

Nineteen Trust v Doshetty

2023 NY Slip Op 31315(U)

April 11, 2023

Supreme Court, New York County

Docket Number: Index No. 657042/2021

Judge: Arthur F. Engoron

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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. ARTHUR F. ENGORON PART 37

Justice

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THE NINETEEN TRUST,	INDEX NO. <u>657042/2021</u>
Plaintiff,	MOTION DATE <u>01/05/2023</u>
- v -	MOTION SEQ. NO. <u>001</u>

VIKRAM DOSHETTY, ESHA RANGANATH,
Defendants.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 were read on this motion for PARTIAL SUMMARY JUDGMENT.

Upon the foregoing documents, and for the reasons stated hereinbelow, plaintiff's motion for partial summary judgment is granted.

Background

On July 30, 2020, plaintiff, The Nineteen Trust, by and through its sole trustee, Joshua Kesselman ("Landlord"), as landlord, entered into a one-year lease ("Lease") with defendants, Vikram Doshetty and Esha Ranganath ("Tenants"), as tenants, for the penthouse apartment located at 138 West 19th Street, New York ("Premises"). NYSCEF Doc. No. 19. The \$13,000-per-month Lease commenced August 15, 2020, and expired August 14, 2021. Id.

As part of the Lease, Tenants gave Landlord a \$13,000 security deposit. NYSCEF Doc. No. 16.

Section 9(b) of the Lease reads, in pertinent part:

When the Lease ends, [Tenants] must remove all of [their] movable property. [Tenants] must also remove *at [Tenant's] own expense ... any other installation or attachment* [Tenants] may have installed in the Apartment, even if it was done with [Landlord's] consent ... [Tenants] *must restore and repair to its original condition those portions of the Apartment affected by those installations and removals* ... The provisions of this article will continue to be in effect after the end of this Lease.

NYSCEF Doc. No. 19 (emphasis added).

Section 20(A)(iv) of the Lease states that Tenant will reimburse Landlord for "[a]ny legal fees and disbursements for legal actions or proceedings brought by [Landlord] against [Tenants]

because of a default by [Tenants] for defending lawsuits brought against [Landlord] because of the actions of [Tenants].” Id. This is also reiterated in Section 20 of the Lease’s Rider.

The Lease also included an “option to cancel rider” allowing Landlord to cancel the Lease a month early, upon 45 days’ notice and a \$10,000 payment to Tenants. NYSCEF Doc. No. 19.

In May of 2021 Landlord properly exercised its option to cancel, and, on July 1, 2021, Tenants vacated the Premises. NYSCEF Doc. No. 34. Soon after, Tenants demanded the return of their security deposit. NYSCEF Doc. No. 34.

On July 6, 2021, non-party Brandon Corcione, Landlord’s Property Manager, went to the Premises “to inspect it for damages,” and took nine photos of alleged damage left by Tenants. NYSCEF Doc. No. 17, 26.

On July 8, 2021, non-party GMG Group provided Mr. Corcione with proposal G-6247-P1 describing “Penthouse touchup” work to be done at the Premises. NYSCEF Doc. No. 20. The proposal listed a subtotal of \$13,240 for the work plus \$1,324 in “general conditions @ 10%,” \$437 in “insurance at 3%,” and \$1,500 in “10% profit,” for a total of \$16,501. Id.

On July 12, 2021, Mr. Doshetty emailed Mr. Kesselman and Mr. Corcione to “coordinate with [Mr. Corcione] on a few items in the penthouse (holes in walls for TV, stain on bed),” obtain a repair estimate, and “figure out a timeframe for the return” of Tenants’ security deposit. NYSCEF Doc. No. 20.

On July 14, 2021, Mr. Corcione replied with a copy of the GMG Group’s proposal and a room-by-room breakdown of the “rough carpentry” and “painting” work that needed to be done to restore the Premises to its original condition. NYSCEF Doc. No. 20. In his email Mr. Corcione explained to Tenants that the eggshell paint in the Premises had a finish and slight sheen to it such that any touch ups would “not have a perfect finish without [the work] being visible,” a reality necessitating painting full walls when covering each hole, even small ones left by artwork anchors. Id.

Mr. Corcione also explained that a \$1,500 charge for “baseboard caulking” was included in the pricing but that it “is for the living room and was *not damaged during [Tenants] time in the [Premises]*” but “needed to be done and was included in the proposal since the crew will be there.” Id. (emphasis added).

On August 11, 2021, Tenants sued Landlord to recover their security deposit in an action captioned Vikram Doshetty and Esha Ranganath v Joshua Kesselman as Trustee of The Nineteen Trust, Index No. 158019/2021 (“Prior Action”). NYSCEF Doc. No. 21.

On November 17, 2021, Tenants voluntarily discontinued the Prior Action after Landlord returned the \$13,000 to Tenants, which Landlord did because it “inadvertently did not segregate the security deposit as required.” NYSCEF Doc. No. 22 and 16.

On December 17, 2021, Landlord commenced the instant action, listing only The Nineteen Trust as a plaintiff. NYSCEF Doc. No. 1. On January 18, 2022, Tenant answered with general denials, a counter claim for attorneys' fees, and three affirmative defenses, including that Landlord incorrectly started the case as a trust not as a trustee. NYSCEF Doc. No. 4.

On January 19, 2022, Landlord filed an amended complaint adding the trustee Mr. Kesselman as a plaintiff and asserting two causes of action: (1) breach of contract, for failing to restore the Premises to their original condition, in the amount of \$16,501, plus \$13,000 in foreseeable consequential damages when Landlord "was constrained to find alternative housing" during the repairs; and (2) trespass to chattel, including a "hot tub controller and couch cushion buttons," also in the amount of \$16,501. NYSCEF Doc. No. 6. Landlord also seeks attorneys' fees.

On February 2, 2022, Tenants filed an amended answer with general denials, a counterclaim for attorneys' fees, and three affirmative defenses: (1) that Landlord is not registered with the New York Department of State and therefore is not entitled to redress here; (2) that Landlord is estopped from taking "different positions" than it did in the Prior Action; and (3) that the amount of relief sought is less than the jurisdictional limit of this Court. NYSCEF Doc. No. 8.

On December 22, 2022, Landlord moved, pursuant to CPLR 3212, for summary judgment against Tenants in the amount of \$16,501 on either plaintiff's first and/or second causes of action. NYSCEF Doc. No. 14.

Landlord argues, essentially, that Tenants breached the Lease when they moved out of the Premises and left behind, inter alia, a number of substantial holes in the walls that could not be fixed by merely patching and painting.

In an affidavit in opposition defendant Esah Ranganath denies just that she and her husband did any damage to the Premises, explaining that, when they vacated, they took their television and its wall mount with them and, "as is always the case when a television mount is removed from a wall, tiny holes remain that are the size of pennies or nickels." NYSCEF Doc. No. 34.

Discussion

In order to obtain summary judgment, the "movant must establish its defense or cause of action sufficiently to warrant a court's directing judgment in its favor as a matter of law. The party opposing the motion, on the other hand, must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which the opposing claim rests' [M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient' for this purpose." Gilbert Frank Corp. v Fed. Ins. Co., 70 NY2d 966, 967 (1988) (internal citations omitted).

Here Landlord has successfully supported a prima facie case for breach of contract. The Lease under which Tenants rented the Premises was clear that Tenants would, upon the end of their tenancy, return the Premises to its original condition. Tenants' protestations that the damage they left behind is no different from any post-tenancy damage are irrelevant. Tenants indisputably left without attempting to fix holes in the walls that were not the part of the "original" condition of the Premises. Landlord provides evidence of the holes, and of the money

spent to have them (and the walls they were in) fixed, in the form of Mr. Corcione’s affidavit and photographs, as well invoices from GMG Group and wire transfer information.

Tenants’ argument that a trial is required to determine if *sufficient* damage to the apartment was done is unavailing. The cost of fixing even a small hole in a wall is not necessarily as simple as Tenants imply. As Mr. Corcione clearly explained to Tenants in his email of July 14, 2021, touch ups of small areas when you have a specific paint finish and sheen can require extensive work. By choosing not to fix the holes in the Premises’ walls themselves, as called for in the Lease, and thus trusting Landlord’s contractors to do the work, Tenants essentially agreed to pay Landlord’s contractors’ prices (and the fees associated with them).


However, this Court notes that in the same email in which Mr. Corcione explained to Tenants why fixing small holes can cost a lot of scratch, Mr. Corcione was clear that \$1,500 of the work done by plaintiff, the “baseboard caulking” in the living room, “was not damaged during [Tenants’] time in the PII” and therefore should not be included in the damages owed Landlord.

The Court has considered the parties’ other arguments and finds them to be unavailing and/or non-dispositive.

Conclusion

Therefore, the motion of plaintiff, The Nineteen Trust, by and through its sole Trustee Joshua Kesselman, for partial summary judgment is hereby granted as against defendants, Vikram Doshetty and Esha Ranganath, jointly and severally, on the first cause of action, for breach of contract, in the amount of \$15,001; and the Clerk is directed to enter judgment accordingly.

It is further ordered that plaintiff’s request for attorneys’ fees is hereby severed, and plaintiff may obtain an inquest into said fees by presenting the Clerk with a Note of Issue with Notice of Inquest, a copy of this Decision and Order, and any necessary fees. Plaintiff must file such Note of Issue within 30 days from the date of this Decision and Order, and plaintiff’s failure to do so timely shall result in automatic disposal of this action. Plaintiff is further directed, within 15 days of filing the Note of Issue, to contact chambers to schedule the inquest date.



4/11/2023
DATE

ARTHUR F. ENGORON, 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