

Covenant Holdings, Inc. v Adams Law Group LLC

2024 NY Slip Op 35049(U)

January 6, 2024

Supreme Court, Rockland County

Docket Number: Index No. 031263/2024

Judge: Sherri L. Eisenpress

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

KS File # 9520

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COVENANT HOLDINGS, INC.,

Index # 031263/2024

Plaintiff,

FILED
JUDGMENT

-against-

Jan 07 2025

ADAMS LAW GROUP LLC AND BENJAMIN ADAMS

Defendants.
-----X

**ROCKLAND COUNTY
CLERK'S OFFICE**

Amount awarded in attached decision and order	\$22,135.00
Attorney's fees allowed.(Included in above)	
Interest (to accrue at statutory rate post judgment)	\$

Total \$22,135.00

Costs by statute.....	\$200.00
Service of summons and complaint.....	\$40.00
Index number fee.....	\$210.00
Prospective Marshal's Fee.....	\$40.00
Request for Judicial Intervention.....	\$95.00
Motion Filing Fee.....	\$45.00
Postage.....	
Judgment filing fee.....	

\$630.00

Total \$22,765.00

State of New York , County of Rockland:

The undersigned, an attorney admitted to practice in the State of New York, associated with the attorneys for plaintiff, under the penalties of perjury, affirms the following to be true: the disbursements specified above have been or will necessarily be made or incurred and are reasonable in amount.

Judgment is submitted based on the Order and Decision of the Honorable SHERRI L. EISENPRESS. The Order and Decision was filed and entered on JANUARY 6, 2025, a copy is attached hereto.

Dated:

KEVIN A. STEVENS, P.C.

JUDGMENT ENTERED ON:

Adjudged that , Plaintiff, COVENANT HOLDINGS INC, with a current business address of 98 Lafayette Ave., Suffern, NY 10901

have judgment and do recover of ADAMS LAW GROUP LLC and BENJAMIN ADAMS now or previously residing at: 15 Mile Rd, Suffern, NY 10901

the sum of \$22,135.00 together with costs and disbursements as taxed by the clerk of \$630.00 amounting in all to \$22,765.00, and that plaintiff have execution therefor.

**DONNA GORMAN SILBERMAN
COUNTY CLERK**

KEVIN A. STEVENS, attorney for plaintiff
98 Lafayette Ave, Suffern, NY 10901 (845)-357-9144

CLERK
Donna Gorman Silberman

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X
COVENANT HOLDINGS INC.,

Plaintiff,

-against-

ADAMS LAW GROUP LLC AND BENJAMIN ADAMS,

Defendant.

-----X

Sherri L. Eisenpress, J.S.C.

DECISION & ORDER

Index No.: 031263/2024

(Motions # 2-3)

The following papers, electronically filed on the NYSCEF system as documents numbered 26-27 and 36-45, were considered in connection with (i) Defendant Benjamin Adams' Notice of Motion for an Order dismissing the Complaint against him with prejudice (Motion #2); and (ii) Plaintiff Covenant Holdings Inc's Notice of Cross-Motion for a money judgment for accelerated rentals, and an award of attorney's fees pursuant to a commercial lease (Motion #3).

Upon the foregoing papers, the Court now rules as follows:

This action was commenced on March 7, 2024, to recover accelerated rents and attorney's fees pursuant to a commercial lease agreement. Plaintiff Covenant Holdings Inc.'s ("Covenant") leased commercial premises known as 98 Lafayette, 2nd Floor, Suffern, NY, to Defendant Adams Law Group LLC ("ALG"), pursuant to a commercial lease agreement dated November 8, 2019 ("Lease"). The term of the Lease was for a period of five years, beginning from December 1, 2019, and ending on November 30, 2024. For year five (5) of the Lease, the base rent was \$2,000 per month. Paragraph "3" of the Lease states as follows with respect to rent and added rent:

The rent payment for each month must be paid on the 1st day of that month at Landlord's Address above. Landlord need not give notice to pay the rent. In the event that the payments due hereunder are not received by the Landlord before the 10th of

each month during the term hereof, then Tenant agrees to pay an additional surcharge of \$35.00 per month when any portion of the Rent or additional Rent hereunder is not timely received.

Defendant Benjamin Adams ("Adams") is a payment guarantor of up to twelve (12) months of liability for unpaid rent and added rent. More specifically, the Lease states:

The undersigned, the principal owner and officer of Tenant hereby unconditionally guaranties timely payment and performance of all of the corporate Tenant obligations set forth in this Lease. However, guarantor's maximum personal liability shall be limited to 12 months of rent and added rent.

The Lease provides for acceleration of rents due in the event of payment default. Paragraph "3" of the Lease provides, in relevant part:

The whole amount of rent is due and payable when this lease is effective. Payment of rent in installments is for Tenant's convenience only. If Tenant materially defaults, and does not cure on ten days' notice, Landlord may give notice to Tenant that Tenant may no longer pay rent in installments. The entire rent for the remaining part of the Term will then be due and payable.

Paragraph "19, entitled Tenant's defaults and Landlords Remedies" states in relevant part:

(A) Landlord may give 10 days written notice to tenant to correct any of the following defaults...failure to pay rent or added rent on time.

(B) If Tenant fails to correct the defaults in section "S" within the 5 days, Landlord may cancel the Lease by giving Tenant a 3 day notice stating the date the Term will end.

(D) If the lease is ended or Landlord takes back the premises, rent and added rent for the unexpired Terms becomes due and payable.

Lastly, paragraph "29" of the subject Lease contains language authorizing the imposition of legal fees and costs incurred in any proceeding to enforce the Lease, as follows:

The prevailing party shall be entitled to any cost, including reasonable attorneys' fees and disbursements, in any legal action brought by either party hereto to enforce or interpret the terms hereof, or relating to or arising from this Agreement or the lease Premises.

It is alleged that Defendant defaulted in payment rent, and a Default Letter

was sent on January 3, 2024. A Lease termination notice was sent on January 24, 2024. Plaintiff commenced a holdover proceeding in Justice Court in the Village of Suffern on February 8, 2024. In a Decision dated May 24, 2024, Suffern Village Justice, Ernest S. Buonocore, found the predicate notice to be sufficient and denied Defendant's motion to dismiss. In a Decision and Order dated June 27, 2024, Justice Buonocore found in favor of Plaintiff in the amount of \$12,210, consisting of six months rent at \$2,000/month (January-June 2024) and a \$35 late fee for six months, for use and occupancy of the premises. Additionally, a Warrant of Eviction was issued on June 27, 2024. Defendants vacated the premises on July 29, 2024.

On May 7, 2024, Defendants filed an Answer with counter-claims. The First counter-claim alleges that Plaintiff had no basis to send a Notice of Default on January 3, 2024, while Defendant was still within the grace period provided for under the Lease; Plaintiff wrongly sent a Notice of Termination and wrongly terminated the Lease; all of which deprived Defendants of their right to quiet enjoyment. The second counterclaim alleges that Defendant is entitled to attorney fees under paragraph 29 of the Lease. The third counterclaim seeks punitive damages for the Plaintiff's wrongful actions. A reply to the counterclaims was filed on May 16, 2024.

On May 20, 2024, Defendant Adams brought a motion to dismiss the Complaint as against him. He argues that because his liability as guarantor is limited to twelve (12) months of rent and added rent, and because Plaintiff terminated the Lease on January 24, 2024, and Plaintiff was holding one month security which should have been applied to January rent, all rent obligations have been satisfied. Defendant further argues that he is not liable for any continuing obligations since the rental agreement was terminated. Moreover, he asserts that his guaranty does not extent to use and occupancy.

Plaintiff opposes the motion and cross-moves for a Judgment on its claims. In opposition to the motion, Plaintiff points out that upon termination of the Lease, the

remaining rents under the Lease (through November 30, 2024) were accelerated and became due and owing at that time. Defendant Adams, as guarantor, is responsible for the unpaid accelerated rent, plus added rent, subject to the twelve-month limitation of liability. As Plaintiff has a judgment for the months of January 2024 through June 2024, from the Village Court, it seeks a grant of summary judgment for rent for the months July through November 2024, together with an award of reasonable legal fees in the amount of \$11,960.00 for which it submits invoices.

In opposition to the motion, Defendants argue that there are a number of factual matters that still need to be resolved, including whether Plaintiff's termination of the Lease was proper. It contends that the Notice of Default was served on January 3, 2024, and contends that because January 1, 2024, was a legal holiday and January 2, 2024, was a Sunday, "it is impossible to imagine that the Defendant was in default on January 3, 2024, when it sent the Notice of Default." Defendants contend that a trial will establish that Defendants exclusively paid rent to the office at Plaintiff's request and Plaintiff was not available to receive rent on either January 1, 2024, or January 3, 2024. Defendants further argue that because the lease provides a 10-day grace period for payment of rent, it is on the 11th day of the month that the rent is late and a notice of default can be served.

The proponent of a summary judgment motion must establish his or her claim or defense sufficient to warrant a court directing judgment in its favor as a matter of law, tendering sufficient evidence to demonstrate the lack of material issues of fact [*Giuffrida v. Citibank Corp., et al.*, 100 N.Y.2d 72 (2003), citing *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320 (1986)]. The failure to do so requires a denial of the motion without regard to the sufficiency of the opposing papers [*Lacagnino v. Gonzalez*, 306 A.D.2d 250 (2d Dept. 2003)]. However, once such a showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form demonstrating material questions of fact requiring trial [*Gonzalez v. 98 Mag Leasing Corp.*, 95 N.Y.2d 124 (2000), citing *Alvarez*,

supra, and Winegrad v. New York Univ. Med. Center, 64 N.Y.2d 851 (1985)]. Mere conclusions or unsubstantiated allegations unsupported by competent evidence are insufficient to raise a triable issue (Gilbert Frank Corp. v. Federal Ins. Co., 70 N.Y.2d 966 (1988); Zuckerman v. City of New York, 49 N.Y.2d 557 (1980)].

Turning first to Defendant Adam's motion to dismiss the action against him, same is denied in its entirety. Pursuant to the terms of the lease, the rent remaining on the lease (January 2024, through November 30, 2024) was accelerated upon material default, and became due and owing in its entirety when Default failed to cure pursuant to the notice of default. Accordingly, Defendant Adams, as personal guarantor, is liable for up to twelve (12) months of rent and added rent. Since there is already a judgment against Defendants for the rent for the months January 2024, through June 2024, Defendants, including Mr. Adams, are responsible for five (5) months of the accelerated rent (July 2024 through November 2024). Defendants' reliance on Archives, LLC v. Volpe, 220 A.D.3d 560, 199 N.Y.S.3d 25 (1st Dept. 2023) and Delazzero Realty Corp. v. Port Morris Tile & Marble LP, 128 N.Y.S.3d 155, 2020 N.Y.Slip Op. 50657(U)(Sup Ct. New York County 2020), is misplaced. In both of those cases, the Court determined that defendant guarantor was not liable for use and occupancy charges accruing after the end of the lease term. Here, the lease term had not expired when the default occurred.

Turning next to Plaintiff's motion, the Court finds that Plaintiff is entitled to summary judgment in its favor as against all Defendants. Plaintiff has established that Defendants were in default of the lease and that the remainder of the monies owed on the lease became due and owing when the default was not cured within the time period allotted. Accordingly, Plaintiff has made a *prima facie* showing that it is entitled to five months of rent from defendants in the amount of \$10,000.00 (\$2000/month) plus late fees in the amount of \$175.00 (\$35/month).

In opposition thereto, Defendants have failed to demonstrate a triable issue of fact warranting denial of summary judgment to Plaintiff. Pursuant to the lease, the rent is due on the first day of each month. After the first day of each month, the Defendants are in default of the lease if payment has not been received, and the notice of default, served on January 3, 2024, was not improper. Contrary to Defendants' position, January 11, 2024, was not "the first day that the rent was late" and therefore "the first day that a notice of default could be served." Additionally, the ten (10) day grace period in paragraph "3" refers to when the \$35.00 additional surcharge will be applied. Nor is there any merit to Defendants' position that the proceeding in Justice Court "release the guarantor from any obligation." For the reasons stated herein, Plaintiff is entitled to a judgment against both Defendants in the amount of \$10,175.00.

Additionally, Plaintiff is entitled to recover attorney's fees as requested. Under the well-established general rule in New York, "attorneys' fees are deemed incidental to litigation and may not be recovered unless supported by statute, court rule, or written agreement of the parties." Flemming v. Barnwell Nursing Home and Health Facilities, Inc., 15 N.Y.3d 375, 379, 912 N.Y.S.3d 504 (2010). In the instant matter, pursuant to ¶ 29 of the lease, Plaintiff is entitled to attorney's fees incurred in connection with recovering the monies owed pursuant to the Lease. In this case, Defendant has submitted its invoices in the amount of \$11,960.00, which the Court deems reasonable. Since attorney's fees are considered to be "added rent," Defendant Adams, as guarantor, is therefore liable for this as well. See Casamento v. Juaregui, 88 A.D.3d 345, 354, 929 N.Y.S.2d 286 (2d Dept. 2011)(attorney's fee in an eviction proceedings fell within the definition of "added rent" because it is a charge which the tenant may be required to pay, albeit indirectly.)

Accordingly, it is

ORDERED that Defendant Adams' Notice of Motion (#2) to dismiss the action against him is DENIED in its entirety; and it is further

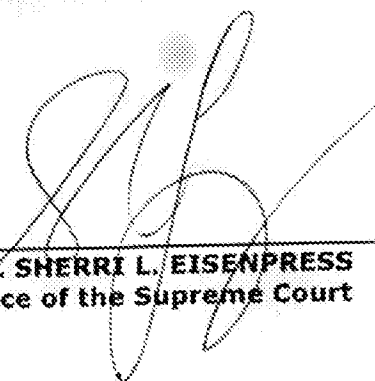
ORDERED that Plaintiff's Notice of Cross-Motion for summary judgment and a judgment against Defendants (#3) is GRANTED; and it is further

ORDERED that Plaintiff Covenant Holdings Inc. is entitled to a Judgment against Defendants Adams Law Group LLC and Benjamin Adams in the amount of TWENTY-TWO THOUSAND ONE HUNDRED THIRTY-FIVE DOLLARS and 00/100 CENTS (\$22,135.00), and it is further

ORDERED that Plaintiff may enter Judgment directly with the Rockland County Clerk without further Order of this Court.

The foregoing constitutes the Decision and Order of this Court on Motions # 2-3.

Dated: New City, New York
January 6, 2024



HON. SHERRI L. EISENPRESS
Justice of the Supreme Court

To: All parties via NYSCEF