

Walber 82 St. Assoc., LP v Fisher

2022 NY Slip Op 34080(U)

December 5, 2022

Supreme Court, New York County

Docket Number: Index No. 155841/2022

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14

Justice

-----X

WALBER 82 STREET ASSOCIATES, LP

Plaintiff,

- v -

DR. ANDREW FISHER,

Defendant.

-----X

INDEX NO. 155841/2022

MOTION DATE N/A

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 46

were read on this motion to/for VACATE - JUDGMENT.

Defendant’s motion to vacate the judgment entered against him is denied.

Background

In this commercial landlord tenant matter, this Court previously awarded plaintiff summary judgment (NYSCEF Doc. No. 19). The Court emphasized that defendant did not deny signing the lease amendments, he did not deny that he occupied the commercial space during the time period alleged by plaintiff and he did not deny that he failed to pay any rent for the relevant time.

Now, with a new attorney, defendant seeks to vacate the judgment. He claims that he was able to include new evidence about the lease renewal issue that should compel the Court to reconsider its previous decision. Defendant contends that he occupied the premises on a month-to-month basis and was at a wedding abroad when he received a phone call from plaintiff’s manager who begged defendant’s corporate entity sign a lease renewal. Defendant insists that he

verbally agreed to help, because plaintiff represented that it needed the documentation for its lenders, and plaintiff's manager emailed him two pages, one was a signature page for the tenant and the second contained a signature page for a guarantor. He claims he signed only the tenant portion and was never provided with (or asked for) a copy of the countersigned document. He insists that had he read the entire agreement, he would not have signed it because this lease amendment raised the real estate obligation amount.

Defendant insists that a notary was not present when he signed the lease and contends that the notary who signed the document is an employee of plaintiff. Defendant blames his prior attorney for not submitting certain exhibits, including emails about signing the lease renewal, in connection with plaintiff's prior motion for summary judgment.

In opposition, plaintiff contends that defendant is a sophisticated businessman who admits he did not ask if there were other pages to the documents he was signing or ever demand that he see a full copy of the lease before signing the document. Plaintiff points out that the signature page defendant admits he signed indicates that he is the tenant rather than a corporate entity.

Discussion

The Court denies the motion. As an initial matter, there is no basis to vacate the judgment in the interest of substantial justice. The fact is that defendant admits he signed an agreement, he admits that it is his signature - and that he occupied the premises during the time period alleged by plaintiff. This is not a situation in which a tenant claims he vacated the premises and the landlord later attempts to collect rent on a vacant space - plaintiff sued for rent due (as well as use and occupancy) while defendant was in the premises. Rather, defendant

admits he signed an agreement without reading it or demanding that a full copy be sent and he admits that he continued to operate his business in the space after signing. He also does not allege that he ever demanded a full copy of the lease amendment prior to this litigation.

Defendant also complains that the real estate obligation went up in the lease to which he now objects. That argument rings hollow because defendant did not pay *any* rent for the relevant time. Defendant has a weak argument for substantial justice when he could have paid whatever amount he thought was undisputed (or put it in an escrow account) and withheld only the disputed increase in real estate taxes. Instead, he did not raise a single objection until this case was commenced. Defendant's argument is akin to refusing to pay anything to a caterer for an entire wedding because you dispute a charge for a few extra place settings. Defendant fails to adequately explain how justice is served where he failed to pay the rent. A potential dispute about real estate taxes does not outweigh the fact that defendant failed to pay the rent month after month (*see* NYSCEF Doc. No. 12 [ledger]).

To be sure, defendant raised questions about the notarized signature, but that issue, in this case, is a red herring. A notary who does not administer an oath (like here) is like an official witness, but that testimony is not necessary when the signer admits that he signed it and that the signature is his. Here, the defendant does not dispute that he signed the signature page of the agreement, which identifies him, individually, as the tenant (NYSCEF Doc. No. 37). While this Court does not purport to condone a faulty notarization, the remedy is not to nullify a document where the signature is admitted.

To the extent the motion seeks to renew with "new evidence," it is denied; defendant clearly possessed those emails in the prior motion but did not include them in his opposition. That defendant now blames his attorney is not a chance for a "do-over" and defendant did not

cite any binding case law for the proposition that vacatur is appropriate where a party hires a new attorney to submit better papers. If defendant thinks his prior attorney is to blame, then he has remedies against the prior attorney – but in light of the fact that defendant admits his signature, the failure to include the emails to support the notarization issue earlier would not have made a difference.

To the extent the motion seeks to reargue the Court’s prior decision, it is denied.

Accordingly, it is hereby

ORDERED that defendant’s motion to vacate is denied.

12/5/2022

DATE



ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE