SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ALEXANDER M. TISCH** **PART 18**

Justice

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ANGELA GAUDIOSO,

Plaintiff,

- v -

JOHN BASSELINI,

Defendant.

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INDEX NO. 150884/2021

MOTION DATE 12/14/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 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, 30, 31

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

According to the complaint, plaintiff Angela Gaudioso was the rent stabilized tenant of record for Apartment 5E (the Apartment) at 200 East 17th Street, New York, NY, 10003. Gaudioso sublet the Apartment to nonparty Joanna Rodrigues (Subtenant) pursuant to a Sublease with a term from August 21, 2018, to August 31, 2019 (Sublease, attached as Ex C to Aff of Jessica R. Goldberg, NYSCEF Doc. No. 20) and a subsequent Sublet Lease Renewal Agreement with a term from September 1, 2019, to August 31, 2020 (Renewal, attached as Ex D to Goldberg Aff, NYSCEF Doc. No. 21). Defendant John Basselini signed the Sublease and the Renewal as guarantor. According to the plaintiff, Subtenant failed to pay rent and failed to vacate the Apartment at the end of the sublease term. Plaintiff claims Subtenant owes her $9,800 in unpaid rent, plus damages owed to Gaudioso's landlord for Subtenant's, and thus the plaintiff's, failure to vacate and due to damage to Gaudioso's personal property. In this action, plaintiff seeks payment from Basselini, as guarantor, asserting claims for breach of contract, legal fees in this action and in the actions brought against Gaudioso by her landlord.

Defendant answered, asserting affirmative defenses for failure to state a cause of action, that the guarantee is unenforceable due to vagueness, that plaintiff overcharged, so owes Rodrigues treble damages, which exceeds the claims made by plaintiff here, unclean hands, lack of standing, and failure to meet the jurisdictional threshold. Now, plaintiff moves for summary judgment, to dismiss defendant's affirmative defenses, and to strike the answer for failure to respond to discovery requests.

Summary Judgment

The standards for summary judgment are well settled. Summary judgment is a drastic remedy which will be granted only when the party seeking summary judgment has established that there are no triable issues of fact (*see* CPLR 3212 [b]; *Alvarez v Prospect Hosp.*, 68 NY2d 329 [1986]; *Sillman v Twentieth Century-Fox Film Corporation,* 3 NY2d 395 [1957]). To prevail, the party seeking summary judgment must make a prima facie showing of entitlement to judgment as a matter of law tendering evidentiary proof in admissible form, which may include deposition transcripts and other proof annexed to an attorney's affirmation (*see Alvarez v Prospect Hosp., supra*; *Olan v Farrell Lines,* 64 NY2d 1092 [1985]; *Zuckerman v City of New York,* 49 NY2d 557 [1980]). Absent a sufficient showing, the court should deny the motion without regard to the strength of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]).

Once the initial showing has been made, the burden shifts to the party opposing the motion for summary judgment to rebut the prima facie showing by producing evidentiary proof in admissible form sufficient to require a trial of material issues of fact (*see Kaufman v Silver,* 90 NY2d 204, 208 [1997]). Although the court must carefully scrutinize the motion papers in a light most favorable to the party opposing the motion and must give that party the benefit of

every favorable inference (*see Negri v Stop & Shop,* 65 NY2d 625 [1985]) and summary judgment should be denied where there is any doubt as to the existence of a triable issue of fact (*see Rotuba Extruders, v Ceppos,* 46 NY2d 223, 231 [1978]), bald, conclusory assertions or speculation and "[a] shadowy semblance of an issue" are insufficient to defeat a summary judgment motion (*S.J. Capalin Assoc. v Globe Mfg. Corp.*, 34 NY2d 338, 341 [1974]; *see Zuckerman v City of New York, supra; Ehrlich v American Moninger Greenhouse Mfg. Corp.,* 26 NY2d 255, 259 [1970]).

Lastly, "[a] motion for summary judgment should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility" (*Ruiz v Griffin,* 71 AD3d 1112 [2d Dept 2010], quoting *Scott v Long Is. Power Auth.,* 294 AD2d 348 [2d Dept 2002]).

Plaintiff moves for summary judgment on the affirmative claims but fails to present any documents to make a prima facie case regarding non-payment, relying solely on plaintiff's affidavit. "While an affidavit is generally considered competent and sufficient evidence on a motion for summary judgment" (*Carboni v Alfa Romeo USA*, 223 AD3d 585, 586-87 [1st Dept 2024]; *see Miller v City of New York,* 253 AD2d 394, 395–396 [1st Dept 1998]), plaintiff's affidavit merely flatly states that subtenant failed to pay rent after April 1, 2020. It is "conclusory and without specific factual basis" so fails to meet the plaintiff's prima facie burden on this motion for summary judgment (*Matter of New York City Asbestos Litig.,* 123 AD3d 498, 499 [1st Dept 2014]).

Motion to Dismiss Affirmative Defenses

As to the portion of the motion aimed at dismissing each of the defendant's affirmative defenses, "the plaintiff bears the burden of demonstrating that [such] defenses are without merit

as a matter of law. In deciding a motion to dismiss a defense, the defendant is entitled to the benefit of every reasonable intendment of the pleading, which is to be liberally construed" (*534 E. 11th St. Hous. Dev. Fund Corp. v Hendrick*, 90 AD3d 541, 541-42 [1st Dept 2011] [internal citations omitted]). A defense should not be stricken where there are questions of fact requiring a trial (*see id.*; *see also Atlas Feather Corp. v Pine Top Ins. Co.*, 128 AD2d 578, 579 [1st Dept 1987]).

In the first affirmative defense, defendant asserts plaintiff's failure to state a cause of action upon which relief may properly be granted. In his opposition, defendant clarifies that the defense is that the guarantee in the Renewal is neither valid nor triggered. However, the error defendant points to, that the Sublease refers to having a guarantor if the tenant is under 25 years old, rather than the subtenant, is corrected in the Renewal, the relevant document here. Defendant also points to section 1 of the Renewal, which states that a guarantor is required to sign the lease if Subtenant is under 25 or non-resident in the United States. Defendant contends that plaintiff's failure to allege in the complaint that the Subtenant is either under 25 or non-resident in the United States is fatal to the complaint. Plaintiff's reply includes allegations Subtenant was not a US resident and attaches supporting documents. Even without those allegations and documents, the language in section 1 does not abrogate the signature of defendant as guarantor. Accordingly, the first affirmative defense is dismissed.

As a second affirmative defense, defendant claims, citing no supporting law, that claims pursuant to the alleged guaranty should be dismissed as the guaranty is impermissibly vague and unenforceable. "A guaranty is a promise to fulfill the obligations of another party and is subject to the ordinary principles of contract construction" (*2402 E. 69th St., LLC v Corbel Installations, Inc.*, 183 AD3d 859, 861 [2d Dept 2020]). In order to enforce a guaranty, the creditor must prove

that there was 1) an absolute and unconditional guaranty, 2) an underlying debt, and 3) the guarantor failed to perform under the guaranty (*see Corbel Installations, Inc.*, 183 AD3d at 861; *see H.L. Realty, LLC v Edwards*, 131 AD3d 573, 574 [2d Dept 2015]). A guaranty is "absolute and unconditional" when it contains language that obligates the "guarantor to payment without recourse to any defenses or counterclaims" (*see Navarro*, 25 NY3d at 493). The Renewal states the guarantor will be "responsible for payment of rent each month as outlined in this agreement in the event the named Subtenant fails to pay rent by the first of every month." The terms of the Renewal do not state the guarantee is absolute and unconditional, which allows for the guarantor to potentially avail himself of defenses to the obligation to pay. Plaintiff has not borne her burden to establish the defense is without merit as a matter of law. Accordingly, the second affirmative defense will survive.

Defendant's third affirmative defense alleges plaintiff overcharged Subtenant for monthly rent, so is indebted to Rodrigues, offsetting any of Rodrigues' debt . Plaintiff argues this defense is conclusory and lacks supporting allegations. In opposition, defendant points to the DHCR Apartment Registration for Subject Premises, which reflects that the Apartment is rent stabilized and states a reported rent for the Apartment of $1,897.02 in 2018, $1,920.73 in 2019, and $1,949.54 in 2020 (attached as Exhibit E to Aff. of Jessica R. Goldberg, NYSCEF Doc. No. 22). Defendant contends the reported rent represents the maximum legal rent for the Apartment, and so plaintiff overcharged the subtenant by initially charging $2,500.00 and later $2,600.00 per month resulting in a balance accruing in subtenant's favor. Plaintiff offers no rebuttal in her reply and appears to concede that the third affirmative defense survives the motion to dismiss.

Defendant's fourth affirmative defense alleges unclean hands and violation of the Rent Stabilization Code. As noted by plaintiff, "[t]he doctrine of unclean hands is an equitable

defense that is unavailable in an action exclusively for damages" (*Manshion Joho Ctr. Co., Ltd. v Manshion Joho Ctr., Inc.*, 24 AD3d 189, 190 [1st Dept 2005]; *Hasbro Bradley, Inc. v Coopers & Lybrand*, 128 AD2d 218, 220 [1st Dept 1987]). That portion of the affirmative defense fails. Plaintiff also moves to dismiss the portion of the affirmative defense which relates to the rent stabilization code as vague and conclusory. Defendant clarifies in his opposition to the motion that the defense refers to plaintiff's alleged violations of the rent stabilization code by overcharging the subtenant, as discussed above. Accordingly, this portion of the fourth affirmative defense will survive.

Defendant's fifth affirmative defense alleges lack of standing to bring this action. Plaintiff moves to dismiss this affirmative defense as conclusory and failing to state a defense. In opposition, defendant clarifies that plaintiff lacks standing to recover rents charged over the legal regulated rent for the Apartment.

The requirement for a plaintiff to have standing is based in the principle that only the correct parties will be allowed to bring a claim. "The court has no inherent power to right a wrong unless thereby the civil, property or personal rights of the plaintiff in the action or the petitioner in the proceeding are affected" (*Schieffelin v Komfort*, 212 NY 520, 530 [1914]). The analysis is whether the plaintiff has "an injury in fact--an actual legal stake in the matter being adjudicated" (*Socy. of Plastics Indus., Inc. v County of Suffolk*, 77 NY2d 761, 772 [1991]). Regardless of the merits, plaintiff has articulated a dispute regarding performance of a contract for the payment of rent and a guaranty of that payment to her. Defendant's argument goes to the merit of that claim. Accordingly, the firth affirmative defense of lack of standing fails and is dismissed.

Defendant's sixth affirmative defense asserts a failure to meet the jurisdictional threshold of this Court, which defendant claims to be $50,000. However, $50,000 is the jurisdictional limit of the civil courts (NY Const art. VI, § 15[b]). That does not limit the jurisdiction of the Supreme Court (NY Const art. VI, § 15[d]). The Supreme Court has "general original jurisdiction in law and equity" (NY Const art. VI, § 7[a]). Further, plaintiff claims there are additional damages from holdover rent, damage to property, expenses from defending against the landlord's suit, and so forth, which will exceed $50,000. Accordingly, the sixth affirmative defense fails and is dismissed.

Motion to Strike

While the Notice of Motion mentions striking the answer for defendant's failure to respond to discovery demands, plaintiff does not substantiate or argue this point in her briefs. Further, there have been no conferences or scheduling order in this case. For that matter, the Request for Judicial Intervention had not even been filed before plaintiff made this motion. This request is denied without prejudice and a conference will be scheduled with the Court.

Conclusion

For the reasons discussed above, the plaintiff's motion for summary judgment (Motion Seq. No. 001) is GRANTED IN PART in that

- The first affirmative defense, failure to state a cause of action upon which relief may properly be granted, is dismissed;
- The fifth affirmative defense, lack of standing to bring this action, is dismissed; and
- The sixth affirmative defense, failure to meet the jurisdictional threshold of this court, is dismissed;

and otherwise DENIED. Counsel shall meet and confer regarding a discovery schedule and appear for a preliminary conference via Microsoft Teams, with the link to be distributed by the court, on Wednesday, August 7 at 2:30pm.

This constitutes the decision and order of the Court.

7/16/2024
DATE

ALEXANDER M. TISCH, J.S.C.

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