

**Radiance Health & Aesthetics LLC v Victor
Regenerative Medicine Ctrs. LLC**

2022 NY Slip Op 34106(U)

December 6, 2022

Supreme Court, New York County

Docket Number: Index No. 160279/2020

Judge: David B. Cohen

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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. DAVID B. COHEN **PART** **58**

Justice

-----X

RADIANCE HEALTH & AESTHETICS LLC,

Plaintiff,

- v -

VICTOR REGENERATIVE MEDICINE CENTERS LLC,
STEVEN VICTOR,

Defendant.

-----X

INDEX NO. 160279/2020

MOTION DATE 08/02/2022

MOTION SEQ. NO. 006

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 006) 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 108, 109

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

Plaintiff moves pursuant to CPLR 3212 for an order granting it summary judgment on its claim for breach of contract against defendant Steven Victor (“Victor”). Victor opposes.

I. BACKGROUND

By lease dated May 11, 2018, plaintiff leases premises located at 635 Madison Avenue, Suite 1400, in Manhattan. The lease provides plaintiff with the right to grant a license for the use of a portion of the premises to unaffiliated physicians. (NYSCEF 96).

In June 2020, plaintiff and defendant Victor Regenerative Medicine Centers LLC (“LLC”) entered into a license agreement for LLC to rent a space within the premises, for a monthly fee of \$15,000, for a three-year term, with the fee increasing three percent per year. Victor, LLC’s president, signed the agreement on behalf of LLC, and LLC paid a \$30,000 security deposit. Among the remedies provided in the event of a default by LLC is the payment of \$500 for every day that LLC remains in possession of the premises after the agreement is terminated, along with LLC’s obligation to pay plaintiff’s attorney fees (NYSCEF 95, 97).

On October 8, 2020, plaintiff served defendants with a notice to cure, alleging that LLC breached the license agreement by failing to pay monthly fees from July to October 2020, and that after applying the security deposit, \$30,000 was still due. Plaintiff also asserted that LLC breached the agreement by installing a video camera at the reception desk facing the waiting room, without plaintiff's permission, and by failing to obtain required liability insurance naming plaintiff as an additional insured. Plaintiff advised defendants that if they failed to cure their defaults by October 26, 2020, it would terminate the agreement (NYSCEF 98).

On October 26, 2020, plaintiff served defendants with a notice of termination of the agreement, with a deadline of October 31, 2020 to vacate the premises (NYSCEF 99). According to plaintiff, defendants neither paid the overdue fees, nor vacated the premises until November 2021 (NYSCEF 95).

Plaintiff commenced this action against only LLC in November 2020. In January 2021, LLC moved for pre-answer dismissal of the complaint, and plaintiff cross-moved for summary judgment. By decision and order, the motion to dismiss was granted as to all claims except the breach of contract claim, and the summary judgment motion was denied without prejudice to renew (NYSCEF 41).

In June 2021, LLC filed its answer, and in July 2021, plaintiff moved for leave to amend its complaint to add additional claims, which was granted in August 2021. Also in August 2021, LLC's counsel was granted permission to withdraw as counsel (NYSCEF 43, 56, 57).

In October 2021, plaintiff moved for a default judgment against LLC, which was granted in December 2021 (NYSCEF 69). In January 2022, a judgment was entered against LLC (NYCEF 73).

By decision dated June 23, 2022, plaintiff's motion for leave to file a supplemental summons and second amended complaint adding Victor as an individual defendant was granted (NYSCEF 86). On August 1, 2022, Victor filed an answer (NYSCEF 93).

II. ANALYSIS

Plaintiff contends that it is entitled to a judgment against Victor personally, as it has discovered since it obtained a judgment against LLC that LLC is a fictitious corporation. It submits in support thereof an affidavit from its investigator, who conducted a search and discovered that LLC is not a registered corporate entity in any state in the United States, as well as an affirmation of counsel, who performed a similarly fruitless search (NYSCEF 95, 101).

In opposition, Victor argues that LLC was fraudulently induced to enter into the license agreement, that the master lease did not permit plaintiff to sublease the space to LLC, and that defendants have meritorious counterclaims related to plaintiff's unsafe practices during the COVID-19 pandemic and plaintiff's illegal operation of its own practice at the premises, as well as a claim for fraudulent inducement, theft, and tortious interference with their business. Victor thus demands damages and a jury trial on defendants' counterclaims (NYSCEF 109).

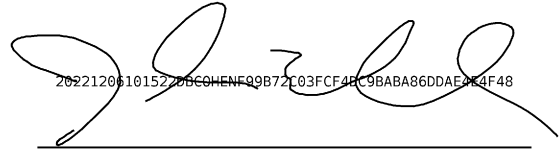
Plaintiff establishes that LLC is a non-registered, nonexistent corporate entity, which Victor does not dispute, and therefore, it is entitled to a judgment holding Victor personally liable as LLC's president and owner (*See e.g., Prod. Resource Group LLC v Zanker*, 112 AD3d 444 [1st Dept 2013] [individual who acts on behalf of nonexistent corporate entity may be held personally liable for entity's liability]).

As defendants never filed an answer with counterclaims, the counterclaims asserted in Victor's opposition papers are not considered. He otherwise raises no triable issues of fact precluding summary judgment, as the lease and the parties' agreement contradict his claims.

III. CONCLUSION

Accordingly, it is hereby

ORDERED, that plaintiff's motion for summary judgment against defendant Victor is granted, and plaintiff is directed to submit a proposed judgment, by e-filing and by email to cpaszko@nycourts.gov, forthwith.



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12/6/2022

DATE

DAVID B. COHEN, 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