants have met their *prima facie* burden of showing that there was no mutual mistake as based on Ms. Fedorova's affidavit, prior to the execution of the Renewal Lease by both the tenants and the landlord, there were no negotiations or discussions regarding the terms of the lease renewal. In opposition, Smilen has failed to rebut Ms. Fedorova's allegations and has therefore failed to establish any evidence tending to show that the Renewal Lease was executed by the parties under the mistake of fact. Additionally, the record indicates Smilen initially sent Ms. Fedorova and Mr. Jones the Renewal Lease and subsequently countersigned it before sending it back again to the tenants again. As such the doctrine of mutual mistake may not be invoked by a party to avoid the consequences of its own negligence (*Da Silva v. Musso*, 53 NY2d 543 [1981]).

Here, given that the parties have never reached an oral agreement as to the terms of the Renewal Lease and that the terms of said lease were clear and unambiguous, the terms may be determined as a matter of law on the basis of the writing alone without resorting to extrinsic evidence. While Defendants were informed of the error two months into the term the Renewal Lease took into effect, and should have on good conscious reformed the terms of the Renewal Lease to mirror the terms of the Original Lease, it is undisputed that the error in the drafting of the Renewal Lease was solely based on the negligence on the part of the landlord and not on the part of the tenants. Thus, the doctrine of mutual mistake cannot be invoked to allow for reformation.

Moreover, a bare claim of unilateral mistake by plaintiff, unsupported by legally sufficient allegations of fraud on the part of defendants, does not state a cause of action for reformation (*see Backer Mgt. Corp. v Acme Quilting Co.*, 46 NY2d 211, 218-219 [1978]). Here,

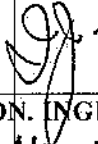
Plaintiff merely alleged that Defendant concealed knowledge of a lower rent in the Renewal Lease. Thus, the unilateral mistake of Smitel is not sufficient to invoke reformation (*Curtis v Albee*, 167 NY 360, 365 [1901]).

Accordingly, after oral argument and a review of the submitted documents, the Court finds that Defendants' motion for summary judgment dismissing Plaintiff's first and second causes of action is granted.

Issues not addressed are either moot or without merit.

This constitutes the Decision and Order of the Court.

ENTER

  
HON. INGRID JOSEPH, J.S.C.  
Hon. Ingrid Joseph  
Supreme Court Justice