

Armstrong v Dumbo Lofts Rental LLC

2022 NY Slip Op 32183(U)

June 17, 2022

Supreme Court, Kings County

Docket Number: Index No. 523862/2019

Judge: Carl J. Landicino

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 81 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 17th day of June 2022.

PRESENT:

CARL J. LANDICINO, J.S.C.
Justice.

-----X
WILLIAM ARMSTRONG, JENNIFER MANCINI,
PROPEL-ANT INC., NORMAN YUN, NAM HEE
LEE, KEIRNAN MONAGHAN and NUSRAT
DURRANI,

Plaintiff(s),

- against -

DUMBO LOFTS RENTAL LLC,

Defendant(s).

Index No. 523862/2019

DECISION AND ORDER

Motions Sequence #2

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Recitation, as required by CPLR 2219(a), of the papers considered in review of this motion:

Papers Numbered (NYSCEF)

| | |
|---|----------|
| Notice of Motion/Cross Motion and Affidavits (Affirmations) Annexed | 107-113, |
| Opposing Affidavits (Affirmations)..... | 120-123, |
| Reply Affidavits (Affirmations)..... | 125-128, |
| Memoranda of Law..... | 114 |

After a review of the papers and upon default in appearance of the Plaintiff at oral argument¹ the

Court finds as follows:

The Defendant Dumbo Lofts Rental, LLC (hereinafter the “Defendant”) now moves (motion sequence #2) against Plaintiff Keirnan Monaghan (hereinafter “Monaghan”) for an Order 1) pursuant to CPLR 3212 awarding the Defendant summary judgment on its first counterclaim for attorneys’ fees, 2) pursuant to CPLR 603, severing the Defendant’s first counterclaim against

¹ Motion Sequence #2 and #3 were scheduled for oral argument on the same date and time. Plaintiff failed to appear, therefore Plaintiff’s cross-motion (Motion Sequence #3) was marked off the calendar. The papers considered herein relate to Motion Sequence #2 and will only be read in relation to Defendant’s Motion Sequence #2.

Monaghan from the remaining plaintiffs herein; and 3) scheduling a hearing or setting a briefing schedule for the determination of reasonable attorneys' fees, costs, and disbursements to be awarded against Monaghan. The Plaintiff argues that it is entitled to an award of attorneys' fees, costs, and disbursements as it relates to Monaghan, whose claims were dismissed in furtherance of this Court's Decision and Order dated June 7, 2021. Article 19 of the Lease provides that "[r]enter shall be liable to Owner in the event Owner incurs legal fees in the enforcement of any of Owner's rights under this lease or pursuant to law."

The Plaintiff opposes this motion. In opposition to the motion, the Plaintiff argues that the instant proceeding is not one wherein the owner sought enforcement of its rights under the Lease. Moreover, the Plaintiff argues that case law supports the position that attorneys' fees are not available in cases where tenants have made claims of rent overcharge, even if those claims are ultimately dismissed.

Summary judgment is a drastic remedy that deprives a litigant of his or her day in court, and it "should only be employed when there is no doubt as to the absence of triable issues of material fact." *Kolivas v. Kirchoff*, 14 AD3d 493 [2d Dept 2005], citing *Andre v. Pomeroy*, 35 NY2d 361, 364, 362 N.Y.S.2d 1341, 320 N.E.2d 853[1974]. The proponent for summary judgment 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. See *Sheppard-Mobley v. King*, 10 AD3d 70, 74 [2d Dept 2004], citing *Alvarez v. Prospect Hospital*, 68 NY2d 320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572 [1986], *Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642 [1985]. "In determining a motion for summary judgment, evidence must be viewed in the light most favorable to the nonmoving party, and all reasonable inference must be resolved in favor of the nonmoving party." *Adams v. Bruno*,

124 AD3d 566, 566, 1 N.Y.S.3d 280, 281 [2d Dept 2015] citing *Valentin v. Parisio*, 119 AD3d 854, 989 N.Y.S.2d 621 [2d Dept 2014]; *Escobar v. Velez*, 116 AD3d 735, 983 N.Y.S.2d 612 [2d Dept 2014].

Once a moving party has made a *prima facie* showing of its entitlement to summary judgment, “the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” *Garnham & Han Real Estate Brokers v Oppenheimer*, 148 AD2d 493 [2d Dept 1989]. Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers. *See Demshick v. Cmty. Hous. Mgmt. Corp.*, 34 AD3d 518, 520, 824 N.Y.S.2d 166, 168 [2d Dept 2006]; *see Menzel v. Plotnick*, 202 AD2d 558, 558–559, 610 N.Y.S.2d 50 [2d Dept 1994].

Turning to the merits of the Defendant’s motion, the Court finds that the Defendant has not met its *prima facie* burden to establish, as a matter of law, that it is entitled to attorneys’ fees under the Lease. The Defendant contends that it is entitled to attorneys’ fees given that it has incurred attorneys’ fees in relation to defending against the Plaintiff’s previously dismissed claims of rent overcharge. The Defendant further contends that this entitlement is covered by Article 19 of the Lease that provides that “[r]enter shall be liable to Owner in the event Owner incurs legal fees in the enforcement of any of Owner’s rights under this lease or pursuant to law.” However, the cases relied upon by the Defendant are not applicable to the issue before the Court. The cases relied upon by the Defendant do not relate to tenant-initiated actions for rent overcharge claims. *Nestor v. McDowell* involved an ejectment action brought by a landlord against an occupant. *See Nestor v. McDowell*, 81 N.Y.2d 410, 415, 615 N.E.2d 991, 993 [1993]. *Casamento v. Juaregui* involved a landlord-initiated summary proceeding seeking to evict a former tenant. In that action the tenant prevailed. *See Casamento v. Juaregui*, 88 AD3d 345, 346, 929 N.Y.S.2d 286, 287 [2d Dept 2011].

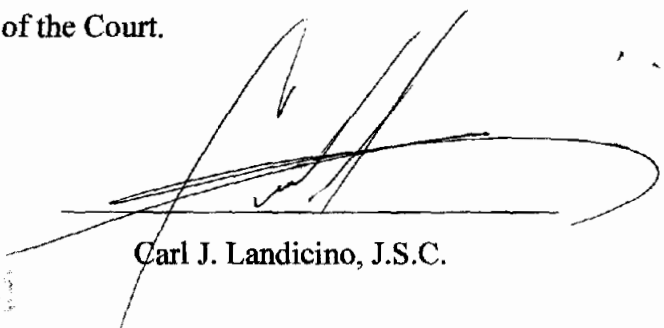
Accordingly, the Court finds that a rent overcharge action is not covered by the Lease provisions at issue. The Lease terms control the determination of a right to attorneys' fees. See *Jerulee Co. v. Sanchez*, 43 AD3d 328, 329, 841 N.Y.S.2d 242, 243 [1st Dept 2007]; see also *Rossman v. Windermere Owners LLC*, 111 AD3d 429, 430, 974 N.Y.S.2d 395, 396 [2d Dept 2011]. The Defendant was not seeking to enforce its rights against Monaghan in this action. It was Monaghan who sought to enforce his rights against the Defendant under a claim of rent overcharge. A tenant should not be deterred from commencing a rent overcharge proceeding for fear of being responsible for the Landlord's attorneys' fees unless the lease is clear on the issue thereby and alerts the tenant of the possible payment of such fees. The provision at issue, under the circumstances of the subject controversy, does not provide for the Defendant landlord to recover attorneys' fees against Plaintiff Monaghan. Moreover, upon searching the record, the Court finds that Plaintiff Monaghan be awarded summary judgment as against the Defendant dismissing the counterclaim for attorneys' fees against Monaghan. See *Bsi v. Raimo*, 195 AD3d 590, 150 N.Y.S.3d 104 [2d Dept 2021], CPLR 3212(b). Accordingly, the Defendant's motion is denied.

Based on the foregoing, it is hereby ORDERED as follows:

Defendant's (motion sequence #2) for summary judgment on its counterclaim for attorneys' fees as against Plaintiff Monaghan is denied and the counterclaim for attorney's fees by the Defendant as against Plaintiff Monaghan is dismissed.

This constitutes the Decision and Order of the Court.

ENTER:



Carl J. Landicino, J.S.C.

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