

**Green 333 Corp. v Kusyk**

2023 NY Slip Op 34362(U)

December 13, 2023

Supreme Court, New York County

Docket Number: Index No. 160003/2022

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

*Justice*

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GREEN 333 CORP.,

Plaintiff,

- v -

RICHARD KUSYK, WENDY KUSYK

Defendant.

-----X

INDEX NO. 160003/2022

MOTION DATE 06/07/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36

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

This litigation arises out of defendants' reluctance to accept the lease offered by plaintiff. Defendants contend that the offered lease is unlawful. Plaintiff now moves pursuant to CPLR §3212, granting summary judgment in favor of plaintiff and against defendants, on the first cause of action for a judgment declaring that the Amended Initial Lease offered to defendants is deemed accepted and/or in effect, and/or in the alternative, on second cause of action for a permanent mandatory injunction compelling Defendants to execute the Amended Initial Lease and all subsequent renewals thereof to date, and/or in the alternative on third cause of action for a judgment declaring that the terms of the Amended Initial Lease comply with all applicable law. Plaintiff also moves for summary judgment on tis fourth cause of action for attorney's fees. Defendants oppose the instant motion. For the reasons set forth below, the motion is granted in part.

Background

Plaintiff is the owner and landlord of 422 West Broadway, New York, New York 10013. Defendants are the statutory tenants of the second floor unit in the subject building. In September

2009, defendants filed a lease violation complaint with the Department of Housing and Community Renewal ("DHCR"). On September 10, 2010, DHCR issued a determination that directed the plaintiff to amend the initial lease and provide to defendants. Although it is disputed as to when the amended initial lease was provided to defendants, to date defendants have not executed an initial lease.

### Discussion

Defendants contend that, for a variety of reasons, the lease offered by plaintiff is unlawful and not compliant with current legal requirements. Further, defendants contend that plaintiff, contrary to the assertions made in the complaint, did not comply with the DHCR order by failing to return the lease to the tenants within 21 days of the order, rather plaintiff waited nearly 12 years to offer defendants a lease.

Defendants do not claim that the Amended Initial Lease fails to comply with the DHCR Order. Rather, defendants claim that the "Riders attached to the Amended Initial Lease are no longer legally compliant with the RSL and RSC" and that "Defendants therefore had no obligation to execute it". Moreover, defendants contend, as well as assert in a counterclaim, that the subject building is without an appropriate Certificate of Occupancy; thus plaintiff is barred from collecting rent.

Plaintiff contends, and this Court agrees that the certificate of occupancy has no bearing on the issue of the residential lease. Moreover, the Court finds that defendants arguments that plaintiff's alleged delay in providing the lease to defendants somehow renders the DHCR order void, is without merit. The Court finds that it was well within defendants' ability to raise plaintiff's non-compliance with the DHCR order to DHCR, however defendants failed to do so. As such, as to whether plaintiff initially provided the lease as it contends or only did so in 2022,

that is not the dispositive issue. The Court finds that plaintiff has in fact established entitlement to judgment on its first cause of action and accordingly, the second and third causes of action are dismissed.

As to plaintiff's fourth cause of action for attorneys' fees based on the language of the amended lease, the Court finds that this provision is inapplicable here. The quoted portion of the lease specifies that the tenant would be liable to the owner in the event of a default or any violation of the provision of the lease. The Court does not find that defendants have defaulted nor has plaintiff established that defendants violated a provision of the lease.

Although not specifically noticed on plaintiff's notice of motion, the issues having been fully briefed by all parties, the Court will address defendants' affirmative defenses and counterclaims. As stated above, defendants' affirmative defenses of laches, unclean hands and equitable estoppel are inapplicable and lack merit. The Court does not believe that the plaintiff is requesting equitable relief. It would make no sense to this Court for DHCR to approve a lease between the parties and not have it be the governing lease for the location.

Further, defendants' allegations of an invalid certificate of occupancy does not allege that the unit is uninhabitable, nor do defendants cite to any applicable case law to support their position that plaintiff is not entitled to rent. Moreover, defendants have failed to establish the theory under which they would be entitled to attorneys' fees. Accordingly, it is hereby

**ORDERED** that the Amended Initial Lease offered to defendants is deemed accepted and in effect; and it is further

**ORDERED** that any subsequent renewal leases comply with all applicable laws; and it is further

ORDERED that any relief not specifically addressed herein is explicitly denied, and causes of action dismissed.

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12/13/2023  
DATE

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LYLE E. FRANK, 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