

**Estiatorio Ent., Ltd. v Stacey Realty Assoc.**

2024 NY Slip Op 35112(U)

August 29, 2024

Supreme Court, Westchester County

Docket Number: Index No. 59466/2024

Judge: Charles D. Wood

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

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

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ESTIATORIO ENT., LTD,

Plaintiff,

-against-

DECISION&ORDER  
Index No. 59466/2024  
Motion Seq. No. 1

STACEY REALTY ASSOCIATES, STACEY REALTY ASSOCIATES, LLC, MARILYN JEAN ALFANO, PAUL SALVATORE DERAFFELE, DAVID CHARLES DERAFFELE, THOMAS MICHAEL DERAFFELE, SALVATORE ANGELO DERAFFELE, PHILIP DANIEL DERAFFELE, SHARON MARGARET DERAFFELE, JAMES MICHAEL DERAFFELE, and JIANGNANEC LLC,

Defendants.

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**WOOD, J.**

In an action, inter alia, to quiet title to enforce plaintiff's ("plaintiff" or "tenant") purported ownership rights with respect to a building that housed a diner, New York State Courts Electronic Filing ("NYSCEF") Documents Numbers 4-30 were read in connection with the pre-answer motion by defendants Stacey Realty Associates, Stacey Realty Associates, LLC, Marilyn Jean Alfano, Paul Salvatore DeRaffele, David Charles DeRaffele, Thomas Michael DeRaffele, Salvatore Angelo DeRaffele, Philip Daniel DeRaffele, Sharon Margaret DeRaffele and James Michael DeRaffele (collectively, "defendants" or "landlord") pursuant to CPLR 3211(a)(1) and (7), to dismiss the complaint.

The Eastchester Odyssey Diner, located at 465 White Plains Road, in Eastchester was operated by tenant and open from approximately 1973 until March of 2023, when it closed due to financial difficulties brought upon by the Covid-19 pandemic. Tenant leased the land on which the diner sat from defendant Stacey Realty pursuant to a commercial triple net lease with rider ("the lease" (NYSCEF#7). It is undisputed that plaintiff failed to pay rent and taxes to

landlord, failed to procure necessary insurance, and closed the diner in violation of the lease terms. Tenant seeks an order from this court to quiet its title to the building, to grant judgment declaring that tenant is the owner of the building and that the lease that Stacey Realty has entered with Jianganec is ineffective, and to eject Jianganec from the building.

A motion pursuant to CPLR 3211(a)(1) to dismiss the complaint on the ground that the action is barred by documentary evidence may be granted “only where the documentary evidence utterly refutes [the] plaintiff’s factual allegations, conclusively establishing a defense as a matter of law” (*Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 [2002]). The subject lease here, qualifies as Materials as “documentary evidence” which include “documents reflecting out-of-court transactions such as mortgages, deeds, contracts, and any other papers, the contents of which are ‘essentially undeniable’ ” (*Midorimatsu, Inc. v Hui Fat Co.*, 99 AD3d 680, 682 [2d Dept 2012]).

In addition, on a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), the court must accept all facts as alleged in the pleading to be true, accord the plaintiff the benefit of every favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*Meehan v Cty. of Suffolk*, 144 AD3d 642, 643 [2d Dept 2016]).

A written agreement that is unambiguous on its face must be enforced according to the plain meaning of its terms. Thus, “[i]t is the role of the courts to enforce the agreement made by the parties—not to add, excise or distort the meaning of the terms they chose to include, thereby creating a new contract under the guise of construction” (*Roman Cath. Diocese of Brooklyn v Christ the King Reg'l High Sch.*, 164 AD3d 1390, 1393 [2d Dept 2018]). Where the terms of a contract are clear and unambiguous, the intent of the parties must be found within the four corners of the contract, giving a practical interpretation to the language employed and reading

the contract as a whole (*Stonewall Contracting Corp. v Long Island Rail Rd. Co.*, 186 AD3d 640, 641–42 [2020], leave to appeal denied, 36 NY3d 912 (2021)). When a term or clause is ambiguous, “the parties may submit extrinsic evidence as an aid in construction, and the resolution of the ambiguity is for the trier of fact (*Geothermal Energy Corp. v Caithness Corp.*, 34 AD3d 420, 423–24 [2d Dept 2006]). Further, it has long been the rule that ambiguities in a contractual instrument will be resolved *contra proferentem*, against the party who prepared or presented it (*151 W. Assocs. v Printsiples Fabric Corp.*, 61 N.Y.2d 732, 734, [1984]).

At issue here is whether two provisions under the lease are in conflict, namely, Article 51(B) (“End of Term”), that provides that tenant retains ownership of the building upon the lease’s expiration or sooner termination, while Article 75(B)(ii) (Lease defaults), contemplates a conveyance of the building to Stacey Realty if Stacey Realty exercises a termination right triggered by an Event of Default, as defined by the lease. Specifically, Article 51(A) of the lease provides in pertinent part that, “Tenant acknowledges that possession of the Demised Premises must be surrendered to Landlord on the Expiration Date or upon any sooner termination of this Lease.” Article 51 (B) states:

51. “(B) Subject nevertheless to Landlord's right to acquire title to the Building pursuant to Paragraph 68 below and the Purchase Option Agreement, **the parties hereto agree that Tenant shall have and retain title to the Building**, as well as to all moveable and not affixed and affixed furnishings.... used to run Tenant's business (NYSCEF#7).

In contrast, Article (75)(B) of the Lease entitled “Defaults: Remedies” provides, in pertinent part, that upon the occurrence of an Event of Default... (ii) **all of Tenant's right, title and interest in, to and under the Building and all Tenant's Moveable FF&E shall be deemed to have been transferred and conveyed to Landlord.** (NYSCEF#7).

Landlord argues that there is no conflict between these two lease provisions, as they merely address different scenarios. Whereas Article 75(B) of the lease expressly governs lease defaults and the remedies available to landlord upon a termination resulting therefrom, Article 51(B) makes no mention of Lease defaults and has nothing to do with default situations that result in an early termination of the lease. Additionally, landlord claims that there is no legal theory on which tenant can legitimately claim it has “a continuing right” to traverse landlord’s premises in light of the fact that landlord terminated tenant’s lease in October of 2021. Landlord contends that while tenant may have made a bad bargain, it is not the function of this court to rewrite the parties’ agreement.

In divergence, tenant argues that the lease reflects that tenant owns the structure that housed the diner itself. Tenant argues that there is a conflict between the language in Article 75(B)(ii)(“Default: Remedies”) of the Lease and Article 51(A)(“End of Term”). In addition, tenant asserts that the building is essentially worthless to it (or any third party) without a lease for the subject premises, and even if the lease were not ambiguous, enforcement of its forfeiture provision would constitute an unconscionable penalty that violates New York public policy. Tenant also contends that it has an easement by implication.


Taking into consideration the parties’ arguments, the court finds that the lease is subject to more than one reasonable interpretation, and thus pursuant to CPLR 3211(a)(1), does not utterly refute the factual allegations contained in the complaint and conclusively establish a defense to the causes of action as a matter of law (*Cord Meyer Dev. Co. v Forest Hills Owners Corp.*, (229 AD3d 495 [2d Dept 2024])). The conflict and ambiguity of the relevant lease provisions raise an issue of fact as to whether when the parties entered the lease, there was a meeting of minds as to end of lease terms and that tenant risked its interest in the building.

Therefore, upon viewing the evidence in light most favorable to plaintiff tenant, as non-moving party, there is a rational process by which a factfinder could find for plaintiff tenant, as the facts as alleged fit within a cognizable legal theory, the complaint sufficiently states a cause of action under CPLR 3211(a)(7) and survives defendant landlord's motion to dismiss. The court has considered the remainder of the factual and legal contentions of the parties and to the extent not specifically addressed herein, finds them to be either without merit or rendered moot by other aspects of this decision. This constitutes the decision and order of the court. Accordingly, it is hereby

ORDERED, that defendants' motion to dismiss is **Denied**; and it is further

ORDERED, that within twenty days after this decision and order is uploaded to NYSCEF, counsel for plaintiff shall serve a copy of this decision and order electronically, with notice of entry, upon all parties, and file proof of service on NYSCEF within five days of service.

Dated: White Plains, New York  
August 29, 2024



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HON. CHARLES D. WOOD  
Justice of the Supreme Court

To: All Counsel for the Parties by NYSCEF