

Granton v Zylberberg
2023 NY Slip Op 35143(U)
June 23, 2023
Supreme Court, Richmond County
Docket Number: Index No. 152173/2017
Judge: Charles M. Troia
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND**

JOHN GRANTON,

Plaintiff

-against -

**DEBORAH ZYLBERBERG, MARILYN POLIZZI
Individually and MARILYN POLIZZI as
ADMINISTRATOR OF THE ESTATE OF JOSEPH
POLIZZI**

Defendants

DEBORAH ZYLBERBERG

Third Party Plaintiff

against

WAGNER COLLEGE

Third Party Defendant

WAGNER COLLEGE

Part DCM1

**Present,
HON. CHARLES M. TROIA**

DECISION AND ORDER

Index No. 152173/2017

The following papers numbered 1-5 were fully submitted on the 15th day of April 2023:

Third Party Defendant's Notice of Motion for Summary Judgment Affirmation in Support with Supporting Exhibits (December 21, 2022)	1
Third Party Plaintiff's Affirmation in Opposition (March 21, 2022)	2
Plaintiff's Affirmation Opposition (March 23, 2023)	3
Third Party Defendant Affirmation in Reply (April 14, 2023)	4
Affirmation in Reply to Plaintiff (April 14, 2023)	5

This motion (#005) seeks an Order pursuant to CPLR 3212 granting summary judgment on the issue of liability in favor of Third- Party Defendant Wagner College and dismissing all claims, cross claims and third-party claims filed against Third-Party Defendant, Wagner College. Third-Party Defendant maintains that it did not have any duty to provide heat to the building located at 190 Highland Avenue because pursuant to the lease agreement in effect on January 10, 2015, Defendant /Third Party Plaintiff Deborah Zylberberg, the owner of the building, had the duty to provide heat to the building.

In the interest of judicial economy, this Court accepts the undisputed procedural history in this matter as set forth in the motion (NYSCEF doc. # 189).

Plaintiff instituted the within action for personal injuries sustained in a slip and fall accident on January 10, 2015, due to ice located on the property at 125 Grand Avenue, which he alleges formed by the freezing of water that had flowed from the residential rental property located at 190 Highland Avenue onto 125 Grand Avenue.

It is axiomatic that "[a] lease is to be interpreted as a whole and construed to carry out the parties' intent, gathered, if possible, from the language of the lease" (*Cobalt Blue Corp. v 184 W. 10th St. Corp.*, 227 AD2d 50, 53, quoting *Papa Gino's of Am. v Plaza at Latham Assoc.*, 135 AD2d 74, 76 ; see *International Chefs v. Corporate Prop. Invs.*, 240AD2d 369, 370). Thus, in the interpretation of leases, the same rules of construction apply as are applicable to contracts generally (see *George Backer Mgt. Corp. v Acme Quilting Co.*, 46 NY2d 211, 217). In those instances where the intent of the parties is clear and unambiguous from the language employed on the face of the agreement, the interpretation of the document is a matter of law solely for the court (see *W.W.W. Assoc. v Giancontieri*, 77 NY2d 157, 162-163, *RAD Ventures Corp. v*

Artukmac, 31 AD3d 412.) In interpreting the provisions of a lease, the court should refrain from rewriting the lease under the guise of construction, should not construe the language of the lease in such a way as would distort its meaning, and should not construe the language in a manner that would render one or more of its provisions meaningless. (*CDC Dev. Props., Inc. v. American Ind. Paper Mills Supply Co., Inc.* 184 Ad3d 623, *J.W. MAYS, Inc. v. Snyder Fulton Street, LLC*, 69 AD3d 572,573 , *Poughkeepsie Savings Bank v. GMSY Associates*, 238 AD2d 237). In addition, "[it] is a cardinal rule of construction that a contract should not be interpreted in such a way as would leave one of its provisions substantially without force", (see, *Albanese v. CONRAIL*, 245 A.D.2d 475, *Tantleff v Truscelli*, 110 AD2d 240, 245-246, *aff'd* 69 NY2d 769)

Paragraph 6 of the fully executed Lease agreement in effect from September 1, 2014, through January 10, 2015, annexed to the motion as Exhibit "AA" unequivocally states that "Tenant is responsible for paying all electric, gas, water, telephone, and any other utilities allocated to the Unit.... Landlord will supply heat, in such quantity for such time as is mandated by law...."

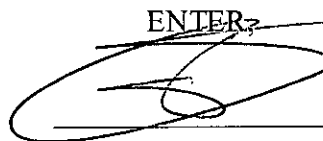
Despite Plaintiff's contentions, Paragraph 6 in the 2014/2015 lease agreement is in fact materially different from the prior lease agreement of 2013, which was the lease in effect while movant occupied both units of the residential rental property. It was clearly the Landlord's duty to have the heat supplied to the unit and the tenant's duty to pay for it. There is no language in the 2014 agreement before us which imposes any duty upon Wagner College to maintain an account with National Grid or to pay them directly for the supply of heat to the rented lower portion of the home. Any other interpretation by this Court of this agreement, "under the guise of construction... would render one or more of the provision meaningless", see, *J.W. MAYS, Inc. v. Snyder Fulton Street, LLC*, 69 AD3d 572,573

Finally, the Landlord's remaining arguments regarding the location of the pipes that burst, the reopening of the account on December 27, 2015, or any repairs that Wagner College made in the home are purely speculative and unsupported by any admissible evidence.

Accordingly, it is hereby,

ORDERED, that summary judgment is granted on the issue of liability in favor of Third Party Defendant Wagner College and all Claims, Cross Claims and Third- Party Claims filed against Wagner College for this cause of action are hereby dismissed.

Dated: June 23, 2023

ENTER


Hon. Charles M. Troia
Acting Supreme Court Justice