

<b>Plaza 400 Owners Corp. v Kurpis</b>
2022 NY Slip Op 33739(U)
November 1, 2022
Supreme Court, New York County
Docket Number: Index No. 651326/2022
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*

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PLAZA 400 OWNERS CORP.,

Plaintiff,

- v -

ALBERT J. KURPIS, MICHAEL J. MARESCA

Defendants.

-----X

INDEX NO. 651326/2022

MOTION DATE 10/28/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42

were read on this motion to/for PARTIAL SUMMARY JUDGMENT.

Plaintiff's motion for partial summary judgment on its first and second causes of action is granted in part.

**Background**

Plaintiff is a cooperative corporation that owns a building in Manhattan. It alleges that defendants entered into a proprietary lease for a commercial space at the building and that they have defaulted on their obligations. Defendants run a dental practice at this location. Specifically, plaintiff maintains that defendants failed to pay maintenance from September 2021 through March 2022 as well as a shareholder assessment among other outstanding charges. It now moves for summary judgment on its first cause of action for breach of the proprietary lease and for legal fees (its second cause of action).

In opposition, defendant Maresca claims that there are issues of fact that preclude a finding of summary judgment for plaintiff. He maintains that there is a dispute with respect to

what is actually owed. Maresca argues that only \$61,576.79 is due while plaintiff contends that nearly \$70,000 is owed. He claims that he did not get credit for certain parking charges and claims that certain payments were made since the beginning of this action.

Defendant Kurpis also offers opposition. He claims he stopped using the office in 2001 but that he has continued to pay 50% of all monthly maintenance payments and is current in his obligations. He claims that he wants defendant Maresca to sell the office and even started a partition action to cut off his financial obligations in connection with this office.

In reply, plaintiff emphasizes that Maresca does not dispute that there is a valid lease and that he failed to substantiate his claims that another amount is due. Plaintiff argues that defendants failed to raise a material issue of act in opposition.

## **Discussion**

“A party moving for summary judgment must demonstrate that the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in the moving party's favor. Thus, 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. This burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party. If the moving party meets this burden, the burden then shifts to the non-moving party to establish the existence of material issues of fact which require a trial of the action” (*Jacobsen v New York City Health and Hosps. Corp.*, 22 NY3d 824, 833, 988 NYS2d 86 [2014] [internal quotations and citations omitted]).

Here, the Court grants the motion with respect to liability only. There is no dispute that defendants entered into the subject proprietary lease and that some amount is owed to plaintiff. That defendant Kurpis claims that he paid his share is of no moment—that is a dispute to be settled between the defendants. It does not compel the Court to deny the motion.

The Court observes that defendant Maresca raised a legitimate issue about how much is owed by submitting copies of checks he says is for the garage payments (payments that were allegedly not included in the amount sought by plaintiff). While plaintiff argues in reply that the checks do not add up to the difference between the amounts each side claims is due (plaintiff seeks \$69,302.24 while Maresca claims \$61,576.79 is due), defendants need not prove how much is due in opposition. In order to necessitate a trial on damages, defendants merely had to raise issue of fact about how much is due. And they did that here. In other words, defendants did not have to prove, as a matter of law, how much is due. They merely had to cite a material issue contradicting plaintiff's claimed amount, which they did.

The Court emphasizes, however, that the instant motion is not premature. Plaintiff is clearly entitled to summary judgment on liability because defendants do not deny that some amount is due and defendant Maresca admits more than \$60,000 is due.

Plaintiff's second cause of action for legal fees is granted with respect to liability only as well. Plaintiff specifically asked for a hearing to determine the amount due; that will take place at the trial.

In this Court's view, the remaining issues to be explored are the crossclaims between the defendants.

Accordingly, it is hereby

ORDERED that plaintiff’s motion for partial summary judgment is granted as to liability only and the amount due to plaintiff shall be determined at trial.

Conference: January 31, 2023 at 10:30 a.m. By January 24, 2023, the parties are directed to upload 1) a stipulation about discovery signed by all parties, 2) a stipulation of partial agreement that identifies the areas in dispute or 3) letters explaining why no agreement about discovery could be reached. The Court will then assess whether a conference is necessary (i.e., if the parties agree, then an in-person conference may not be required). The failure to upload anything will result in an adjournment of the conference.

<u>11/1/2022</u>			<hr/>		
<b>DATE</b>			<b>ARLENE P. BLUTH, J.S.C.</b>		
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE