

Ninhursag Props. LLC v Boyle

2024 NY Slip Op 31776(U)

May 22, 2024

Supreme Court, New York County

Docket Number: Index No. 153110/2020

Judge: Debra A. James

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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. DEBRA A. JAMES

PART 59

Justice

-----X

NINHURSAG PROPERTIES LLC,

Plaintiff,

- v -

PATRICK K. BOYLE,

Defendant.

-----X

INDEX NO. 153110/2020

MOTION DATE 04/23/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29

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

ORDER

Upon the foregoing documents, it is

ORDERED that to the extent of dismissing the affirmative and counterclaims interposed in defendant's answer and as to liability for breach of the written personal guaranty, the motion of plaintiff for partial summary judgment against defendant Patrick K. Boyle is granted; and it is further

ORDERED, that this matter having come on before this court on April 23, 2021, on motion of the plaintiff for summary judgment, and the plaintiff having been represented in connection therewith by Mitchell S. Zingman, Esq., and the defendant having been represented in connection therewith by Daniel G. Blumenstein, Esq., and, pursuant to CPLR § 4317, the court having on its own

motion determined to consider the appointment of a referee to determine an issue of damages separately triable and not requiring a trial by jury is involved, it is now hereby

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to determine the following individual issues of fact, which are hereby submitted to the JHO/Special Referee:

- (1) the issue of the amount of rent, additional rent and use and occupancy due under the Lease and Guaranty dated November 6, 2019, from March 1, 2020 through October 31, 2021, with an offset for mitigation of damages under the Lease dated November 9, 2020, between plaintiff and non-party Fine Creative Media, Inc., which plaintiff is entitled to recover from defendant; and
- (2) the issue of the reasonable value of attorneys' fees and disbursements incurred by plaintiff in the prosecution of this action, which plaintiff is entitled to recover from defendant;

and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR:

and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/supctmanh at the "References" link), shall assign this matter at the initial

appearance to an available JHO/Special Referee to determine as specified above; and it is further

ORDERED that counsel shall immediately consult one another and counsel for plaintiff shall, within thirty (30) days from the date of service of this Order with notice of entry, submit to the Special Referee Clerk by e-mail an Information Sheet (accessible at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed with the hearing, on the date fixed by the Special Referee Clerk for the initial appearance in the Special Referees Part, subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue(s) specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly; and it is further

ORDERED that counsel shall file memoranda or other documents directed to the assigned JHO/Special Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and the Special Referees (available at the "References" link on the court's website) by filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules); and it is further

ORDERED and ADJUDGED that pursuant to CPLR § 4319, the Clerk is directed to enter judgment in favor of plaintiff and against defendant Patrick K. Boyle in accordance with the aforementioned Special Referee, without any further application.

DECISION

The record establishes that the defendant Patrick K. Boyle ("Boyle") executed an unambiguous written agreement personally guaranteeing the obligations of the tenant of the lease at issue. (NYSCEF Doc No. 13).

Boyle asserts counterclaims and defenses on behalf of the tenant, who is not a party to this action, and are improper in an action to enforce solely the guaranty. Moon 170 Mercer, Inc. v Vella, 122 AD3d 544, 545 (1st Dept 2014) ("defendant cannot avail himself of the breach of contract and fraud claims. . .because they are independent causes of action that may only be asserted by the tenant").

Based on the foregoing, the plaintiff is entitled to summary judgment as to liability on its complaint against defendant and the counterclaims interposed by defendant must be dismissed.

Debra A. James

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5/22/2024

DATE

DEBRA A. JAMES, 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