Petrola House Inc. v Curated NYC, LLC
2024 NY Slip Op 30732(U)
March 6, 2024
Supreme Court, New York County
Docket Number: Index No. 651943/2022
Judge: Nancy M. Bannon
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. NANCY M. BANNON** *Justice* **PART** **61**

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PETROLA HOUSE INC.,

Plaintiff,

- v -

THE CURATED NYC, LLC and CHRISTIAN SIRIANO HOLDINGS, LLC,

Defendants.

---X

INDEX NO. 651943/2022

MOTION DATE 8-4-23

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 67, 68, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86

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

I. INTRODUCTION

The plaintiff, Petrola House, Inc. ("Petrola"), owner of real property at 5 West 54th Street in Manhattan (the "Premises"), commenced this breach of contract action seeking to recover, *inter alia*, unpaid rent and maintenance charges from defendant tenant The Curated NYC, LLC ("Curated") and defendant guarantor Christian Siriano Holdings, LLC ("Siriano"). The plaintiff now moves pursuant to CPLR 3212 for summary judgment on the complaint and dismissal of the defendants' affirmative defenses. The defendants oppose the motion. The motion is granted.

II. BACKGROUND

In February 2018, Curated entered into a commercial lease agreement (the "Lease") with Petrola with respect to the Premises, a five-story townhouse in which Curated operated a boutique selling designer clothing, accessories and gifts. The Lease was to expire by its terms on or about February 21, 2023. Pursuant to Article 4.1of the Lease, Curated was obligated to pay

monthly rent and maintenance charges. Article 4.1(d) stated, in pertinent part, that "[t]here shall be no abatement of, deduction from, counterclaim or setoff against Rent, except as otherwise specifically provided in this Lease."

Article 10.1 of the Lease obligated Petrola to "maintain, manage, repair and replace the [Premises]… including all repairs needed to the Base Building Systems," which were defined to include "gas, utility, heating, air conditioning, ventilating, [and] elevator . . . ." Petrola warranted, in Article 3.2(b), that the Base Building Systems would be in good working order and, pursuant to Article 6.3, agreed to bear the cost of repairs to the Base Building Systems. Article 11.6(a) stated that Petrola would make diligent efforts to repair the Base Building Systems should they be interrupted, but that any such interruptions would not be deemed an eviction or disturbance of Curated's use of the Premises, nor render Petrola liable to Curated for damages, nor relieve Curated from performing its obligations under the Lease.

However, Article 11.6(b) provided, in pertinent part, that Curated would be entitled to an abatement of the rent if, due to Petrola's gross negligence or willful misconduct, there was a substantial disruption, for at least five consecutive days, of "Essential Services," which were defined as heat, access to the Building, air conditioning, gas, water, or electric service.

In conjunction with the execution of the Lease, Siriano executed a guaranty (the "Guaranty") in which it "absolutely, unconditionally, and irrevocably guarantee[d] to [Petrola] the prompt and complete payment by [Curated] to [Petrola]" of "(i) the rent, (ii) the Maintenance Charge . . . and (vii) legal fees due pursuant to the terms of the Lease."

According to the defendants, after taking possession of the Premises, Curated discovered several problems with the building, which it repeatedly asked Petrola to repair and/or otherwise

address. These included, among other things[1], issues with the elevator, staircase banister, and heating and air conditioning systems. Curated vacated the Premises on February 28, 2021, before the expiration of the Lease, citing these problems with the Premises.

On April 20, 2022, Petrola commenced the instant action, alleging six causes of action, for breach of contract, breach of guaranty and attorney's fees as against each defendant, and demanding $1,910,484.27 in unpaid rent and additional rent, as reduced by Curated's security deposit. The defendants answered the complaint asserting eleven affirmative defenses.

The instant motion ensued.

III. DISCUSSION

A. Motion for Summary Judgment – First and Second Causes of Action

On a motion for summary judgment, the moving party must make a *prima facie* showing of its entitlement to judgment as a matter of law by submitting evidentiary proof in admissible form sufficient to establish the absence of any material, triable issues of fact. See CPLR 3212(b); Jacobsen v New York City Health & Hosps. Corp., 22 NY3d 824 (2014); Alvarez v Prospect Hosp., 68 NY2d 320 (1986); Zuckerman v City of New York, 49 NY2d 557 (1980). Once the movant meets this burden, it becomes incumbent upon the party opposing the motion to come forward with proof in admissible form to raise a triable issue of fact. See Alvarez v Prospect Hospital, supra; Zuckerman v City of New York, supra.

Pursuant to CPLR 3211(b), a "party may move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no merit." The burden is on the

[1] Curated also alleges, without support, that there was a cockroach infestation, that construction behind the Premises caused significant noise and dust, and that the scaffolding erected in the back of the Premises prevented Curated from using the building's outdoor patio space.

plaintiff to demonstrate that the defenses are without merit as a matter of law. See Granite State Ins. Co. v Transatlantic Reinsurance Co., 132 AD3d 479 (1st Dept. 2015); 534 East 11th Street Housing Dev. Fund v Hendrick, 90 AD3d 541 (1st Dept. 2011). In reviewing such a motion, "the allegations set forth in the answer must be viewed in the light most favorable to the defendant." Granite State Ins. Co. v Transatlantic Reinsurance Co., supra at 481; see 182 Fifth Avenue LLC v Design Development Concepts, Inc., 300 AD2d 198 (1st Dept. 2002).

In support of its motion, Petrola submits, *inter alia*: the pleadings; the subject Lease and Guaranty; the affidavit of Petrola's President, Andre Gregory, stating that Curated failed to pay maintenance charges from March 2018 to April 2019, part of its base rent in February 2020, and any base rent or maintenance from March 2020 through November 2022. By this affidavit, Petrola also submits a ledger, prepared and maintained in the normal course of business, detailing $1,910,484.27 in unpaid arrears.

Petrola's proof establishes, *prima facie*, its entitlement to judgment on the first and second causes of action for breach of contract. Specifically, the plaintiff's proof demonstrates (1) the existence of the Lease, (2) the plaintiff's performance under the Lease by giving Curated possession and use of the Premises, (3) Curated's breach of the Lease by failing to pay rent and maintenance, and (4) resulting damages. See Second Source Funding, LLC v Yellowstone Capital, LLC, 144 AD3d 445 (1st Dept. 2016); Harris v Seward Park Housing Corp., 79 AD3d 425 (1st Dept. 2010); Flomenbaum v New York Univ., 71 AD3d 80 (1st Dept. 2009).

The defendants do not dispute that they defaulted under the Lease. Instead, they argue that the poor conditions of the elevator, staircase banister, air conditioning and heating systems, and Petrola's failure to repair and/or replace them, is a breach of the Lease that absolves Curated

from liability for the unpaid rent. However, Article 11.6(a) states that, while Petrola "shall make diligent efforts to restore such Base Building Systems," Petrola does not "warrant that any of the[se] services . . . will be free from interruption," and that any service interruptions do not render Petrola "liable to [Curated] for damages by abatement of the Rent . . . nor relieve [Curated] from performance of [its] obligations under this Lease." Moreover, Article 4.1(d) expressly states that Curated is not entitled to an abatement against rent except as specifically provided for in the Lease.

Article 11.6(b) is the sole provision in the Lease providing for an abatement of rent. The defendants' claim to an abatement under this provision due to the alleged condition of the elevator, staircase banister, heating and air conditioning systems is without merit. The defendants argue the defective elevator and staircase banister are Essential Services because they provide "access to the building." However, this reading distorts the plain meaning of the phrase "access *to* the building" (emphasis added). The elevator and staircase do not provide access *to* the building, but rather facilitate movement *within* it. If the parties had intended that Essential Services also encompass elements providing access within the building, they could have expressly stated as much. They did not do so. "A fundamental tenet of contract law is that agreements are construed in accordance with the intent of the parties and the best evidence of the parties' intent is what they express in their written contract." Goldman v White Plains Ctr. for Nursing Care, LLC, 11 NY3d 173, 176 (2008). Thus, the court cannot read the Lease to include the elevator and staircase banister as Essential Services under Article 11.6(b).

Gas and air conditioning are both listed as an Essential Service in Article 11.6(b). However, the defendants' submissions fail to raise an issue of fact as to whether the alleged

defects in the heating and air conditioning systems were due to Petrola's gross negligence or willful misconduct. See Colnaghi, U.S.A., Ltd. v Jewelers Prot. Servs., Ltd., 81 NY2d 821, 823-24 (1993) (defining gross negligence as reckless disregard for another party's rights or conduct that "smacks" of intentional wrongdoing); Farnam v Kittinger, 83 NY2d 520, 529 (1994) (defining willful misconduct as requiring a showing of malice and willfulness).

Therefore, the branch of Petrola's motion seeking summary judgment on its claim for breach of the Lease is granted.

B. Motion for Summary Judgment – Fourth and Fifth Causes of Action

Petrola's submissions establish Siriano's liability under the Guaranty by showing "the existence of the guaranty, the underlying debt and the guarantor's failure to perform under the guaranty." Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A., N.Y. Branch v Navarro, 25 NY3d 485, 492 (2015) (internal quotation marks omitted), citing Davimos v Halle, 35 AD3d 270, 272 (1st Dept. 2006).

Therefore, the branch of Petrola's motion seeking summary judgment on its claim for breach of the Guaranty is granted.

C. Interest Calculation

CPLR 5004(a) provides that statutory interest on judgments shall be 9% per annum. In a breach of contract action, interest "accrues from the time of an actionable breach." Kellman v Mosley, 60 AD3d at 457 (1st Dept. 2009); see generally Brushton-Moira Cent. Sch. Dist. v Fred H. Thomas Assocs., P.C., 91 NY2d 256 (1998); Love v State of New York, 78 NY2d 540 (1991). This is in keeping with CPLR 5001(b), which provides that interest is computed "from the earliest ascertainable date the cause of action existed, except that interest upon damages

incurred thereafter shall be computed from the date incurred." The statute further provides that "[w]here such damages were incurred at various times, interest shall be computed upon each item from the date it was incurred or upon all of the damages from a single reasonable intermediate date." Here, while the initial breach was in March 2018, the damages were incurred at various times thereafter, *i.e.*, monthly from March 2018 to November 2022. Under these circumstances, and as prescribed by CPLR 5001(b), pre-judgment interest shall be awarded from the intermediate date of July 1, 2020. See Maurice Kassimir & Assocs, P.C. v Omri, 189 AD3d 581 (1st Dept. 2020); Solow Mgmt. Corp. v Tanger, 43 AD3d 691 (1st Dept. 2007); Sherbansky v 117 West 81st Street Tenants, 238 AD2d 246 (1st Dept. 1997).

Therefore, Petrola is entitled to $1,910,484.27 for unpaid base rent and maintenance charges, as reduced by Curated's security deposit, plus 9% interest from July 1, 2020.

D. Motion for Summary Judgment – Third and Sixth Causes of Action

In its third and sixth causes of action, Petrola seeks reimbursement for attorneys' fees incurred due to Curated's default under the Lease. It is well settled that attorneys' 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). Article 16 of the Lease provides that Petrola may collect from Curated reasonable legal fees involved in collecting rent that is owed to Petrola. Paragraph 13 of the Guaranty likewise provides that Siriano pay Petrola for attorneys' fees incurred to enforce the Guaranty.

Therefore, the branch of Petrola's motion seeking summary judgment solely as to liability on the third and sixth causes of action for attorneys' fees is granted, and the plaintiff may submit supplemental papers to demonstrate the amount of attorneys' fees incurred.

E. Dismissal of Affirmative Defenses

The branch of Petrola's motion that seeks to dismiss the defendants' eleven affirmative defenses is likewise granted. Most are improperly asserted in a conclusory manner without any detail. See Commr. of State Ins. Fund v Ramos, 63 AD3d 453 (1st Dept. 2009); Mfrs. Hanover Trust Co. v Restivo, 169 AD2d 413 (1st Dept. 1991). They fail for additional reasons.

In light of the grant of summary judgment in favor of the plaintiff, the defendants' first affirmative defense, asserting that the complaint fails to state a claim, is meritless.

As to the second and third affirmative defenses, any claim of ineffective service or lack of personal jurisdiction was waived pursuant to the parties' stipulation and the court's order, both dated September 28, 2022, by which the plaintiff accepted the defendants' late answer as timely served.

The fourth, fifth, sixth, and seventh affirmative defenses relate to the conditions of the Premises, including the elevator, staircase banister, gas, and air conditioning. These affirmative defenses are dismissed for the reasons already discussed herein. Further, the seventh affirmative defense, alleging that Petrola breached the covenant of quiet enjoyment contained in Article 23.1 of the Lease, fails because that provision expressly required Curated to keep current on its obligations under the Lease, which it failed to do. "It is well settled that "[t]he tenant must . . . have performed all covenants which are a condition precedent to its right to insist upon the covenant [of quiet enjoyment]." Dance Magic, Inc. v Pike Realty, Inc., 85 AD3d 1083, 1088 (2nd Dept. 2011), citing Dave Herstein Co. v Columbia Pictures Corp., 4 NY2d 117, 121 (1958).

To the extent the defendants argue that Curated was constructively evicted from the Premises (see Real Property Law § 227), this argument is without merit. Article 11.6(a) of the

Lease expressly states that interruptions to the Base Building Systems "shall not be deemed an eviction or disturbance of [Curated's] use and possession of the [Premises] . . . nor relieve [Curated] from performance of [its] obligations under this Lease." See Dance Magic, Inc. v Pike Realty, Inc., 85 AD3d 1083 (2nd Dept. 2011) [commercial tenant's waiver of rights under Real Property Law § 227 limits tenant to remedies set forth in lease and precludes defense of constructive eviction].

The eighth and ninth affirmative defenses, alleging bad faith settlement negotiations, are patently meritless as the plaintiff engaged in substantial settlement negotiations, in good faith, some of which were before the court. Nor was the plaintiff required to negotiate.

The tenth affirmative defense, alleging that Petrola wrongfully applied Curated's $348,000 security deposit to the unpaid arrears, is also patently meritless as Article 25(b) of the Lease expressly allows Petrola to draw upon Curated's security deposit "to remedy any default by [Curated]."

The eleventh affirmative defense alleging the plaintiff's failure to mitigate damages is dismissed because neither the Lease nor the law requires Petrola to relet the premises or otherwise mitigate its damages. See Holy Props. Ltd., L.P. v Kenneth Cole Prods., 87 NY2d 130 (1995); 172 Van Duzer Realty Corp. v Globe Alumni Student Assistance Assn., Inc., 24 NY3d 528 (2014); BP 399 Park Ave. LLC v Pret 399 Park, Inc., 150 AD3d 507 (1st Dept. 2017).

The court has considered Curated's remaining contentions and finds them unavailing.

IV. CONCLUSION

Accordingly, upon the foregoing papers and after oral argument. it is,

ORDERED that the motion of plaintiff Petrola House, Inc. for summary judgment

pursuant to CPLR 3212 is granted as to the first, second, fourth and fifth causes of action of the complaint, and granted solely as to liability with respect to the third and sixth cause of action of the complaint, and it is further

ORDERED that the Clerk shall enter judgment in favor of plaintiff Petrola House, Inc. and against the defendants, The Curated NYC, LLC, and Christian Siriano Holdings, LLC, jointly and severally, in the sum of $1,910,484.27, plus costs and 9% statutory interest per annum from July 1, 2020; and it is further

ORDERED that plaintiff Petrola House, Inc. shall file supplemental papers, within sixty (60) days of the date of this order, to establish the amount of its reasonable attorneys' fees, and the plaintiff shall provide notice to the court of any such filing by emailing the Part 61 Clerk at SFC-Part61-Clerk@nycourts.gov; and it is further

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision and Order of the Court.

HON. NANCY M. BANNON

3/6/2024
DATE

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
	X	GRANTED	DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT	REFERENCE