

129 W. 29th St. LLC v Lavrinovich

2023 NY Slip Op 30511(U)

February 17, 2023

Supreme Court, New York County

Docket Number: Index No. 656404/2022

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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129 WEST 29TH STREET LLC	INDEX NO. <u>656404/2022</u>
Plaintiff,	MOTION DATE <u>05/20/2022</u>
- v -	MOTION SEQ. NO. <u>001</u>
VLAD LAVRINOVICH,	
Defendant.	DECISION + ORDER ON MOTION
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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 12, 13, 20, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33
 were read on this motion to/for JUDGMENT - SUMMARY IN LIEU OF COMPLAINT.

Upon the foregoing documents and for reasons set forth on the record (2.17.23), 129 West 29th Street LLC’s (the **Landlord**) motion for summary judgment in lieu of complaint must be granted. On the record before the Court, it is undisputed that the Tenant failed to pay rent in accordance with the terms of the Lease at the absolutely latest (and crediting all of the Guarantors arguments) by December 1, 2019. The Tenant had no right to withhold rent during this period. This is the latest when the “default or other event causing such natural person to become wholly or partially liable for such obligation” occurred.¹ Thus, AO 22-1005 does not serve to insulate the Guarantor from liability under the Guaranty. Nor by its express terms does it serve to cut off liability for a default which occurred and is continuing for a period prior to the period specified in the statute. It is beyond doubt, that the Guaranty is an instrument for the payment of money only (*Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A., "Rabobank*

¹ To be clear, the Tenant under the Lease had no right to withhold rent in April, 2019 either. To the extent that it thought there was an overpayment because of its deposit of first months rent following the 6 months of rent abatement, the Tenant should have notified the Landlord and requested reconciliation not withheld current rent.

Intl., " *N.Y. Branch, v Navarro*, 25 NY3d 485, 492 [2015]). As discussed on the record, any personal defenses of the Tenant to any asserted defaults are not available to Guarantor under the express terms of the Guaranty. The record firmly establishes that there was no commingling of the security deposit (NYSCEF Doc. No. 30). There simply is not evidence that there was ever an acceptance of any purported surrender of the Tenant in March, 2020 as the Landlord never took an action inconsistent with the Tenant's lease other than terminating the lease **in December 2021** (*Riverside Research Inst. v KMGA, Inc.*, 68 NY2d 689, 691–692 [1986]; *Brock Enterprises Ltd. v Dunham's Bay Boat Co. Inc.*, 292 AD2d 681, 682 [3d Dept 2002]). Thus, the plaintiff is entitled to summary judgment and no issues of fact exist preclude the entry of judgment in its favor. Lastly, the argument that there was a failure of consideration fails. The Landlord was required to deliver possession. The Tenant moved in and accepted possession and did not attempt to rescind the Lease (*Fugelsang v Fugelsang*, 131 AD2d 810, 811 [2d Dept 1987]). Thus, the motion must be granted.

It is hereby ORDERED that the motion for summary judgment in lieu of complaint pursuant to CPLR 3213 is granted; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of 129 West 29th Street LLC, and against Vlad Lavrinovich, in the amount of \$1,410,638.73, plus interest at the statutory rate from May 1, 2022 to the date of judgment and thereafter, plus costs and disbursements as allocated by the Clerk, for a total amount of \$ _____; and it is further

ORDERED that a Judicial Hearing Officer (“JHO”) or Special Referee shall be designated to determine the issue of the amount due, which is hereby submitted to the JHO/Special Referee for such purpose; 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 unless otherwise indicated; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) 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 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 shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or 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

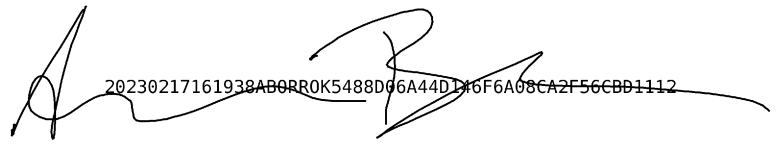
fixed by the Special Referee Clerk for the initial appearance in the Special Referees Part, subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further

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 issues 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 that counsel shall file memoranda or other documents directed to the assigned JHO/Special Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and the Special Referees (available at the “References” link on the court’s website) by filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules); and it is further

ORDERED that the plaintiff shall order a copy of the transcript (2.17.23) and upload the same to NYSCEF.



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2/17/2023

DATE

ANDREW BORROK, 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