

<b>150 W. 55th St. Apt. Corp. v Greenthorn Ltd.</b>
2022 NY Slip Op 34176(U)
December 7, 2022
Supreme Court, New York County
Docket Number: Index No. 655850/2020
Judge: Louis L. Nock
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. LOUIS L. NOCK PART 38M**

*Justice*

-----X

150 WEST 55TH STREET APARTMENT CORPORATION,

Plaintiff,

- v -

GREENTHORN LTD. and PEONY FLOWERS, INC.,

Defendants.

-----X

**INDEX NO.** 655850/2020

**MOTION DATE** 02/01/2022

**MOTION SEQ. NO.** 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 003) 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 78, 79, 80, 81, 82, and 83

were read on this motion for

SUMMARY JUDGMENT

LOUIS L. NOCK, J.

Upon the foregoing documents, the motion is granted in part for the reasons set forth in the moving and reply papers (NYSCEF Doc. Nos. 63-64, 70, 78), and the exhibits attached thereto, in which the court concurs as set forth below. The court assumes familiarity with the facts and prior history of this action as set forth on the argument record of October 28, 2021, deciding Motion Sequence No. 001 (Transcript of Proceedings, NYSCEF Doc. No. 33).

Plaintiff's first and second causes of action seek to vacate or reform a stipulation entered into by plaintiff and defendants, through defendant's principal nonparty Peter Grontas, dated September 18, 2018, in which plaintiff agreed to satisfy "any outstanding rent owed to [plaintiff] at the time of the settlement of" the matter of *Grontas v Kent North Associates LLC*, Index No. 603482/2009, pending in this court before Hon. James E. d'Auguste, from the settlement proceeds of that action (the "Grontas Action") and forbear from commencing a special proceeding to evict defendants for nonpayment of rent (Stipulation, NYSCEF Doc. No. 72).

The parties expressed a hope that the Grontas Action would be settled by December 31, 2018;

but did not otherwise provide a time in which Grontas would need to settle the action in order for plaintiff to continue to forbear (*id.*). It is undisputed that the Grontas Action remains pending without settlement, and plaintiff now asserts that the total rental arrears owed by defendants far exceeds the value of any potential settlement, as neither defendant has paid any rent in the interim.

“A party will not be relieved from the consequences of a stipulation unless there was sufficient cause to invalidate it, such as fraud, mistake, collusion, accident, or some other ground” (*Charlop v A.O. Smith Water Products*, 64 AD3d 486, 486 [1st Dept 2009], *citing Hallock v State of New York*, 64 NY2d 224 [1984]). The record before the court simply does not disclose any such fraud, mistake, collusion, or accident. The parties simply neglected to specify the effective life of the stipulation by setting a date beyond which it would terminate in the absence of a settlement in the Grontas Action. Nor is there any ground to reform the stipulation to the extent of limiting it to damages accruing prior to its effective date, as the clear terms of the stipulation state that it applies to any outstanding rent on the date of settlement (*Slatt v Slatt*, 64 NY2d 966, 967 [1985] [“In adjudicating the rights of parties to a contract, courts may not fashion a new contract under the guise of contract construction”]).

Yet, even if grounds to entirely vacate the stipulation do not exist, plaintiff is not entirely without recourse. A stipulation is a contract (*Azriliant v Oppenheim*, 91 AD2d 586, 588 [1st Dept 1982]), and “[w]hen a contract does not specify time of performance, the law implies a reasonable time” (*Savasta v 470 Newport Assoc.*, 82 NY2d 763, 765, *rearg denied* 82 NY2d 889 [1993]). In determining what time is reasonable, the court considers “the nature and object of the contract, the previous conduct of the parties, the presence or absence of good faith, the experience of the parties and the possibility of prejudice or hardship to either one, as well as the

specific number of days provided for performance” (*Ben Zev v Merman*, 73 NY2d 781, 783 [1988]).

Here, the nature and object of the contract was to allow Grontas some time to settle the Grontas Action to acquire sufficient funds to pay off the rent arrears owed by defendants. Even allowing for the most generous possible interpretation of the parties’ intentions, it defies credibility to think, as defendants posit, that plaintiff was yielding its right to recover all unpaid rent until Grontas settled the Grontas Action, no matter how long he took to do so. Nor can the court deny the significant prejudice being suffered by plaintiff, as defendants have been allowed to operate rent-free for more than four years. Such a situation is “manifestly unfair” to plaintiff (*MMB Assoc. v Dayan*, 169 AD2d 422 [1st Dept 1991]), and cannot continue *ad infinitum*. On the other hand, the court is also cognizant that whether or not the Grontas Action settles is not solely within Grontas’ control. In addition, the global pandemic which began in or shortly prior to 2020 has further elongated court proceedings, generally. In balance of all these factors, the court determines that the most equitable determination of a reasonable time to perform is to now set an end date to do so. Accordingly, the motion as to the first and second causes of action is granted to the extent of stating that the time in which the Grontas Action must be settled, for purposes of the stipulation, is set at sixty days following entry of this decision and order, after which the stipulation shall terminate. Defendants fail to raise an issue of fact counseling against this disposition.

Turning to the third and fourth causes of action, plaintiff has established *prima facie* entitlement to summary judgment on each underlying lease by submission of “the existence of the lease . . . the tenant’s failure to pay the rent, the amount of the underpayment, and the calculation of the amounts due under the lease (*Thor Gallery at S. Dekalb, LLC v Reliance*

*Mediaworks (USA) Inc.*, 143 AD3d 498 [1st Dept 2016]). Defendants do not raise a triable issue of fact in opposition except as to the amount of damages. Moreover, if the stipulation remains in effect, then plaintiff's damages may be limited by the amount of the settlement in the Grontas Action. Accordingly, summary judgment on the third and fourth causes of action is as to liability only.

So much of plaintiff's motion which is to dismiss defendants' affirmative defenses and counterclaims is also granted in part. The counterclaims allege that plaintiff commenced the prior Housing Court action, as well as the instant action, without "reasonable or legal basis" (NYSCEF Doc. No. 75, ¶¶ 32-36), which allegation sounds in frivolous conduct pursuant to Rules of the Chief Administrator of the Courts (22 NYCRR) § 130-1.1. As is well-established, no independent cause of action exists for frivolous conduct (*360 W. 11th LLC v ACG Credit Co. II, LLC*, 90 AD3d 552, 554 [1st Dept 2011]). As to the affirmative defenses, the first and second argue that the court should not modify the stipulation without consent. In light of the above discussion regarding modification of the stipulation, these affirmative defenses should be dismissed. The third and fourth affirmative defenses, however, assert that the stipulation acts as a limitation on damages. As set forth above, the language of the stipulation provides that settlement proceeds will be used to satisfy all outstanding rental arrears as of the date of settlement. As the stipulation remains in effect, it cannot be said that the defenses are entirely without merit (CPLR 3211[b]).

Accordingly, it is hereby

ORDERED that the plaintiff's motion for summary judgment is granted to the extent of granting partial summary judgment in favor of plaintiff and against defendants on the complaint as follows; and it is further

ORDERED that summary judgment is granted on the first and second causes of action to the extent of supplying a term for defendants' time to perform the stipulation, to wit, that the Grontas Action must be settled within sixty days of entry of this decision and order; and it is further

ORDERED that the defendants are found liable to plaintiff, jointly and severally, on the third and fourth causes of action and the issue of the amount of a judgment to be entered thereon shall be determined at the trial herein; and it is further

ORDERED that the action is severed and shall continue as to the third and fourth causes of action; and it is further

ORDERED that counsel are directed to appear for a status conference in Room 1166, 111 Centre Street, New York, New York, on January 11, 2023, at 2:00 PM.

This constitutes the decision and order of the court.

ENTER:

<u>12/7/2022</u>			<u>LOUIS L. NOCK, J.S.C.</u>	
DATE				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input checked="" type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE