Lumumba v Praileau
2023 NY Slip Op 30394(U)
February 7, 2023
Supreme Court, New York County
Docket Number: Index No. 651104/2021
Judge: Frank P. Nervo
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART IV
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SHAKA LUMUMBA,

Plaintiff,

-against-

DASHAWN B. PRAILEAU, individually, and WATSON ASSOCIATES, LLC TAX AND ACCOUNTING SERVICE CNJ HOLDINGS, LLC,

Defendants.

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DECISION FOLLOWING INQUEST

Index No. 651104/2021

HON. FRANK P. NERVO, J.S.C.

By decision and order on motion sequence 001, the Hon. Debra A. James, J.S.C. found defendants in default and granted plaintiff a default judgment against same, with the determination of damages and attorneys' fees to be calculated at inquest (*see* NYSCEF Doc. No. 44). By administrative order, the inquest in this matter was assigned to Part IV, before the Hon. Frank P. Nervo, J.S.C. Thereafter, by order dated December 02, 2022, this Court directed the inquest proceed on paper submissions on January 23, 2023, unless defendants appeared in this matter and sought cross-examination (*see* NYSCEF Doc. No. 47). The Court has received papers in support of plaintiff's damages (NYSCEF Doc. Nos. 48 - 54). Defendants have neither submitted papers in opposition nor

sought to cross-examine plaintiff's witnesses. Defendants have not appeared on this inquest.

RENT

Turning to the merits of the inquest and considering the procedural posture of this matter, namely defendant's default, it is beyond cavil that defendants have admitted all traversable allegations in the complaint, including liability (*Amusement Bus. Underwriters v. American Intl. Group*, 66 NY2d 878 [1985]; *Curiale v. Ardra Ins. Co., Ltd.*, 88 NY2d 268 [1996]). Whether a default is premised upon failure to answer or upon striking of an answer is of no moment (*Abbas v. Cole*, 44 AD3d 31, 33 [2d Dept 2007]). Accordingly, the only issue before the Court is "plaintiff's conclusion as to damages" (*Amusement Bus. Underwriters v. American Intl. Group*, *supra*; *Curiale v. Ardra Ins. Co., Ltd*, *supra*).

Plaintiff has established the following by a preponderance of the evidence (*see generally* NYSCEF Doc. Nos. 48 - 54). The parties entered into a lease agreement in January 2018 for a storefront property owned by plaintiff, with said lease expiring in February 2019 (NYSCEF Doc. No. 50). Following expiration of the lease, defendants remained in possession of the subject storefront as holdover tenants. During the holdover tenancy, defendants failed

to pay monthly rent for June and July 2019. Plaintiff brought an action in Civil Court for this unpaid rent and the parties executed a stipulation settlement which was so-ordered by the Court. Thereafter, defendant was evicted in February 2022.

Plaintiff alleges at the expiration of the parties' lease agreement, during defendants' holdover tenancy, the parties entered into an oral agreement for an increased monthly rent of $4,300.00 (NYSCEF Doc. No. 48). Plaintiff has established that a stipulation of settlement was issued in Civil Court, and so-ordered by the Hon. Dakota D. Ramseur, previously of the Civil Court and recently elected as a Justice of this Supreme Court; the Court notes that said the photograph submitted of said stipulation is legible only with great effort (NYSCEF Doc. No. 52). Notwithstanding, the stipulation is silent as to the amount of monthly rent, stating only that rent had been paid through May of 2020.

A tenant's holdover establishes a month-to-month tenancy, absent agreement otherwise (Real Property Law § 232-c; *Logan v. Johnson*, 34 AD3d 758 [2d Dept 2006]). When a lease extension cannot be reached, and the landlord accepts the holdover tenant's monthly payments in an amount other than that

provided by the lease agreement, "the acts and conduct of the parties negate the existence of the original contract" (*Transit Drive-In Theatre, v. Outdoor Theater Caterers*, 53 AD2d 1009 [4th Dept 1976]; *see also Bahamonde v. Grabel*, 34 Misc3d 58 [App Term 9th and 10th JD 2011] landlord's acceptance of $13,000 in monthly rent precluded seeking $16,500 in monthly rent following expiration of lease). Stated differently, it has long been established that a holdover tenancy is subject to the same terms and conditions as the prior tenancy, absent conduct of the parties which negates these terms and conditions (*Kennedy v. City of New York*, 169 NY 19 [1909]; *City of New York v. Pennsylvania R. Co.*, 37 NY2d 298 [1975]; *Baylies v. Ingram*, 84 AD 360 [1st Dept 1903]).

Here, there is no evidence, other than plaintiff's own sworn statement, that the parties agreed to an increased monthly rent of $4,300.00 following the expiration of the parties' lease agreement. The evidence presented at inquest regarding the rent amount is: (1) the lease agreement/rider establishing monthly rent of $4,100.00, (2) a so-ordered September 2019 stipulation agreeing that past and future rent was paid through May 2020, without denominating the monthly rent or total rent paid for said period and (3) plaintiff's affidavit that the monthly rent paid during the holdover period had increased to $4,300.00. Conspicuously absent are any bank records, canceled checks, or receipts

establishing the monthly rent paid pursuant to September 2019 stipulation during the defendants' holdover tenancy was $4,300.00. Additionally, the September 2019 stipulation is silent as to the amount of monthly rent, providing only that rent was paid through May 2020 without providing for the amount, be it designated as monthly rent or a total rent payment for the period through May 2020. This evidence is insufficient, as a matter of law, to rebut the common law presumption that defendants' holdover tenancy continued upon the same terms and conditions as the parties' lease agreement (*Kennedy v. City of New York*, 169 NY at 23; *City of New York v. Pennsylvania R. Co.*, 37 NY2d 298 at 301; *Baylies v. Ingram*, 84 AD at 362). Put simply, plaintiff has not established changed circumstances or conditions which would entitle plaintiff to a rent in excess of that in the parties' lease agreement.

Accordingly, plaintiff recovers $86,100.00 in unpaid rent, representing 21 months of unpaid rent at the monthly rate of $4,100.00, as provided by the parties' lease agreement, for the months of June 2020 through and including February 2022.

INTEREST

Finally, turning to the interest sought on the award, plaintiff prays for interest on the award from November 19, 2021, the date of entry of default judgment (NYSCEF Doc. No. 48). However, the Court finds that interest should be calculated by the date of defendants' breach (*Brushton-Moira Cent. School Dist. v. Fred H. Thomas Associates, P.C.*, 91 NY2d 256, 261 [1998]; *Rodriguez v. Moore–McCormack Lines*, 32 NY2d 425, 429 [1973]). The breaches here occurred each month defendants failed to pay rent, beginning in June 2020, and continuing until defendants' eviction in February 2022. Consequently, the Court uses the midpoint of this continuing breach, April 2, 2021, as the date by which to calculate interest (CPLR § 5001[b]).

Accordingly, it is

ORDERED and ADJUDGED that plaintiff, SHAKA LUMUMBA, 2360 Adam Clayton Powell Jr. Boulevard New York, NY 10030, shall have judgment in the amount of $86,100.00 as against defendants DASHAWN B. PRAILEAU, 2360 Adam Clayton Powell Jr. Boulevard New York, NY 10030, and WATSON ASSOCIATES LLC TAX AND ACCOUNTING SERVICE, 2360 Adam Clayton Powell Jr. Boulevard New York, NY 10030, jointly and severally, with interest at the statutory rate from April 2, 2021, as calculated by

the Clerk of the Court and together with costs and disbursements as taxed by the Clerk of the Court; and it is further

ORDERED that judgment shall be submitted to the Clerk of the Court, unless directed otherwise by that office, and not to chambers.

THIS CONSTITUTES THE DECISION, ORDER, AND JUDGMENT OF THE COURT FOLLOWING INQUEST.

Dated: February 7, 2023

E N T E R:

HON. FRANK P. NERVO
J.S.C.