

<b>Maxgain LLC v Rai</b>
2022 NY Slip Op 33070(U)
September 12, 2022
Supreme Court, New York County
Docket Number: Index No. 152874/2021
Judge: Suzanne J. Adams
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. SUZANNE J. ADAMS PART 39TR

*Justice*

-----X

MAXGAIN LLC,

Plaintiff,

- v -

SUMIT RAI, ANNA RAI, SVN MED LLC

Defendant.

-----X

INDEX NO. 152874/2021

MOTION DATE 10/18/2021

MOTION SEQ. NO. 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 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, 64, 65, 66, 67 were read on this motion to/for DISMISS DEFENSE

Upon the foregoing documents, it is ordered that plaintiff's motion is granted. Plaintiff in this action is the landlord of the condominium unit 56B at 30 Park Place in Manhattan. By lease agreement dated November 6, 2019, plaintiff leased the unit to defendant SVN Med LLC ("Tenant") for a lease term commencing December 1, 2019, through May 31, 2021. Defendant Sumit Rai signed the lease agreement on Tenant's behalf as its member/manager, and also signed the lease agreement in his personal capacity as guarantor. Defendant Anna Rai a/k/a Anna Lou, Sumit's wife, resided with him in the unit. In March 2021, plaintiff commenced the instant action alleging, in sum, that Tenant breached the lease by failing to pay rent and other charges for certain periods of time and surrendered the lease prior to its expiration date, and seeking damages for said breach. Plaintiff now moves for an order: pursuant to CPLR 3211(b) dismissing defendants' affirmative defenses; pursuant to CPLR 3212(b) granting summary judgment on its First through Sixth Causes of Action of the Amended Verified Complaint and awarding certain monetary

damages; and pursuant to CPLR 3212 dismissing defendants' First through Third Counterclaims. Defendants oppose the motion.

It is well established that “[o]n a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction (*see*, CPLR 3026).” *Leon v. Martinez*, 84 N.Y.2d 83, 87-88 (1994). The standard of review on a CPLR 3211(b) motion to dismiss an affirmative defense is “whether there is any legal or factual basis for the assertion of the defense.” *Matter of Ideal Mut. Ins. Co.*, 140 A.D.2d 62, 67 (1<sup>st</sup> Dep’t 1988). With respect to motions for summary judgment, it is equally well established that “the proponent of a summary judgment motion 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.” *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 324 (1986) (citing *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 (1985)). The party opposing a motion for summary judgment is entitled to all reasonable inferences most favorable to it, and summary judgment will only be granted if there are no genuine, triable issues of fact. *Assaf v. Ropog Cab Corp.*, 153 A.D.2d 520, 521-22 (1<sup>st</sup> Dep’t 1989).

Viewing the evidence in a light most favorable to the non-moving party, dismissal of defendants’ affirmative defenses and counterclaims is warranted, as they lack factual and/or legal support, and plaintiff has made a *prima facie* showing of entitlement to judgment as a matter of law on its causes of action. The basis of defendants’ defenses and counterclaims, as well as their opposition to the relief sought on this motion, is premised on their contention that the lease at issue was superseded by a new agreement made via text messages exchanged between plaintiff’s manager, Chiahsin Lu, and defendant Sumit Rai on January 31, 2021. (Affidavit of Sumit Rai, Exhibit 3) However, the nature of the texts does not establish that a new contract was formed. “To create a binding contract, there must be a manifestation of mutual assent sufficiently definite

to assure that the parties are truly in agreement with respect to all material terms [citation omitted]. . . . Generally, courts look to the basic elements of the offer and the acceptance to determine whether there is an objective meeting of the minds sufficient to give rise to a binding and enforceable contract.” *Matter of Express Indus. & Term. Corp. v. New York State Dept. of Transp.*, 93 N.Y.2d 584, 589 (1999). Whether a writing is ambiguous as to the parties’ intent is a question of law for a court’s determination. *W.W.W. Assoc. v. Giancontieri*, 77 N.Y.2d 157, 162 (1990). The court finds that the writing at issue, as presented in Exhibit 3, is indeed ambiguous. Although defendants contend that it constitutes a lease agreement meant to supersede the November 6, 2019, lease, the purported agreement is missing material terms such as the new lease term’s beginning and end dates; the definition of the phrase “settlement amount” in the lease context; and the purpose of payment of the dollar amounts set forth in the text. Defendant Sumit Rai also texted “I’ll draft it up in next couple days,” which, together with the aforementioned ambiguities in the text exchange, indicates that the exchange between Mr. Rai and Mr. Lu was an “unenforceable agreement to agree.” *See Dragon Head LLC v. Elkman*, 118 A.D.3d 424 (1<sup>st</sup> Dep’t 2014). Moreover, a court may consider extrinsic evidence of the parties’ intent where, as here, an agreement is ambiguous. *Computer Assoc. Intl., Inc. v. U.S. Balloon Mfg. Co., Inc.*, 10 A.D.3d 699, 699-700 (1<sup>st</sup> Dep’t 2004). Annexed to the moving affidavit of Mr. Lu as Exhibit F are additional text exchanges between himself and Mr. Rai, which exchanges are not disputed by defendants. They clearly indicate that the two men were negotiating the terms of an agreement and not a new lease, and that in fact Mr. Lu stated on January 31, 2021, that he would not continue their negotiations.

With respect to plaintiff’s claims against defendant Anna Rai a/k/a Anna Lou, who is not a party to the lease nor a guarantor, N.Y. Real Property Law § 220 permits a landlord to recover

fair compensation for use and occupancy of real property “under an agreement, not made by deed.” While not bound by the lease terms requiring payment of electricity charges, early termination charges, or attorneys’ fees, Ms. Rai/Lou does not dispute that she lived in the unit for the time period set forth in the Amended Verified Complaint, and paid no consideration for such use and occupancy. Accordingly, it is hereby

ORDERED that plaintiff’s motion is granted in its entirety; and it further

ORDERED that defendants’ First through Eleventh Affirmative Defenses and First through Third Counterclaims are dismissed, with prejudice; and it is further

ORDERED that the Clerk shall enter judgment in favor of plaintiff on its First, Second, Fourth, and Sixth Causes of Action and against defendants SVN Med LLC and Sumit Rai, jointly and severally, in the amount of \$222,523.46, together with interest at the statutory rate from the date of this order through the date of entry of judgment, as calculated by the Clerk, together with costs and disbursements to be taxed by the Clerk; and it is further

ORDERED that the Clerk shall enter judgment in favor of plaintiff on its Third Cause of Action and against defendants SVN Med LLC and Sumit Rai, jointly and severally, for attorneys’ fees in the amount of \$19,966.70; and it is further

ORDERED that the Clerk shall enter judgment in favor of plaintiff on its Third Cause of Action and against defendant Anna Rai a/k/a Anna Lou in the amount of \$180,000.00.

This constitutes the decision and order of the court.

9/12/2022  
DATE

  
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SUZANNE J. ADAMS, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE