

Ruru & Assoc. LLC v Weinberg Holdings, LLC

2022 NY Slip Op 32217(U)

July 11, 2022

Supreme Court, New York County

Docket Number: Index No. 653321/2020

Judge: Louis L. Nock

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LOUIS L. NOCK PART 38M

Justice

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RURU & ASSOCIATES LLC,
Plaintiff,

- v -

WEINBERG HOLDINGS, LLC, JB MAX, INC., and THE
WATERING HOLE OF 2ND AVE. CORP.,

Defendants.

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INDEX NO. 653321/2020
MOTION DATE 02/16/2022
MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, and 130

were read on this motion for FOR JUDGMENT.

LOUIS L. NOCK, J.

Plaintiff commercial landlord moves for judgment against defendants commercial tenants for unpaid use and occupancy at the monthly rate of \$16,894.21, going back to the first date of non-payment – January 2021 – through the time of the filing of the motion, January 2022, aggregating the sum of \$236,518.21. Plaintiff further moves for an order of ejectment in respect of said non-payment.

The dispositional backdrop for this motion is best examined from the point in time of this court’s decision and order filed February 1, 2022 (NYSCEF Doc. No. 96), which granted plaintiff’s motion (seq. no. 001) for pendente lite use and occupancy payments at the monthly rate of \$16,894.21. The facts and circumstances of this case are summarized in that decision and order. Familiarity therewith will be presumed.

In the instant motion (seq. no. 003), plaintiff seeks judgment against the defendants because defendants have not agreed to pay use and occupancy going back to January 2021; but

rather, defendants assert that their payment obligation only starts from February 2022, which was the date of filing of this court's aforesaid decision and order.

There is no evidence in the record that defendants are openly flaunting the court's decision and order. Rather, the parties are in dispute regarding whether this court's February 2022 direction to pay use and occupancy starts from that point in time, or going back to the first date of non-payment, January 2021. Defendants have cross-moved for sanctions against plaintiff, accusing it of maintaining a frivolous litigation posture regarding the start date for the payment of use and occupancy.

This court faults neither party in understanding the timeframe intended by the court's use and occupancy order in different ways. The proposed order to show cause presented by plaintiff on motion sequence no. 001 in December 2020 (which was signed) spoke in terms of "ongoing possession" (*see*, NYSCEF Doc. No. 22). Thus, one can understand why defendants might have understood that this court's grant of that motion was limited to "ongoing possession" from the starting point of February 2022 – the date of the court's decision an order. On the other hand, the legal principles underlying the plaintiff's contrary understanding have led plaintiff to ascribe a broader scope to the court's use and occupancy decision; i.e., a starting point of January 2021, the first date of non-payment. Those principles are consistent with this court's analysis in its use and occupancy decision, as follows:

A tenant does not have the right to occupy space without compensation therefor merely because it is litigating with the landlord regarding other incidents of the leasehold (*see*, *Lispenard Partners, Inc. v 35 Smoke & Grill, LLC*, 74 AD3d 496 [1st Dept 2010]; *Oxford Towers Co., LLC v Wagner*, 58 AD3d 422 [1st Dept 2009]). Even if a tenant, as in this action, disputes the amount of rent owed, it cannot continue to occupy the leased premises without payment (*see*, *Levinson v 390 W. End Assocs., L.L.C.*, 22 AD3d 397 [1st Dept 2005]). The court has the inherent authority to direct the payment or deposit of rent pending the outcome of litigation (*see*, *Cane v Herman*, 209 AD2d 368 [1st Dept 1994]).

(NYSCEF Doc. No. 94 at 3.)

Thus, while the court does not fault defendants for their narrower understanding of the use and occupancy decision and order, this court now clarifies that the principles underlying its said decision do, in fact, require the use and occupancy timeframe to be coterminous with the duration of non-payment, from January 2021, as plaintiff correctly understands it.

The defendants are now endowed with this court's clarification of its use and occupancy decision and order; to wit, that the obligation to pay, *pendente lite*, starts from January 2021, and not February 2022 (resulting in the \$236,518.21 outstanding per plaintiff's calculation). Accordingly, the court will grant judgment to plaintiff in said amount. However, the court will refrain, for the time being, from issuing an order of ejectment pending the monitoring of any progress in defendants' satisfaction of the within use and occupancy judgment.

Accordingly, it is

ORDERED that plaintiff's motion for judgment against defendants is granted and, accordingly, plaintiff shall have judgment against the defendants, jointly and severally, in the principal sum of \$236,518.21, and shall have execution therefor; and it is further

ORDERED that plaintiff's motion for an order of ejectment is denied, without prejudice to renew upon the event of defendants' failure to satisfy the within judgment within a reasonable period of time; and it is further

ORDERED that defendants' cross-motion for sanctions is denied.

This will constitute the decision and order of the court.

ENTER:

Louis L. Nock

<u>7/11/2022</u>				<u>LOUIS L. NOCK, J.S.C.</u>	
	DATE				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>			<input type="checkbox"/>	
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