

**200 Water S.P.E., LLC v Keita**

2024 NY Slip Op 32734(U)

August 5, 2024

Supreme Court, New York County

Docket Number: Index No. 152747/2021

Judge: Mary V. Rosado

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. MARY V. ROSADO PART **33M**

*Justice*

-----X

200 WATER S.P.E. LLC,

Plaintiff,

- v -

NANA KEITA,

Defendant.

-----X

INDEX NO. 152747/2021

MOTION DATE 08/03/2024

MOTION SEQ. NO. 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents, and after oral argument, which took place on June 4, 2024, where Craig M. Notte, Esq. appeared for Plaintiff 200 Water S.P.E. LLC (“Plaintiff”) and the *pro se* Defendant Nana Keita (“Defendant”) failed to appear, Plaintiff’s motion seeking leave to amend its pleadings to conform to the evidence and seeking summary judgment is granted in part and denied in part.

The portion of Plaintiff’s motion seeking leave to amend pursuant to CPLR 3025(c) is granted as unopposed. Leave to amend shall be liberally granted and there is no showing of any prejudice here (*Mashinsky v Drescher*, 188 AD3d 465 [1st Dept 2020]).

The portion of Plaintiff’s motion seeking dismissal of Defendant’s affirmative defenses is granted on default as Defendant has failed to oppose and failed to appear. Thus those defenses are deemed abandoned (*Joon Song v MHM Sponsors Co.*, 176 AD3d 572 [1st Dept 2019]).

As for the branch of Plaintiff’s motion seeking summary judgment, this portion of the motion is granted in part and denied in part. To show prima facie entitlement to summary judgment on a breach of contract claim, Plaintiff must prove the existence of a contract, Plaintiff’s

performance, Defendant's breach, and damages (*Markov v Katt*, 176 AD3d 401, 402 [1st Dept 2019]). Here, the undisputed documentary and testamentary evidence establish that the parties entered into a lease agreement, that Plaintiff did not breach any aspect of the lease agreement, that Defendant fell into arrears and holdover past the lease termination, and that Plaintiff has suffered damages by not receiving rents owed and being deprived of its property after lease expiration. Therefore, summary judgment on Plaintiff's second cause of action for unpaid base rent and additional rent from October 1, 2019, through May 31, 2020, is granted. Likewise, Plaintiff's third cause of action seeking unpaid use and occupancy from June 1, 2020, through February 6, 2023, is granted.

However, the Court denies the branch of Plaintiff's motion which seeks summary judgment on its fourth cause of action for attorneys' fees incurred in both this action and the holdover proceeding. New York requires attorneys' fees be sought within the action in which they are incurred, and not in a subsequent action (*O'Connell v 1205-15 First Ave. Associates, LLC*, 28 AD3d 233, 234 [1st Dept 2006]; *Wavertree Corp. v 136 Waverly Associates*, 258 AD2d 392, 292 [1st Dept 1999]). Here, Plaintiff is impermissibly seeking fees incurred in multiple actions. Thus, this portion of the motion is denied without prejudice for seeking fees incurred in the holdover proceeding.

The Court agrees that pursuant to the terms of the lease, and the undisputed facts of this case, Defendant is liable for Plaintiff's legal fees incurred in this action. Therefore, the parties are referred to a special referee to hear and report on the fees Plaintiff incurred in this action.

Accordingly, it is hereby,

ORDERED that Plaintiff's motion seeking leave to amend to conform to the evidence to include all amounts due through the date this motion is determined is granted; and it is further

ORDERED that Plaintiff's motion seeking dismissal of Defendant's affirmative defenses is granted without opposition; and it is further

ORDERED that Plaintiff is granted summary judgment on its second cause of action against Defendant in the amount of \$17,254.89 for unpaid base rent and additional rent from October 1, 2019 through May 31, 2020, and on its third cause of action in the amount of \$83,263.17 for unpaid use and occupancy from June 1, 2020 through February 6, 2023; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of Plaintiff 200 Water S.P.E. LLC against Defendant Nana Keita in the amount of \$100,518.06, plus statutory interest and costs and disbursements, as calculated by the Clerk of the Court; and it is further

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to determine the amount of legal fees Defendant Nana Keita owed Plaintiff 200 Water S.P.E. LLC pursuant to Plaintiff 200 Water S.P.E. LLC's fourth cause of action; 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](http://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/petitioner shall, within 15 days from the date of this Order, 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 plaintiff shall serve a proposed accounting within 24 days from the date of this order and the defendant shall serve objections to the proposed accounting within 20 days from service of plaintiff's papers and the foregoing papers shall be filed with the Special Referee Clerk prior to the original appearance date in Part SRP fixed by the Clerk as set forth above; 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 that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

8/5/2024  
DATE

Mary V Rosado JSC  
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE