

Grove Equities LLC v Diaz

2023 NY Slip Op 31901(U)

June 6, 2023

Supreme Court, New York County

Docket Number: Index No. 152316/2023

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14

Justice

-----X

GROVE EQUITIES LLC,

Plaintiff,

- v -

RAYMOND DIAZ, AMY DIAZ

Defendant.

-----X

INDEX NO. 152316/2023

MOTION DATE 05/26/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27

were read on this motion to/for

JUDGMENT - SUMMARY

Plaintiff's motion for summary judgment, to dismiss defendants' affirmative defenses and to conform the pleadings to the evidence pursuant to CPLR 3025(c) is granted in part.

Background

In this commercial landlord-tenant action, plaintiff seeks to recover against defendants (the "Guarantors"). It argues that the tenant, non-party Two Future Dreams, Inc., leased the premises located at 43-45 Grove Street in Manhattan and, as of March 1, 2023, the tenant owed over \$1.3 million in unpaid rent. The tenant ran a laundromat in the commercial space owned by plaintiff.

Plaintiff moves for summary judgment and to dismiss defendants' affirmative defenses. It contends it submitted a valid guaranty that binds both defendants, and that the tenant owes rent. Plaintiff maintains that the Guarantors' affirmative defenses are conclusory and without merit. These affirmative defenses include failure to state a cause of action, personal jurisdiction, release, unclean hands, force majeure, proper notice, unconscionability, laches, estoppel, accord

and satisfaction as well as unjust enrichment. Plaintiff explains why it believes each one should be dismissed.

In opposition, defendants claim that issues of fact prevent this Court from granting the motion. They contend that there is a question about whether the lease agreement between the parties was extended for five years pursuant to paragraph 46 of the lease rider and whether plaintiff has the right to collect both additional and base rent. Defendants contend that the statute of limitations for breach of contract claims bars certain claims from 2014 and that the collection of late fees is unconscionable. They also argue that discovery is necessary.

In reply, plaintiff contends that defendants abandoned most of their affirmative defenses in their opposition papers. It maintains that Guarantors did not raise a material issue of fact. Plaintiff acknowledges, however, that some of the charges predate March 3, 2017 (six years before this complaint was filed) and so it wants to sever those sums without prejudice.

Plaintiff insists that defendants' arguments about ratification and modification of the lease through a course of conduct are without merit. It points out that paragraph 46 of the lease rider permitted the tenant to extend the lease for another five years but required that such notice be submitted in writing at least one year prior to November 30, 2021 (the expiration date of the lease). Plaintiff explains that when the lease expired, the holdover rate went into effect as stated in the lease. It argues that simply because defendants paid some rent after November 30, 2021 does not mean they satisfied the requirements to effectively extend the lease.

Discussion

“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. Failure to make such prima facie showing requires a

denial of the motion, regardless of the sufficiency of the opposing papers. Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324, 508 NYS2d 923 [1986]).

The Court grants the motion, but only as to liability that the Guarantors owe something. Plaintiff met its burden to recover under the guaranty by demonstrating that there was a guaranty signed by the Guarantors, the tenant was in default and that the Guarantors failed to perform under the terms of the guaranty (*Vandergrand Properties Co., L.P. v Warnock*, 206 AD3d 597, 597, 172 NYS3d 14 [1st Dept 2022]). And, as plaintiff points out, defendants abandoned nearly all of their affirmative defenses in opposition to the instant motion.

With respect to the statute of limitations issues, the Court finds that there must be a trial on damages. Plaintiff attempted in reply to “sever” certain claims based on this issue. But the Court declines to permit that request. At the trial on damages, plaintiff can seek whatever damages it wants and Guarantors will have the opportunity to put plaintiff to its proofs and assert that certain claims are time-barred. It would be inappropriate to permit plaintiff to cordon off certain claimed damages without prejudice for the first time in its reply papers. This action is plaintiff’s opportunity to seek damages based on the guaranty.

However, defendants’ remaining arguments are without merit. The Court observes that paragraph 46 of the lease permitted the tenant to extend the lease for five years “PROVIDED THE TENANT STRICTLY COMPLIES WITH ALL THE TERMS AND OBLIGATIONS HEREUNDER AND NOTIFIES THE LANDLORD AND LANDLORD’S ATTORNEY IN WRITING BY CERTIFIED MAIL AND REGULAR MAIL AT LEAST ONE YEAR PRIOR

TO THE EXPIRATION OF THE LEASE THAT THE TENANT IS EXERCISING ITS OPTION TO RENEW THE LEASE FOR AN ADDITIONAL 5 YEARS” (NYSCEF Doc. No. 9, ¶ 46). Guarantors submitted no evidence in opposition to show that the tenant complied with the terms of this provision, including that the option to extend be exercised in writing and submitted at least a year prior to the expiration date. Their attempts to claim that the lease was extended because the tenant made certain payments that were accepted by plaintiff does not operate as a modification of a clear and unambiguous term of the lease.

Moreover, Guarantors’ attempts to rewrite the lease, particularly concerning the holdover rate do not raise an issue of fact. The lease provides that the holdover rate is “three times the monthly rent and additional rent due” (*id.* ¶ 52). The Court is unable to find that this provision is unconscionable and should be ignored simply because the Guarantors do not want to follow the terms of the lease. Clearly, the purpose of such a provision is to encourage the tenant to vacate the premises upon expiration of the lease. Similarly, the Court cannot strike late fees because the Guarantors think that should not be part of the lease. At the trial on damages, however, plaintiff will have to prove the amount and calculation of late fees.

Guarantors did, however, show an entitlement to discovery on damages. Plaintiff was apparently already asking for money owed beyond the statute of limitations and then, when exposed, backed off - seeking to withdraw those claims “without prejudice”. Without prejudice to what? Defendants are entitled to full discovery on all monies sought by plaintiff, including attorneys’ fees (to the date of the response). There should be no surprises at the trial on damages, except for updated attorneys’ fees. Discovery is only necessary for damages as defendants do not dispute that they entered into a guaranty, that the tenant failed to pay rent and they are obligated to pay outstanding rent when the tenant fails to pay rent.


Summary

Discovery on damages is allowed; defendant must serve demands within thirty days. The Court grants the motion, but only as to liability as plaintiff modified the amount it seeks in reply. That, combined with the fact that notice of motion sought to conform the pleadings to the evidence pursuant to CPLR 3025(c) compels, the Court to direct plaintiff to file a note of issue for a trial on the issue of damages after discovery is complete. Simply put, the Court cannot grant a specific amount under these circumstances. The Court also observes that the issue of reasonable attorneys' fees to be awarded to plaintiff shall be decided at the trial on damages.

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment is granted as to liability only, defendants' affirmative defenses are severed and dismissed, and discovery shall proceed on damages.

Conference: August 7, 2023 at 10 a.m. By July 31, 2023, the parties are directed to upload 1) a discovery stipulation signed by all remaining parties, 2) a stipulation of partial agreement about discovery that identifies the areas in dispute or 3) letters explaining why no agreement about discovery could be reached. Based on these submissions, the Court will assess whether an in-person conference is required. The failure to upload anything by July 31, 2023 will result in an adjournment of the conference.

<p style="text-align: center;"><u>6/6/2023</u></p> <p style="text-align: center;">DATE</p>	 <hr style="width: 100%;"/> <p style="text-align: center;">ARLENÉ P. BLUTH, J.S.C.</p>	
<p>CHECK ONE:</p>	<p><input type="checkbox"/> CASE DISPOSED</p> <p><input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED</p>	<p><input checked="" type="checkbox"/> NON-FINAL DISPOSITION</p> <p><input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER</p>
<p>APPLICATION:</p>	<p><input type="checkbox"/> SETTLE ORDER</p>	<p><input type="checkbox"/> SUBMIT ORDER</p>
<p>CHECK IF APPROPRIATE:</p>	<p><input type="checkbox"/> INCLUDES TRANSFER/REASSIGN</p>	<p><input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE</p>