

**JF Hospitality Group LLC v CRP 701 W. 135th St. A  
LLC**

2024 NY Slip Op 33331(U)

September 20, 2024

Supreme Court, New York County

Docket Number: Index No. 150979/2023

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M**

*Justice*

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JF HOSPITALITY GROUP LLC,  
Plaintiff,

- v -

CRP 701 WEST 135TH STREET A LLC, CRP 701 WEST  
135TH STREET B LLC

Defendant.

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INDEX NO. 150979/2023  
MOTION DATE 09/21/2024  
MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 63, 64, 65

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

Upon the foregoing documents, and after oral argument, which took place on July 23, 2024, where Eduardo A. Fajardo, Esq. appeared for Plaintiff JF Hospitality Group LLC (“Plaintiff”) and Andrew M. Goldsmith, Esq. appeared for CRP 701 West 135th Street A LLC and CRP 701 West 135th Street B LLC (collectively “Defendants”), Plaintiff’s motion for partial summary judgment seeking declaratory relief and dismissal of Defendants’ affirmative defenses is denied without prejudice, with leave to renew upon further discovery.

**I. Background**

This is an action alleging breach of a commercial lease. Plaintiff initiated this action on January 31, 2023. Defendants own the premises located at 701 West 135th Street, New York, New York (the “Premises”). Plaintiff leased the Premises from Defendants pursuant to a commercial lease dated January 18, 2017. In September of 2018, a sinkhole formed outside the Premises, which caused flooding of the building and made occupancy untenable. Plaintiff alleges that it has been out of possession of the premises since then.

Defendants filed their Answer on June 16, 2023. Plaintiff filed the instant motion on January 16, 2024. Plaintiff argues that Defendants have admitted in a separate action that the sinkhole was caused by Defendants' contractors and that the lease is suspended.

In opposition, Defendants argue that Plaintiff has failed to establish its *prima facie* burden and cannot do so as there has been no discovery, nor any expert testimony, nor any mention of the last time Plaintiff visited the Premises. Defendants argue that without any before-and-after evidence of the condition of the Premises, it is impossible for this Court to rule as a matter of law whether there is a present violation of the lease. Defendants proffer several fact witness affidavits contradicting Plaintiff's allegations regarding the condition of the Premises. Defendants also argue that Plaintiff is not entitled to summary judgment because Plaintiff has violated their own obligations under the lease by failing to procure adequate insurance coverage.

In reply, Plaintiff provides only the affidavit of Danilo Duran. Mr. Duran largely provides testimony which contradicts statements made by Defendants' fact witnesses about the condition of the premises and certain repairs that have been made.

## II. Discussion

"Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact." (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012]). The moving party's "burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party." (*Jacobsen v New York City Health and Hosps. Corp.*, 22 NY3d 824, 833 [2014]). Once this showing is 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. *See e.g., Zuckerman v City of New York*, 49 NY2d 557, 562 [1980];

*Pemberton v New York City Tr. Auth.*, 304 AD2d 340, 342 [1<sup>st</sup> Dept 2003]). Mere conclusions of law or fact are insufficient to defeat a motion for summary judgment (*see Banco Popular North Am. v Victory Taxi Mgt., Inc.*, 1 NY3d 381 [2004]). To establish a *prima facie* claim for breach of contract, the movant must show the existence of a contract, plaintiff's performance, defendant's breach, and resulting damages (*Markov v Katt*, 176 AD3d 401 [1st Dept 2019]).

Here, the Court agrees with Defendants that Plaintiff has failed to meet its *prima facie* burden on its motion. In particular, Plaintiff has failed to show that it performed under the contract given its failure to obtain and maintain adequate insurance coverage, which was the reason why Plaintiff's motion for a Yellowstone injunction was denied in Motion Sequence 002. In any event, Plaintiff has likewise failed to submit sufficient evidence of the past and present condition of the premises, or any expert testimony regarding the insufficiency of Defendants' repairs. Even if Plaintiff did meet its *prima facie* burden, triable issues of fact exist. There has not yet been any discovery in this matter and there are three conflicting fact affidavits regarding the condition of the premises and performance under the lease. Given Plaintiff's heavy burden, the insufficient record, and the issues of fact which exist in the rather scarce record, the Court is unable to grant Plaintiff summary judgment.

Accordingly, it is hereby,

ORDERED that Plaintiff's motion for partial summary judgment is denied without prejudice with leave to renew upon further discovery; and it is further

ORDERED that the parties are directed to meet and confer and submit a proposed preliminary conference order to the Court via e-mail to [SFC-Part33-Clerk@nycourts.gov](mailto:SFC-Part33-Clerk@nycourts.gov) on or before October 23, 2024. In the event the parties are unable to agree to a proposed preliminary

conference order, they shall appear for an in-person preliminary conference on October 30, 2024, in Room 442, 60 Centre Street, New York, New York at 9:30 a.m.; and it is further

ORDERED that should the parties wish to utilize this Court's free mediation services, the parties are directed to inform the Court via e-mail so that the appropriate referral to this Court's ADR part may be made; and it is further

ORDERED that within ten days of entry, counsel for Defendants shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

9/20/2024  
DATE

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

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