R.C.F.H.P., Inc. v Escalante
2023 NY Slip Op 32406(U)
July 12, 2023
Supreme Court, New York County
Docket Number: Index No. 157223/2021
Judge: Alexander M. Tisch
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ALEXANDER M. TISCH, *Justice* PART 18

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R.C.F.H.P., INC., CAMBRIDGE REALTY MANAGEMENT, LLC,

Plaintiffs,

- v -

TATIANA ESCALANTE, JULIANNA ESCALANTE, DAYANA ESCALANTE, CARLOS A. NAVIA, THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF BUILDINGS, OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Defendants.

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INDEX NO. 157223/2021

MOTION DATE 11/23/2022, 11/23/2022

MOTION SEQ. NO. 002 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 32, 33, 34, 35, 36, 37, 38, 39, 44, 65

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

The following e-filed documents, listed by NYSCEF document number (Motion 003) 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 64, 66, 67, 68

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

Upon the foregoing documents, plaintiffs move for leave to enter default judgment against defendants Julianna Escalante, Dayana Escalante, and Carlos A. Navia (motion sequence no. 002) and for summary judgment against defendant Tatiana Escalante on the fourth cause of action in the complaint (motion sequence no. 003).

The undisputed facts are as follows: plaintiffs R.C.F.H.P. Inc. and Cambridge Realty Management LLC are the owner and managing agent for the property located at 1374 York Avenue in New York, New York. Plaintiffs and defendant Tatiana Escalante entered into a lease agreement for Apartment 2 D in or around January 26, 2017 (see generally NYSCEF Doc No 3) and the remaining defendants were guarantors to the lease (see id. at 15, 17-29).

The lease provides in relevant part:

> 10. SUBLETTING/ASSIGNMENT: Renter shall not assign the apartment in whole or in part. Renter shall not sublet the apartment in whole or in part without the written consent of Owner, nor permit anyone not specifically indicated in this lease to occupy the apartment. A sublet without consent, or any assignment shall constitute a material breach of this lease.
>
> * * *
>
> 15. LIABILITY OF RENTER: Renter shall pay all sums incurred by Owner in the event Owner is held liable for damages resulting from any act by Renter (id. at 32).

Each of the three guaranty agreements provide in relevant part:

> Guarantor . . . hereby guarantees, absolutely and unconditionally, to landlord the full and prompt payment of rent And all other charges and sums (including, without limitation, Landlord's legal expenses and attorney's fees and disbursements) payable by tenant under the Lease, and hereby further guarantees the full and timely performance and observance of all the covenants, terms, conditions and agreements therein provided to be performed and observed by Tenant; and Guarantor hereby covenants and agrees to and with Landlord that if default shall at any time be made by Tenant in the payment of any Rent, or other charges and sums, or if Tenant shall default in the performance and observance of any of the terms, covenants and conditions contained in the Lease, Guarantor shall and will forthwith pay Rent, and all other charges and sums, to Landlord and any arrears thereof, and shall and will forthwith faithfully perform and fulfill all of such terms, covenants and conditions and will forthwith pay to Landlord all damages that may arise in consequence of any default by Tenant under the Lease, including, without limitation, all reasonable attorneys' fees, and disbursements incurred by Landlord or caused by any such default or the enforcement of this Guaranty (id. at 18-19).

On July 22, 2019, the New York City Department of Buildings (DOB) issued five summonses for violations related to the apartment not being suitable for short-term occupancy, i.e., occupancy of others for less than 30 days without the host or owner staying with them (NYSCEF Doc No 58). The violations were sustained at an OATH Hearing as set forth in the decision dated June 7, 2021, imposing fines in the amount of $10,000.00 (see NYSCEF Doc No 50).

Summary Judgment (Mot. Seq. No. 003)

"[T]he 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 Hosp., 68 NY2d 320, 324 [1986]). The "evidence must be viewed in the light most favorable to the nonmoving party, and all reasonable inferences must be resolved in favor of the nonmoving party" (Valentin v Parisio, 119 AD3d 854, 855 [2d Dept 2014]). "In

considering a motion for summary judgment, the function of the court is not to determine issues of fact or credibility, but merely to determine whether such issues exist" (Rivers v Birnbaum, 102 AD3d 26, 42 [2d Dept 2012]; see Ferrante v American Lung Assn., 90 NY2d 623, 631 [1997]).

The Court finds that plaintiffs met their prima facie burden entitling them to judgment as a matter of law on the fourth cause of action for breach of lease. Plaintiffs demonstrated that tenant is liable to the owner for the violations and the impositions of the fines/penalties pursuant to the unambiguous terms of the lease set forth above. In opposition, tenant failed to demonstrate an issue of fact requiring a trial. Contrary to defendant-tenant's contentions, the underlying merits of the violations are not presently before the Court, including, e.g., whether the tenant did, in fact, impermissibly sublet the subject apartment for short-term stays. While that may be the subject of other claims in the complaint, plaintiff here is only seeking summary judgment on the fourth cause of action and does not provide any support for further or other damages.

As to damages for the fourth claim, the Court agrees with defendant that plaintiffs provide no basis for an award of $40,000.00. The fines imposed upon plaintiffs amount to only $10,000.00, and although plaintiffs' counsel's affirmation claims the "violations exceed $40,000 in fines and are accruing late fees, interest, and potential default and penalty fees" (NYSCEF Doc No 46 at ¶ 4), no proof of any "fees" was submitted and no basis for imposing interest was provided. To be sure, the complaint itself alleges in the fourth cause of action that defendant(s) should be liable for breach of contract "and this Court should impose all penalties available" — yet plaintiffs failed to identify or elaborate on what those "penalties" would be in the complaint as well.

Although plaintiffs claimed in reply that damages are irrelevant at this juncture and that defendant "will have plenty of opportunity to seek discovery regarding damages" (NYSCEF Doc No 67 at ¶ 4 [c]), there is no need for an inquest or hearing on damages if plaintiffs cannot show entitlement to any other damages beyond the $10,000.00 in fines that is clearly recoverable under paragraph 15 of the

lease. Plaintiffs do not cite to any other evidence, cause of action, or paragraph in the lease entitling it to damages beyond those for which the "Owner [was] held liable" as set forth in paragraph 15 of the lease.[1]

Default Judgment (Mot. Seq. No. 002)

"On a motion for leave to enter judgment against a defendant for the failure to answer or appear, a plaintiff must submit proof of service of the summons and complaint, proof of the facts constituting its claim, and proof of the defendant's default" (Katz v Blau, 173 AD3d 987, 988 [2d Dept 2019]). With respect to proof of the facts constituting the claim, the application must contain sufficient proof "to enable a court to determine that a viable cause of action exists" (Woodson v Mendon Leasing Corp., 100 NY2d 62, 71 [2003]). In undertaking this review, the Court is mindful that "defaulters are deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them" (id.).

The Court finds that plaintiffs met their burden entitling them to default judgment. In opposition, there are three affidavits filed by each of the remaining defendants-guarantors contesting service of process.

"To defeat a facially adequate CPLR 3215 motion, a defendant must show either that there was no default, or that it has a reasonable excuse for its delay and a potentially meritorious defense" (Fried v Jacob Holding, Inc., 110 AD3d 56, 59-61 [2d Dept 2013]). "However, where, as here, a defendant seeking to vacate a default raises a jurisdictional objection . . ., the court is required to resolve the jurisdictional question before determining whether it is appropriate to grant a discretionary vacatur of the default" (Rattner v Fessler, 202 AD3d 1011, 1015 [2d Dept 2022]). "While a mere conclusory denial of service will not suffice to rebut a prima facie claim of proper service, 'the sworn denial, combined with documentary and other evidence supporting such claim, is sufficient to rebut the plaintiff's prima

[1] Notably, the lease does not permit recovery of attorneys' fees for any party who seeks to enforce the provisions of the lease (see NYSCEF Doc No 3 at 33).

facie showing of proper service and to necessitate an evidentiary hearing'" (id. at 1016, citing U.S. Bank, N.A. v Tauber, 140 AD3d 1154, 1155 [2016]).

The affidavits from defendants Dayana Escalante and Carlos A. Navia contesting service of process contend that process was not personally served upon them because "the process server spoke with an entirely different person 'over the ring doorbell', and never personally engaged me" (NYSCEF Doc Nos 41, 43). However, service need not be physically delivered to the defendant in the manner proscribed in CPLR 308 (1); rather, affixing and mailing per CPLR 308 (4), as done here, is an adequate method of personal service to acquire jurisdiction over the defendants. The affidavits fail to actually contest that said defendants reside at that location, or otherwise sufficiently rebut the plaintiff's showing of proper service.

Defendant Julianna Escalante's affidavit is similarly inadequate to rebut the presumption of proper service, as it simply states "the process server stated the home 'is under renovations' and rather than personally serving me the documents were affixed to the door" (NYSCEF Doc No 42). However, there is no serious claim that she does not reside there nor that, e.g., renovations were not taking place at said location. Ms. Escalante also states that her name is Julianna Escalante, and not "Juliana Escalante" as misstated in the affidavit of service — referring to a missing "n" in her first name (NYSCEF Doc No 42). Such a defect is immaterial and may be corrected (see CPLR 2004).

Accordingly, it is hereby ORDERED that plaintiffs' motion for summary judgment on the fourth cause of action against defendant-tenant TATIANA ESCALANTE is granted (motion sequence no. 003); and it is further

ORDERED that the remaining causes of action are hereby severed; and it is further

ORDERED that plaintiffs' motion for leave to enter default judgment against defendants-guarantors JULIANNA ESCALANTE, DAYANA ESCALANTE, and CARLOS A. NAVIA is granted (motion sequence no. 002); and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiffs and against all defendants jointly and severally in the amount of $ 10,000.00, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.

This constitutes the decision and order of the Court.

7/12/2023
DATE

ALEXANDER M. TISCH, 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	