

365 W. End LLC v Mondragon

2024 NY Slip Op 31791(U)

May 10, 2024

Supreme Court, New York County

Docket Number: Index No. 653769/2021

Judge: Verna L. Saunders

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This opinion is uncorrected and not selected for official publication.

Plaintiff now moves, pursuant to CPLR 3212, for an order granting summary judgment in its favor on its claims against defendant, as well as dismissal of defendant's affirmative defenses (NYSCEF Doc. No. 56, *notice of motion*). In support of its application, plaintiff attaches, among other things, copies of the lease renewals and a rent ledger (NYSCEF Doc. Nos. 60-64). Additionally, plaintiff proffers the affidavit of Leon Melohn ("Melohn"), a member of plaintiff, who purports to be familiar with the facts and circumstances of this case, who reiterates the allegations in the complaint. He states that the \$81,600.00 sought remains due and owing. Specifically, plaintiff contends that allegations relating to financial hardship (first affirmative defense) do not excuse a defendant's payment obligations under the lease. In addition, plaintiff asserts that neither the now expired New York eviction moratorium (second cause of action) nor the fact that defendant filed a Declaration of Hardship in Suffolk County (third cause of action) prevent landlord from obtaining a money judgment. According to plaintiff, the underlying law creating the Declaration of Hardship did not come into effect until December 24, 2020, nearly three months after defendant vacated the apartment; therefore, plaintiff posits, it cannot serve as a defense in this action. Lastly, plaintiff maintains that Molina's filing for Chapter 7 bankruptcy cannot serve as a defense to the payment of rent because he is not a party to this action and Molina's bankruptcy proceeding does not foreclose plaintiff from obtaining a judgment against defendant. Plaintiff further asserts that pursuant to the terms of the lease, defendant is liable to plaintiff for its legal fees incurred in connection with this action (NYSCEF Doc. No. 59, *memo of law*, pg. 4).

Defendant, *pro se*, opposes the summary judgment motion via an affidavit wherein she argues that there are issues of fact as to the amount due and owing. She claims to have experienced financial difficulties due to the COVID-19 pandemic and the subsequent bankruptcy filing by her husband. Defendant further contends that the New York eviction moratorium provided legal protection to tenants, such as herself. Defendant also claims that because she filed a Declaration of Hardship in Suffolk County, there are issues of fact as to the amount that plaintiff is seeking. Lastly, she asserts that summary judgment must be denied because plaintiff is a creditor in Molina's bankruptcy case, which is interconnected with the instant case. Defendant states that her finances are intertwined with that of her husband as she has no independent income, and given the bankruptcy case and the complexities therein, this court should, in furtherance of judicial efficiency, stay proceedings in this case until full resolution of the issues subject to the bankruptcy proceeding to avoid conflicting judgments (NYSCEF Doc. No. 68, *opposition*).

In reply, plaintiff restates arguments already proffered in its initial moving papers and articulates that there is no basis to stay or adjourn this matter further. Plaintiff maintains that defendant's argument pertaining to her husband's bankruptcy proceedings is meritless insofar as she is not a party in that action. Plaintiff further claims that defendant has failed to sustain her burden in opposing summary judgment as she has failed to submit any viable opposition to the instant motion. It further articulates that any purported issues of fact raised by defendant are feigned attempts to conjure issues where none exist (NYSCEF Doc. No. 69, *reply*).

It is well-settled that the proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact (see *Winegrad v New York Univ. Med.*

Ctr., 64 NY2d 851, 853 [1985]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980].) Once this showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action or show that “facts essential to justify opposition may exist but cannot [now] be stated” (CPLR 3212[f]; see *Zuckerman*, 49 NY2d at 562).

A landlord seeking summary judgment against a tenant for breach of rental obligations satisfies its *prima facie* evidentiary burden by proving the existence of a lease, landlord’s performance under the lease, tenant’s nonpayment of rent, the total debt due, and a description of how the amounts due were calculated (see *Thor Gallery At S. DeKalb, LLC v Reliance Mediaworks (USA) Inc.*, 143 AD3d 498, 498 [1st Dept 2016]).

Here, plaintiff has established its initial *prima facie* entitlement to summary judgment on its cause of action for breach of the lease by submitting documentary evidence demonstrating the existence of a lease executed by defendant, the lease renewals, along with a rent ledger (see *Durst Pyramid LLC v Silver Cinemas Acquisition Co.*, 222 AD3d 431, 431 [1st Dept 2023]). As the burden shifts, defendant has failed to demonstrate an issue of fact precluding summary judgment. This court notes that defendant fails to dispute the validity of the lease, the nonpayment of rent from February 2020 through September 2020, nor the calculation of rent owed. Instead, defendant relies on COVID-19 defenses to argue that she is absolved from liability. However, the COVID-19 relief referenced focused on mitigating evictions of residential tenants unable to meet rent obligations due to financial hardship caused by the COVID-19 pandemic and not a measure to eliminate a tenant’s financial obligation to pay rent (see *558 Seventh Ave. Corp. v Times Sq. Photo Inc.*, 194 AD3d 561, 561 [1st Dept 2021]).

Addressing the affirmative defense based on the New York Eviction Moratorium, there is no allegation that defendant was evicted from the subject premises. Defendant has further failed to demonstrate how the Declaration of Hardship that she signed while living in a residence located in Suffolk County, almost three months after vacating plaintiff’s premises, relates to this action and obviates her responsibility to pay the rent arrears sought here.

Turning now to the fourth affirmative defense based on her husband’s bankruptcy case, although “[f]ederal bankruptcy law automatically stays the commencement or continuation of any judicial proceedings against a debtor upon the filing of a bankruptcy petition” (*Lubonty v U.S. Bank Natl. Assn.*, 34 NY3d 250, 252 [2019]), defendant has not demonstrated that she is a party to Molina’s bankruptcy proceedings. Therefore, she has failed to persuade the court that this case should be stayed. Hence, defendant’s affirmative defenses are dismissed and plaintiff’s motion seeking summary judgment on its first cause of action is granted.

In view of the foregoing, that branch of plaintiff’s summary judgment motion for legal costs and fees (second cause of action) is also granted pursuant to ¶19 of the lease dated August 24, 2016 (NYSCEF Doc. No. 60, lease), and shall be referred to a special referee to hear and determine (see *Brusco v Braun*, 199 AD2d 27, 29 [1st Dept 1993]). All other arguments have been considered and are either without merit or need not be addressed. Accordingly, it is hereby

ORDERED that that branch of plaintiff’s motion seeking summary judgment against defendant on its claim for breach of the lease (first cause of action) and damages in the amount of \$81,600.00, plus interest from the date of judgment, is granted; and it is further

ORDERED that defendant’s affirmative defenses are dismissed; and it is further

ORDERED and **ADJUDGED** that the Clerk of Court shall enter a money judgment in favor of plaintiff and against defendant for the principal sum of \$81,600.00, together with interest at the statutory rate from the date of judgment, until the judgment is satisfied in full, together with costs and disbursements; and it is further

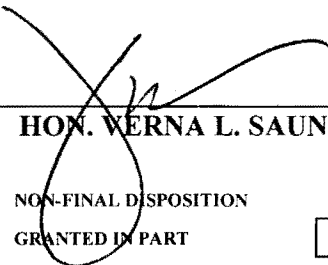
ORDERED that that branch of plaintiff’s motion seeking attorney fees is granted and shall be referred to a special referee to hear and determine; and it is further

ORDERED that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for plaintiff shall serve a copy of this decision and order, with notice of entry, upon defendant, as well as upon the Special Referee Clerk and the Clerk of the Court who shall enter judgment accordingly; and it is further

ORDERED that service upon the Clerk of the Court and Special Referee Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh)

This constitutes the decision and order of this court.

May 10, 2024



HON. WERNA L. SAUNDERS, JSC

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: