

COD, LLC v Ljulldjuraj
2024 NY Slip Op 35529(U)
March 18, 2024
Civil Court of the City of New York, New York County
Docket Number: Index No. 308455/2021
Judge: Jack Stoller
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART R

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COD, LLC,

Petitioner,

Index No. 308455/2021

- against -

DECISION/ORDER

MIRAS LJULJDJURAJ,

Respondents.

----- X

Present: Hon. Jack Stoller
 Judge, Housing Court

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:

Pages	numbered
Order to Show Cause and Supplemental Affidavit and Affirmation Annexed	1, 2, 3
Affirmation In Opposition	4
Affirmation In Reply	5
Letter to Court	6

Upon the foregoing papers, the Decision and Order on this motion are as follows:

COD, LLC, the petitioner in this proceeding (“Petitioner”), commenced this holdover proceeding against Miras Ljuljdjuraj (“Respondent”), a respondent in this proceeding, and “John Doe” and “Jane Doe” (“Co-Respondents”), other respondents in this proceeding (the Court collectively refers to Respondent and Co-Respondents and “Respondents”), seeking possession of 151 East 80th Street, Apt. 9A, New York, New York (“the subject premises”) on the basis that Respondent’s occupancy was incidental to his employment with Petitioner and that Petitioner terminated Respondent’s employment. The Court dismissed this proceeding on the basis that a lease between the parties (“the Lease”) rendered Respondent a tenant even if Petitioner terminated Respondent’s employment. The Court restored the matter on Respondent’s claim for

attorney's fees. Petitioner now moves to dismiss Respondent's counterclaim for attorney's fees.

Each side in litigation bears its own litigation costs in the absence of a statute or an agreement to the contrary. Flemming v. Barnwell Nursing Home & Health Facilities, Inc., 15 N.Y.3d 375, 379 (2010). The Lease constitutes such an agreement. Vt. Teddy Bear Co. v. 538 Madison Realty Co., 1 N.Y.3d 470, 475 (2004), D'Alto v. 22-24 129th St., LLC, 76 A.D.3d 503, 506 (2nd Dept. 2010). Paragraph 15 of the Lease provides as follows: "If this [l]ease is terminated by Petitioner due to [Respondent's] default, and/or the non-renewal of Lease by [Respondent], the following are the rights and obligations of [Respondent] and [Petitioner].... If the [subject premises] is subsequently re-rented, [Respondent] must pay [Petitioner] as damages ... [Petitioner's] expense for attorney's fees...."

Whenever a lease provides that in any action or summary proceeding the landlord may recover attorneys' fees incurred as the result of the failure of the tenant to perform any covenant or agreement contained in such lease, there shall be implied in such lease a covenant by the landlord to pay the tenant attorneys' fees incurred by the tenant as a result of, *inter alia*, the successful defense of any summary proceeding commenced by the landlord against the tenant arising out of the lease. RPL §234(1).

Petitioner argues that RPL §234(1) does not apply to Petitioner's cause of action herein because its cause of action was not based on Respondent's failure to perform any covenant or agreement contained in such lease, but rather pursuant to RPAPL §713(11). However, RPL §234(1) does not condition a tenant's right to recovery on "whether the attorneys' fees are available in the landlord's underlying proceeding against the tenant for the breach of the lease." Graham Ct. Owner's Corp. v. Taylor, 24 N.Y.3d 742, 749 (2015). Rather, RPL §234(1)

conditions a tenant's right to recovery on language in a lease entitling a landlord to recover attorneys' fees. Id. at 747. The language of the kind found in the Lease in particular triggers the provisions of RPL §234(1). Id. at 729.

Petitioner cites Kew Gardens Portfolio Holdings, LLC v. Bucheli, 72 Misc.3d 1223(A)(Civ. Ct. Queens Co. 2021) in support of the proposition that a tenant's counterclaim was not based on on a breach of lease. However, the holding in that case dismissed a counterclaim for attorney's fees because the tenant in that case based its counterclaim on "allege[d] frivolous conduct" as opposed to RPL §234. Respondent in this proceeding bases his claim on RPL §234.

Petitioner also cites Morrissey v. 400 W. 59th St. Partners, LLC, 2021 N.Y. Slip Op. 32107(U), *5 (S. Ct. N.Y. Co.) in support of its argument. In Morrissey, a tenant sued a landlord for declaratory relief. The tenant did not prevail and the landlord sought a judgment for fees. The Court denied the landlord's motion because the lease only entitled the landlord to collect fees if the tenant defaulted in an obligation or if the tenant's conduct caused a landlord to defend an action. RPL §234(1), however, entitles a tenant to attorneys' fees upon a successful defense to a summary proceeding as long as the lease has language entitling a landlord to attorneys' fees. Respondent in this case successfully defended against a summary proceeding and Morrissey, supra, is therefore inapposite. Accordingly, it is ordered that the Court denies Petitioner's motion to dismiss Respondent's cause of action for attorneys' fees.

Respondent seeks a determination from the Court of an amount of attorneys' fees on a submission of his attorney's billing records. However, the record as currently constituted does not contain a predicate for the Court to make a finding as to an appropriate hourly rate. In order

to resolve this issue and any other outstanding issues that Petitioner may wish to raise with regard to attorneys' fees, the Court shall restore this proceeding for a conference with counsel on a date to be arranged over email.

This constitutes the decision and order of the Court.

Dated: New York, New York
March 18, 2024



HON. JACK STOLLER
J.H.C.

APPROVED
JSTOLLER , 3/18/2024, 9:08:43 AM