

213 W. 23rd St. LLC v Crunch Holdings LLC
2022 NY Slip Op 33634(U)
October 20, 2022
Supreme Court, New York County
Docket Number: Index No. 652882/2022
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH **PART** **14**

Justice

-----X

213 WEST 23RD STREET LLC,

Plaintiff,

- v -

CRUNCH HOLDINGS LLC, CRUNCH WEST 23RD
STREET, LLC

Defendant.

-----X

INDEX NO. 652882/2022

MOTION DATE 10/14/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 21, 22, 23, 24

were read on this motion to/for DISMISS.

Defendant's motion to dismiss is denied.

Background

This action arises from a breach of contract claim by plaintiff (the landlord) against defendants (the guarantor and tenant) who operated a gym at the premises. Plaintiff and defendants entered into a lease agreement in 2013 for a fifteen-year period. The lease included a Good Guy Guaranty clause recognizing Crunch Holdings, LLC ("Crunch Holdings") as the guarantor, and that if the tenant, Crunch West 23rd Street, LLC ("Crunch West") wanted to surrender the lease, it would need to give notice at least 10 months in advance subject to written consent by the landlord. The lease required that Crunch West leave the premises in "broom clean condition," (NYSCEF Doc. No. 2 at 47). On October 12, 2020, the parties amended the Good Guy Guaranty clause to require a 12 months notice period in the event defendants wanted to surrender the premises.

On January 25, 2021, Crunch West gave notice of its intent to surrender the premises on January 26, 2022. The landlord did not consent in writing. On December 8, 2021, Crunch West sent a second notice of its intent to surrender on January 26, 2021, and again the landlord did not agree in writing. The defendants vacated the premises on or about January 26, 2022. On February 8, 2022, plaintiff visited the premises and allegedly found it was in disarray and had extensive damage including graffiti on mirrors, broken mirrors, holes in the wall, destroyed tiles, garbage, and missing gym equipment that was supplied prior to defendants' occupancy of the premises.

Plaintiff filed a complaint against defendants alleging breach of contract for failing to restore the premises to its previous condition upon surrendering and failing to give 12 months advance notice because plaintiff never accepted defendants' notice in writing. In October of 2022, after repairing the damage and replacing gym materials, plaintiff contends it was able to lease the space to a gym operator who was the tenant immediately before defendants.

Defendants seek dismissal of plaintiff's complaint alleging that if defendant failed to adequately surrender, plaintiff breached the contract by taking possession of the premises and violating the covenant of quiet enjoyment. Additionally, defendants contend that plaintiff did not invite defendants back to the premises to clean or repair the damage. Defendants further allege plaintiff does not have standing because it did not file a biennial registration statement with the New York Department of State.

In response, plaintiff contends defendant abandoned the premises and plaintiff's possession complies with plaintiff's right to reenter and relet the property upon a tenant's abandonment of the premises. Furthermore, defendants failed to comply with the lease by

leaving the premises in vandalized and in complete disarray. Plaintiff also alleges it updated the registration statement with the New York Department of State.

In reply, defendants further contend that plaintiff failed to plead that it is complying with the contract in its initial complaint, thus entitling defendant to a dismissal.

Discussion

"On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction. We accept the facts as alleged in the [pleading] as true, accord [the proponent of the pleading] the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v Martinez*, 84 NY2d 83, 87-88, 638 N.E.2d 511, 614 NYS2d 972 [1994] [citations omitted]).

The elements of a breach of contract claim are "the existence of a contract, the plaintiff's performance thereunder, the defendant's breach thereof, and resulting damages" (*Markov v Katt*, 176 AD3d 401, 401-402, 109 NYS3d 295 [1st Dept 1995]).

Plaintiff satisfied the elements of a breach of contract claim in the complaint. Plaintiff and defendants were engaged in a lease, defendants requested a surrender of the lease to which plaintiff did not consent in writing, and defendants subsequently vacated the premises with 6 years left on the lease and allegedly in extremely damaged condition.

Defendants present a different set of facts as to how these events transpired, namely that plaintiff refused to allow defendants on the premises to repair damages. At this stage of litigation, with competing factual summaries, dismissal of plaintiff's claims is improper. Plaintiff satisfied a prima facie case for breach of contract and although defendants contend that they complied with their contractual obligations to surrender with adequate notice and plaintiff is only

bringing suit because it failed to timely fill the vacancy, plaintiff's claim should nevertheless be heard in court so a decision can be reached on the merits. Even if it is ultimately determined that the landlord should have consented to the twelve months notice, there is still the issue of not leaving the premises in a condition required by the lease and the consequences thereof.

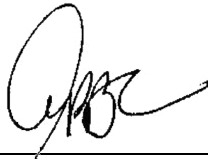
Accordingly, it is hereby

ORDERED that defendant's motion to dismiss is denied and defendant must answer pursuant to the CPLR.

Next Conference: January 31, 2023 at 10:30 a.m.

By January 24, 2023, the parties are directed to upload 1) a discovery stipulation signed by all parties, 2) a stipulation of partial agreement and a brief explanation of the conflicting positions to which the parties cannot agree, or 3) letters explaining why an agreement about discovery could not be reached at all.

The failure to upload something by January 24, 2023 may result in an adjournment of the conference or the Court ordering that a note of issue be filed (at the Court's discretion).

<p><u>10/20/2022</u> DATE</p>	 <hr/> ARLENE P. BLUTH, J.S.C.			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	<input type="checkbox"/> OTHER
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	<input type="checkbox"/> REFERENCE
			<input type="checkbox"/>	<input type="checkbox"/> FIDUCIARY APPOINTMENT