

315 Broadway, LLC v Broadway Spirits Inc.
2023 NY Slip Op 31810(U)
May 26, 2023
Supreme Court, New York County
Docket Number: Index No. 656729/2021
Judge: Suzanne J. Adams
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. SUZANNE J. ADAMS

PART

39TR

Justice

-----X

315 BROADWAY, LLC,

Plaintiff,

- v -

BROADWAY SPIRITS INC., NAVNIT KUMAR

Defendant.

-----X

INDEX NO. 656729/2021MOTION DATE N/AMOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85 were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, it is ordered that plaintiff's motion is granted and defendants' cross-motion is denied. Plaintiff is the owner and landlord of the premises located at 315 Broadway in Manhattan. Pursuant to a written commercial lease dated June 1, 2013, plaintiff's predecessor-in-interest leased certain portions of the premises to defendant Broadway Spirits Inc. ("Tenant") for the operation of a liquor store. Defendant Navnit Kumar ("Guarantor") entered into a guaranty of the lease with plaintiff's predecessor-in-interest, dated May 22, 2013. Plaintiff served a five days' notice of termination of the lease dated October 20, 2021, terminating the lease as of October 29, 2021. Tenant remains in the premises despite the termination of the lease. Plaintiff commenced this action in November 2021 seeking ejectment of Tenant from the premises and a judgment against defendants for, *inter alia*, arrears, damages, and holdover rent. Plaintiff now moves pursuant to CPLR 3211(a)(1) and (7) dismissing defendants' affirmative defenses and counterclaims and pursuant to CPLR 3212 for summary judgment for monetary damages and an

order of ejectment. Defendants oppose the motion and cross-move for a declaration that Tenant is not in default of the lease at issue. Plaintiff opposes the cross-motion.

“On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction (*see*, CPLR 3026). We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory.” *Leon v. Martinez*, 84 N.Y.2d 83, 87-88 (1994). “However, allegations consisting of bare legal conclusions, as well as factual claims either inherently incredible or flatly contradicted by documentary evidence, are not entitled to such consideration.” *Franklin v. Winard*, 199 A.D.2d 220 (1st Dep’t 1993). Further, it is well established that “the proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact.” *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 324 (1986) (citing *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 (1985)). The party opposing a motion for summary judgment is entitled to all reasonable inferences most favorable to it, and summary judgment will only be granted if there are no genuine, triable issues of fact. *Assaf v. Ropog Cab Corp.*, 153 A.D.2d 520, 521-22 (1st Dep’t 1989).

Here, viewing the evidence in a light most favorable to the non-moving party, plaintiff has made a *prima facie* showing of entitlement to judgment as a matter of law. Defendants, while opposing the motion, fail to raise any triable factual issues sufficient to warrant its defeat, such as proffering admissible evidence of any rental payments. There is no counter-statement of material facts, such that plaintiff’s statement of material facts is deemed admitted. 22 NYCRR § 202.8-g(c). Moreover, defendants’ affirmative defenses and counterclaim contain no factual bases and only bare legal conclusions, which warrant their dismissal. *Robbins v. Growney*, 229 A.D.2d 356,

358 (1st Dep't 1996). Nor have defendants set forth any factual or legal basis for the relief sought in the cross-motion.

Accordingly, it is hereby

ORDERED that plaintiff's motion is granted and defendants' cross-motion is denied; and it is further

ORDERED that defendants' affirmative defenses and counterclaim are dismissed, with prejudice; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendants Broadway Spirits Inc. and Navnit Kumar, jointly and severally, in the amount of \$191,932.33, together with interest at the statutory rate from February 28, 2022, through the date of entry of judgment, 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 the amount of any outstanding rent and additional rent that has accrued from the date of plaintiff's motion through the date of the hearing due and owing from defendants Broadway Spirits Inc. and Navnit Kumar, jointly and severally, and the amount of attorneys' fees and costs incurred by plaintiff that are due and owing from defendant Broadway Spirits Inc. and Navnit Kumar, jointly and severally, as determined by a Special Referee as set forth hereinbelow; and it is further

ORDERED that plaintiff is granted the ejectment of defendant Broadway Spirits Inc. from said premises, and is granted a writ of assistance thereon directing the Sheriff of the County of New York to place plaintiff in possession of said premises, in accordance with the Judgment of this court issued concurrently with the decision and order herein; and it is further

ORDERED that the amount of any outstanding rent and additional rent, and attorneys' fees, to be assessed against defendants, as described hereinabove, is referred for determination to a

Special Referee, and that within 60 days from the date of this order plaintiff shall cause a copy of this order with notice of entry, including proof of service thereof, to be filed with the Special Referee clerk (Room 119M, 646-386-3028 or spref@nycourts.gov) to arrange a date for a reference to determine pursuant to CPLR § 4317(b); and it is further

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff and against defendants in accordance with the aforesaid award of damages with interest, costs, and disbursements, and the report of the Special Referee, without any further application.

This constitutes the decision and order of the court.

<u>5/26/2023</u>			
DATE		SUZANNE J. ADAMS, 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