V.I.P Real Estate Inc. v Corporate Commons Three, LLC.
2024 NY Slip Op 35429(U)
April 15, 2024
Supreme Court, Richmond County
Docket Number: Index No. 150956/2022
Judge: Catherine M. DiDomenico
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
COUNTY OF RICHMOND IAS PART 11
---X
V.I.P REAL ESTATE INC.,

Plaintiff

-against-

CORPORATE COMMONS THREE, LLC.,

Defendant.

---X

Present: Hon. Catherine DiDomenico

DECISION AND ORDER

Index No. 150956/2022

Motion Seq. No: 001

Recitation as required by CPLR § 2219(a) of the papers considered in the review of Motion Sequence Number 001.

Document	Numbered
Motion for Summary Judgment by Plaintiff, (Mot Seq. 001)	1
Affirmation in Opposition by Defendant,	2
Reply By Plaintiff,	3
Transcript Dated December 18, 2023.	4

Upon the foregoing cited papers, the Decision and Order on this Application is as follows:

Factual Background

In October 2019, Plaintiff V.I.P Real Estate, Inc. and Defendant Corporate Commons Three, LLC, entered into a "Commission Agreement." Pursuant to the terms of that agreement the parties agreed that Plaintiff would procure a tenant for Defendant's commercial property. In return, Plaintiff would receive a multi-year "step-down" fee structure that would extend over the duration of the tenancy. The agreement also stated that if and when Plaintiff procured a tenant, they would be entitled to a 2% commission if that tenant exercised an option or extended its lease.

Plaintiff procured a tenant, The Icahn School of Medicine at Mount Sinai ("Icahn"), who executed a lease with Defendant on December 15, 2020. Section 11.05 of that lease identified Plaintiff as the sole Broker entitled to a commission. The lease was for a 15-year term and included space on the second floor of Defendant's property. However, Article I, Section 1.02(a) of the lease gave Icahn a "right of first refusal" option to rent suites 1C and 1D on the first floor if a third party attempted to rent them. Moreover, Article I, Section 1.02(b) gave Icahn an option to lease any available space in the building until January 1, 2023.

On December 17, 2021, Plaintiff mailed Defendant a "letter of intent" allegedly on behalf of Icahn, which outlined proposed lease terms for the first and eighth floors of the property. Subsequently, on February 15, 2022, Icahn and Defendant executed a modification of their existing lease entitled "First Amendment and Modification to Lease." Therein, Icahn extended its second-floor lease from 15 to 20 years and entered into a 20-year lease for suites 1C and 1D on the first floor and space on the eighth floor of the property. It is undisputed that Defendant owes a 2% commission for the second-floor lease extension, the issue raised in the present action is the proper calculation of a broker's fee for the additional rentals on the first and eighth floors.

Defendant does not dispute its obligation to pay a commission but argues that Plaintiff has incorrectly calculated the amount owed under the terms of the contract. Plaintiff claims it is owed **$415,029.50** in broker fees and **$7,500** in attorney fees. Defendant claims it only owes, at most, **$269,390**. By Notice of Motion dated November 18, 2022 (Mot Seq. 001), Plaintiff moves for summary judgment on the issue of liability and damages, arguing that its calculations are in accordance with the terms of the commission agreement and lease. Plaintiff argues that the "step down" commission is controlling because the first and eight floor leases were not "options" under the original lease and instead constituted new leases. Defendant argues that Icahn did in fact exercise its option under Article 1, Section 1.02 of the original lease when it rented space on the first and eighth floors, triggering a 2% commission.

<u>Applicable Law</u>

"The proponent of a summary judgment motion must make a 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. Ctr.*, 64 N.Y.2d 851 (1985); see also, *Fairline Fin. Corp. v. Longspaugh*, 144 A.D.3d 858 (2d Dept. 2016)**. Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. **See *Junger v. John V. Dinan Assoc., Inc.* 164 A.D.3d 1428 (2d Dept. 2018)**. Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof sufficient to establish the existence of material issues of fact which require a trial. **See *St. Claire v. Empire Gen Contr. & Painting Corp.*, 33 A.D.3d 611 (2d Dept. 2006)**. "On a motion for summary judgement, facts must be viewed in the light most favorable to the non-moving party." ***Vega v. Restani Const. Corp.*, 18 N.Y.3d 499 (2012)**. "Whether a contract is clear or ambiguous is for the court to determine as a matter of law." ***Fetner v. Fetner*, 741 N.Y.S.2d 256 (2d Dept. 2002).** Unambiguous provisions of a contract must be given their plain and ordinary meaning. ***See Arthur Vincent & Sons Constr., Inc. v. Century Sur. Ins. Co.*, 156 A.D.3d 853 (2d Dept. 2017)**.

Plaintiff claims that there are no material issues of fact that would preclude summary judgement and argues that it became entitled to the full step-down commission when Ichan and Defendant entered into the amended and modified lease. In support of this position, Plaintiff claims that the amended lease is tantamount to a "new lease" for floors one and eight. In opposition, Defendant argues that Icahn did not enter into a new lease, but rather exercised an "option" contained in the original lease. In support of its motion for summary judgement, Plaintiff has provided a supporting affidavit from the real estate broker who facilitated the lease agreement between Icahn and Defendant. Plaintiff also provides an email exchanged between the real estate broker and the individual who signed the commission agreement on behalf of Defendant. However, the Court cannot glean Icahn's intent from the documents. The Court looks to the language of the parties' contracts to determine intent. **See *Ellington v. EMI Music*, Inc., 24 N.Y.3d 239 (2014); See also *Harmony Rockaway, LLC v. Gelwan*, 160 N.Y.S.3d 294 (2021).**

The parties have different interpretations of the lease at issue. However, as the contractual language of that lease is clear and unambiguous, its interpretation is an issue of law within the province of the court. **See *NRT New York, LLC v. Harding*, 16 N.Y.S.3d 255 (2015); See also *Maser Consulting, P.A. v. Viola Park Realty, LLC*, 936 N.Y.S.2d 693 (2012)**. The commission agreement, original lease, and amended lease are all interrelated. According to the commission agreement, Plaintiff was entitled to a 2% commission in the event Icahn exercised an option under the lease. The parties' commission agreement is referenced in Section 11.05 of the original lease. That lease also contains Section 1.02(b), which is entitled "Option for Additional Space." This clause states that "[t]enant shall have the right to lease any other available space in the building." As this option was available to Icahn through January 1, 2023, it was still operative when the parties executed the modified lease on February 1, 2022. Under the clear and unambiguous terms of the original lease, Icahn had the option to rent any available space in the building, which is exactly what it did when it rented space on the first and eight floors on February 1, 2022. Thus, the clear and unambiguous terms of the amended lease clearly evidence Icahn's intent to exercise the option it had under the original lease to rent space in floors one and eight. **See *Willsey v. Gjuraj*, 885 N.Y.S.2d 528 (2009); See also *Franklin Apartment Assocs., Inc. v. Westbrook Tenants Corp.*, 841 N.Y.S.2d 673 (2007).** For these reasons, Plaintiff's motion for summary judgement on the issue of damages is denied as they have incorrectly calculated the amount of commission due. As liability is uncontested, that aspect of the motion is granted.

However, this does not end the Court's analysis. With liability resolved, the parties present the Court with a binary choice between two calculations of damages. If Plaintiff's analysis was correct, the step-down provision of the commission agreement would control, however, as set forth above, the Court has found Defendant's interpretation of the contract to be controlling and finds that a 2% commission was triggered. When faced with a binary choice in relation to a motion for summary judgment, CPLR §3212(b) authorizes the court to search the record and grant a non-movant summary judgment without giving prior notice to the parties. **See *Williams v. County of Suffolk*, 215 A.D.3d 893 (2d Dept. 2023); see also, *Backer v. Bouza Falco Co.*, 28 A.D.3d 503 (2d Dept. 2006); *Kenneth's Fine Repairs, LLC v. State of New York*, 133 A.D.3d 1181 (3rd Dept. 2015).** Accordingly, upon a review of the motion record this Court grants a summary declaratory judgment to Defendant that a 2% commission applies to the transactions at issue. Defendant is hereby directed to calculate the commission owed and settle a proposed order on notice. This will allow Plaintiff an opportunity to submit a counter order if they believe Defendant's calculations are incorrect. Matter is hereby adjourned for a telephone status conference which shall be held on May 17, 2024 at 3:30PM.

This constitutes the Decision and Order of the Court resolving motion sequence number 001.

Dated: April 15, 2024

HON. CATHERINE M. DIDOMENICO
A.J.S.C.