

**SRI Eleven 1407 Broadway Operator LLC v Weaver  
Apparel, LLC**

2023 NY Slip Op 30444(U)

February 10, 2023

Supreme Court, New York County

Docket Number: Index No. 654167/2020

Judge: Debra A. James

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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. DEBRA A. JAMES**

**PART 59**

*Justice*

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SRI ELEVEN 1407 BROADWAY OPERATOR LLC,

Plaintiff,

- v -

WEAVER APPAREL, LLC,

Defendant.

-----X

INDEX NO. 654167/2020

MOTION DATE 02/08/2023

MOTION SEQ. NO. 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55

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

ORDER

Upon the foregoing documents, it is

ORDERED that the cross-motion of defendant to stay further proceedings in the herein action pending resolution of a prior pending action entitled SRI Eleven 1407 Broadway Operator LLC, New York Supreme Court, Index No. 653959/2021 (Saunders, J.) is denied; and it is further

ORDERED that the motion of plaintiff for summary judgment, dismissing the affirmative defenses and counterclaims interposed by defendant and awarding a monetary judgment on its first and second causes of action is granted and the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendant in the amount of \$ 104,311.93, together with interest at statutory rate from the date of August 1, 2021 until the date of

the decision and order on this motion, and thereafter at the statutory rate, as calculated by the Clerk, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED, that with respect to the third cause of action for reasonable attorney's fees and legal expenses, such claim is severed, shall continue and is referred to a Special Referee to hear and determine; and

WHEREAS, this matter having come on before this court on February 8, 2023, on motion of the plaintiff for summary judgment and on cross motion of the plaintiff for a stay pending resolution of a prior pending action, and the plaintiff having been represented in connection therewith by Brendan J. Derr, Esq., and the defendant having been represented in connection therewith by Stephen H. Finkelstein, Esq., and, pursuant to CPLR 4317, the court having on its own motion determined to consider the appointment of a referee to determine, and it appearing to the court that a reference to determine is proper and appropriate pursuant to CPLR 4317 (b) in that an issue of damages separately triable and not requiring a trial by jury is involved, it is now hereby

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to determine the following individual

issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose:

- (2) the issue of amount of reasonable attorney's fees and legal expenses incurred by plaintiff in connection with or arising out of the enforcement of the subject Lease and/or the herein action;

and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh) at the "References" link ), shall assign this matter at the initial appearance to an available JHO/Special Referee to determine as specified above; and it is further

ORDERED that counsel shall immediately consult one another and counsel for plaintiff/petitioner shall, within twenty (20) days from the date of this Order, submit to the Special Referee Clerk by e-mail an Information Sheet (accessible at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical

thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed with the hearing, on the date fixed by the Special Referee Clerk for the initial appearance in the Special Referees Part, subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further

ORDERED that on the initial appearance in the Special Referees Part the parties shall appear for a pre-hearing conference before the assigned JHO/Special Referee and the date for the hearing shall be fixed at that conference; the parties need not appear at the conference with all witnesses and evidence; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue(s) specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly; and it is further

ORDERED and ADJUDGED that pursuant to CPLR § 4319, the Clerk is directed to enter judgment in favor of plaintiff SRI Eleven 1407 Broadway Operator LLC and against the defendant Weaver

Apparel, LLC, in accordance with the Report of the aforementioned Special Referee, without any further application.

DECISION

Defendant has raised no triable issues of fact in response to plaintiff's submissions that establish plaintiff's prima facie entitlement to summary judgment against defendant on plaintiff's claims of breach of the Lease dated February 12, 2019. See Cut-Outs, Inc. v Man Yun Real Estate Corp, 286 AD2d 258, 263 (1st Dept) (failure to pay rent constitutes breach of contract, permitting recovery of "unpaid rent and additional rent").

In addition, defendant's argument that the herein action should be stayed pending resolution of the motion for summary judgment in the prior pending action in which plaintiff seeks to enforce the Lease guaranty is unavailing, as there is no "complete identity of parties, cause of action and remedy". See Milliken & Co v Stewart, 182 AD2d 385, 387 (1st Dept 1992).

*Debra A. James*

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<u>2/10/2023</u>			<u>DEBRA A. JAMES, J.S.C.</u>	
DATE				
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
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 checked="" type="checkbox"/> REFERENCE