

**45 Broadway Owner LLC v Edward Griffith P.C.**

2024 NY Slip Op 33741(U)

October 18, 2024

Supreme Court, New York County

Docket Number: Index No. 651437/2023

Judge: Lori S. Sattler

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 02M

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45 BROADWAY OWNER LLC,

Plaintiff,

- v -

EDWARD GRIFFITH P.C., EDWARD DALE GRIFFITH

Defendant.

INDEX NO. 651437/2023

MOTION DATE 03/08/2024

MOTION SEQ. NO. 004

**DECISION + ORDER ON  
MOTION**

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HON. LORI S. SATTLER:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 59, 61, 62, 63

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

In this breach of contract action, Plaintiff 45 Broadway Owners LLC (“Plaintiff”) moves for an Order granting summary judgment in its favor and against Defendants Edward Griffith P.C. d/b/a Law Offices of Edward Griffith and Edward Dale Griffith (“Defendant”), dismissing Defendant’s affirmative defenses, awarding interest from June 1, 2020, and reasonable attorneys’ fees. Defendant, an attorney representing himself and his solo law firm, opposes the motion in a one-page document.

This action involves Defendant’s failure to pay rent and additional fees for offices located at 45 Broadway, New York, New York (“Building”). Plaintiff submits the affirmation of Aron Weber (“Weber”), the regional director for Cammeby’s Management Company LLC, Plaintiff’s management company (NYSCEF Doc. No. 43, Weber aff). In this capacity, Weber manages the Building including collecting rent, billing, leases, and lease compliance. He affirmed that all records are contained on an office computer and kept in the normal course of business.

Plaintiff and nonparty Bolatti & Griffith LLP (“Bolatti”) entered into an 8-year commercial lease for suite 2204 in the Building on August 5, 2005 (NYSCEF Doc. No. 45, “Lease”). In 2012, Bolatti assigned the lease to Edward Griffith P.C. via an Assignment and Assumption of Lease (NYSCEF Doc. No. 46). Plaintiff consented to the assignment (NYSCEF Doc. No. 47). A Modification of Lease Agreement was entered into between Plaintiff and Defendant on July 31, 2019 (NYSCEF Doc. No. 48, “Modification”). The Modification extended the term of the lease through August 31, 2024, with an annual base rent of \$167,085 in the first year and increasing yearly thereafter. The Modification further provides that Defendant was responsible for other charges including his proportionate share of common electric expenses on the 22nd floor in the amount of \$10,665 per year in accordance with the Lease (Lease Art. 6), and 0.97% share of the real estate taxes in excess of the “Base Taxes” as defined in the Lease (Lease §§ 1.01, 5.02). The Modification also increased the security deposit to \$93,104.34 (Modification § 7). The Lease further provided for late charges to be paid by Defendant upon default in the amount of the lesser of either four percentage points above the prime commercial lending rate of Citibank, N.A. for 90-day unsecured loans, or the maximum amount permitted by applicable law (Lease § 14.11[a]).

Defendant defaulted under the Lease in or about August 2020 (NYSCEF Doc. No. 43, Weber aff) and, after Defendant defaulted in a summary eviction proceeding brought by Plaintiff, a judgment of possession was granted (NYSCEF Doc. No. 50). No money judgment was granted. Plaintiff used Defendant’s security deposits to cover unpaid obligations and represents that they have been used entirely (Weber aff ¶ 39). Plaintiff asserts that a total of \$332,177.17 in base rent is due and owing, along with \$19,552 in base electric charges and \$8,260.42 in common space electric charges, as evidenced by its ledger (Weber aff ¶¶ 44-45, 52;

NYSCEF Doc. No. 51). It further maintains Defendant owes \$39,696.19 in interest at a rate of 11.75% (Weber aff ¶ 46). Plaintiff claims that it was unable to re-lease the offices.

Defendant objects to the relief requested. He argues that the managing agent should have submitted a sworn affidavit instead of an affirmation and that the affirmation is confusing. He further claims that the affirmation fails to account for payments made under the Lease and the application of the security deposit. However, Defendant fails to submit any evidence contradicting the affirmation and the documentary evidence submitted by Plaintiff.

On a motion for summary judgment, the moving party “must make prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (*Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 853 [1985], citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). “Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers” (*Winegrad*, 64 NY2d at 853). Should the movant make its prima facie showing, the burden shifts to the opposing party, who must then produce admissible evidentiary proof to establish that material issues of fact exist (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

Here, Plaintiff has demonstrated entitlement to rental arrears in the amount of \$332,177.17, plus base and common area electric arrears totaling \$27,812.42 based on the Weber affirmation and Building ledger. Defendant fails to produce admissible evidentiary proof to establish that there were issues of fact. As to his claims that Plaintiff should have filed an affidavit of Weber rather than an affirmation, pursuant to CPLR 2106, an affirmation subscribed and affirmed as true under the penalties of perjury may be used in the action “in lieu of and with the same force and effect as an affidavit.”

The branch of Plaintiff's motion seeking to dismiss Defendant's affirmative defenses is granted. CPLR 3211(b) allows a party to "move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no merit." A plaintiff has a "heavy burden of showing that [a] defense is without merit as a matter of law" (*Emigrant Bank v Rosabianca*, 210 AD3d 527 [1st Dept 2022]). The "allegations in the answer must be viewed in the light most favorable to the defendant . . . and the defendant is entitled to the benefit of every reasonable intendment of the pleading, which is to be liberally construed" (*id.*, citing *Pugh v New York City Hous. Auth.*, 159 AD3d 643 [1st Dept 2018]). Nevertheless, "bare legal conclusions are insufficient to raise an affirmative defense" (*Chelsea 8th Ave. LLC v Chelseamilk LLC*, 220 AD3d 565, 566 [1st Dept 2023] [internal citation and quotation marks omitted]).

Here, the Verified Answer sets forth nine affirmative defenses, each of which fail as a matter of law even if liberally construed and viewed in the light most favorable to Defendant. The first through sixth and the ninth affirmative defenses are wholly unsupported by factual allegations in the pleading and must be dismissed (*Chelsea 8th Ave.*, 220 AD3d at 566). The seventh and eighth affirmative defenses relating to Defendant's alleged inability to afford rent due to the COVID-19 pandemic must also be dismissed as neither the Verified Answer nor Defendant's opposition papers contain any factual allegations that could support a claim that the purpose of the Lease was frustrated or that performance was rendered impossible (*see, e.g., Valentino U.S.A. Inc. v 693 Fifth Owner LLC*, 203 AD3d 480 [1st Dept 2022]).

Accordingly, it is hereby:

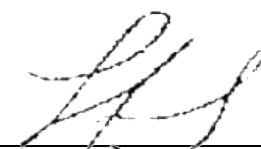
ORDERED that Plaintiff's motion for summary judgment is granted and a money judgment in the amount of \$359,989.59 shall be awarded in favor of Plaintiff and against Defendant with statutory interest from date of entry of this order; it is further

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

ORDERED that that this matter is set down for a hearing on counsel fees on December 11, 2024 at 10:00 a.m. at 60 Centre Street, Room 212.

This constitutes the Decision and Order of the Court.

10/18/2024  
DATE

  
LORI S. SATTLER, 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