

Hillview Owners Corp. v Sugar Hill Med. Mgt., LLC

2023 NY Slip Op 34029(U)

November 13, 2023

Supreme Court, New York County

Docket Number: Index No. 655572/2020

Judge: Nancy M. Bannon

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. NANCY M. BANNON PART 42

Justice

-----X

HILLVIEW OWNERS CORPORATION,

Plaintiff,

- v -

SUGAR HILL MEDICAL MANAGEMENT, LLC and XYZ CORPORATION

Defendants.

-----X

INDEX NO. 655572/2020
MOTION DATE 11/03/2023
MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 34, 35, 36, 37, 38, 39, 40, 46

were read on this motion to/for MISC

I. INTRODUCTION

In this breach of contract action to recover unpaid rent and additional rent due under a commercial lease and for an ejectment, the parties, by counsel, entered into a Stipulation of Settlement, wherein defendant Sugar Hill Medical Management LLC, the tenant, agreed to pay arrears of \$200,785.64 in monthly installments through June 2024. The tenant defaulted on the terms of the stipulation. The plaintiff landlord now moves, in effect, pursuant to CPLR 3215(1) to enforce the stipulation, seeking (1) a money judgment in the amount of \$160,427.55, (2) a judgment of possession and warrant of eviction, and (3) attorney's fees. No opposition is submitted. The motion is granted in part.

II. BACKGROUND

The plaintiff is the owner of real property located at 343-345 West 145th Street in Manhattan and defendant Sugar Hill Medical Management LLC is the tenant of the ground floor medical office pursuant to a 15-year lease executed in March 2010. The tenant defaulted in its obligations during 2020 and was served with a rent demand and notice to cure. Upon the tenant's failure to cure, the landlord commenced this action. The complaint, dated October 15, 2020, contains four causes of action – two for breach of contract, one for ejectment and one for contractual attorney's fees. The tenant answered.

On April 14, 2021, the parties entered into a Stipulation of Settlement, by which they agreed that the tenant owed arrears in rent and additional rent in the sum of \$167,725.74 through March 31, 2021, and an additional \$33,059.90 for the month of April 2021. The stipulation set forth a schedule of monthly payments, the last due in June 2024. The tenant also agreed to pay ongoing rent and additional rent. The tenant also agreed to pay “any and all reasonable attorney’s fees, costs and disbursements incurred by plaintiff by reason of defendant’s failure to comply with the terms and conditions of the stipulation.” The tenant agreed to withdraw its answer and the landlord agreed to discontinue the action once the defendant made all payments due under the lease. The stipulation also provided that should the tenant fail to make any payment due under its terms, the “plaintiff may have judgment entered for the arrears owed at the time of the default.” The stipulation does not mention ejectment, a judgment of possession or warrant of eviction.

After some initial payments, the tenant defaulted on the stipulation. On November 1, 2021, the landlord moved, in effect, pursuant to CPLR 3215(i) to enforce the stipulation seeking (1) a money judgment in the amount of \$167,863.80, (2) a judgment of possession and warrant of eviction, and (3) attorney’s fees. By stipulation dated November 30, 2021, the plaintiff withdrew that motion without prejudice upon the tenant’s partial payment of \$61,462.81. The parties agreed that the terms of the Stipulation of Settlement dated April 14, 2021, remained in full force and effect. By an order dated December 1, 2021, the court permitted the motion to be withdrawn without prejudice for the plaintiff to restore the action upon any default by the tenant in the terms of the parties Stipulation o Settlement. The tenant again defaulted, was again served a notice to cure on July 5, 2023, and again failed to cure the default.

On August 30, 2023, the landlord moved for a second time, in effect, pursuant to CPLR 3215(i) to enforce the stipulation seeking (1) a money judgment in the amount of \$160,427.55, (2) a judgment of possession and warrant of eviction, and (3) attorney’s fees. The landlord’s submissions include an affidavit of Felicia Rodriguez, the landlord’s property manager, and a rent ledger maintained in her office showing that the tenant owed arrears of \$160,427.55 as of August 1, 2023. The tenant has not opposed the motion.

III. DISCUSSION

The applicable law is well settled. Public policy favors enforcement of stipulations of settlement. See McCoy v Feinman, 99 NY2d 295 (2002); Nieborak v W54-7 LLC, 203 AD3d 439

(1st Dept. 2022); Pruss v Infiniti of Manhattan, Inc., 180 AD3d 163 (1st Dept. 2020). “[A] plaintiff is entitled to seek enforcement of a stipulation of settlement by motion in the underlying action.” Kergaravat v Hampton Coach, Inc., 298 AD2d 432, 433 (2nd Dept. 2002). “Stipulations of settlement are essentially contracts and subject to principles of contract interpretation.” Hotel Cameron, Inc. v Purcell, 35 AD3 153 (1st Dept. 2006); see VNB New York LLC v Maidi, 159 AD3d 556 (1st Dept. 2018). Only where there is cause sufficient to invalidate a contract, such as fraud, collusion, mistake or accident, will a party be relieved from the consequences of a stipulation made during litigation.” Hallock v State of New York, 64 NY2d 224, 230 (1984); see also Hawkins v City of New York, 40 AD3d 327 (1st Dept. 2007); Hotel Cameron, Inc. v Purcell, supra; City of New York v 130/40 Essex St. Dev. Corp., 302 AD2d 292 (1st Dept. 2003).

(A) Money Judgment

The landlord has established that the parties’ stipulation was a valid agreement and that the tenant breached the agreement by failing to make the required payments. Since the tenant has not opposed this motion, no allegation of fraud, collusion, mistake or accident is made. Moreover, the tenant expressly agreed to entry of a money judgment upon its default, in the amount of arrears due at that time. CPLR 3215(i)(1) provides that a default judgment may be entered “[w]here ... a stipulation of settlement is made, providing, in the event of failure to comply with the stipulation, for entry without further notice of a judgment in a specified amount ... the clerk shall enter judgment on the stipulation and an affidavit as to the failure to comply with the terms thereof, together with a complaint or a concise statement of the facts on which the claim was based.” Therefore, the landlord is entitled to a money judgment in the amount of \$160,427.55.

(B) Judgment of Possession

The landlord is not entitled to a judgment of possession and warrant of eviction since that relief was not agreed to in the Stipulation of Settlement. Default judgments under CPLR 3215(i) are limited to those for a money judgment in a “specified amount” where, as here, the stipulation of settlement provided for the entry of such an amount. See CPLR 3215(i); HSBC Bank USA, N.A. v Wielgus, 131 AD3d 510 (2nd Dept. 2015). Indeed, a party may not even seek a money judgment under CPLR 3215(i) if that relief is not expressly provided for in the stipulation. See Lumbermans Mut. Cas. Co. v Ultracashmere House, Ltd., 169 AD2d 419 (1st Dept. 1991); Sanchez v Brendza, 62 AD2d 953 (1st Dept. 1978).

That is, under the principles of contract law, a party to a stipulation of settlement is not entitled to relief not expressly provided for in the stipulation. See Weichert v Hemmerich, 217 AD3d 1370 (4th Dept. 2023); see also 64th Street-3rd Ave. Assocs. v Wall, 257 AD2d 48 (1st Dept. 1999) [stipulation of settlement expressly provided that landlord would be entitled to seek a final judgment of possession upon tenant's default]. Both parties here were represented by experienced counsel and could have included a judgment of possession and warrant of eviction as available relief upon default if the parties so intended. See Glaze Teriyaki LLC v MacArthur Properties I LLC, 206 AD3d 513 (1st Dept. 2022); Cenpark Realty LLC v Gurin, 204 AD3d 436 (1st Dept. 2022). "It is not the function of the court to remake an agreement agreed to by the parties, but to enforce it as it exists." Andron v Libby, 120 AD3d 1056, 1058 (1st Dept. 2014) *citing Rowe v Great Atl. & Pac. Tea Co.*, 46 NY2d 62, 69 (1978).

(C) Attorney's Fees

Finally, the landlord is entitled to recover reasonable attorney's fees and cost it incurred in bringing the instant motion since the tenant expressly agreed to do so in the Stipulation of Settlement. Attorney's fees are recoverable, where, as here, there is a specific contractual provision for that relief. See Flemming v Barnwell Nursing Home and Health Facilities, Inc., 15 NY3d 375 (2010); Coopers & Lybrand v Levitt, 52 AD2d 493 (1st Dept. 1976). Thus, parties must abide by stipulations providing for attorney's fees. See Goidel & Siegel LLP v 122 East 42nd Street LLC, 143 AD3d 567 (1st Dept. 2016); Thompson v 490 West End Apartments Corp., 252 AD2d 430 (1st Dept. 1998); *compare Hirschberg v Hirschberg*, 56 AD3d 377 (1st Dept. 2008) [no basis in stipulation of settlement for an award of attorney's fees]; J.D. Realty Assocs. v Shanley, 288 AD2d 27 (1st Dept. 2001) [same]. Since the tenant does not oppose the motion, it proffers no authority or argument to the contrary. However, the landlord has not submitted any proof of the amount of fees incurred, such as billing records, invoices or an affirmation. The landlord may submit such supplemental papers, if so advised, within 60 days.

The action is severed and discontinued as against defendant "XYZ Corporation" as the landlord has not identified any such party.

IV. CONCLUSION

Accordingly, and upon the foregoing papers, it is

ORDERED that the motion of the plaintiff, Hillview Owners Corporation, to enforce a Stipulation of Settlement dated April 14, 2021, is granted to the extent that the plaintiff is awarded a money judgment in the amount of \$160,427.55, plus statutory interest from July 5, 2023, and attorney's fees and costs incurred in bringing this motion with leave to file supplemental supporting papers, and the motion is otherwise denied without prejudice, and it is further

ORDERED that the Clerk shall enter judgment in favor of the plaintiff, Hillview Owners Corporation, and against defendant Sugar Hill Medical Management LLC, in the sum of \$160,427.55, plus costs and statutory interest from July 5, 2023, and it is further

ORDERED that the plaintiff shall file any supplemental papers in support of its application for attorney's fees and costs within 60 days of the date of this order, and notify the Part 42 Clerk of any such filing, and it is further

ORDERED that the action is severed and dismissed as against defendant "XYZ Corporation", and it is further

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision and Order of the court.

Nancy M. Brown
20231113102727NBA11N0609A2578EC774F55ACEFE53480556F54

11/13/2023
DATE

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: