

AD Broadway Family L.P. v Bretschneider

2025 NY Slip Op 30826(U)

March 13, 2025

Supreme Court, New York County

Docket Number: Index No. 158313/2024

Judge: Lyle E. Frank

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

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

-----X

AD BROADWAY FAMILY LIMITED PARTNERSHIP

Plaintiff,

- v -

SEBASTIAN BRETSCHNEIDER,

Defendant.

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INDEX NO. 158313/2024

MOTION DATE 11/19/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21

were read on this motion to/for DISMISS.

Upon the foregoing documents, defendant’s motion is granted in part and denied in part.

Background

In June of 2018, Sebastian Bretschneider (“Defendant”) signed a residential lease (the “Lease”) for an apartment owned by AD Broadway Family Limited Partnership (“Plaintiff”). In September of 2023, Plaintiff initiated a holdover proceeding against Defendant, seeking eviction and use and occupancy in the amount of \$8,000 per month, plus costs and fees. The parties signed a stipulation of adjournment (the “February Stipulation”) that set use and occupancy for February at \$6,110 and stated that the agreement was “without prejudice to Petitioner’s claims or Respondent’s defenses” in the holdover proceeding. Then in March, the parties entered into a Stipulation of Settlement (the “March Stipulation”), which set the amount of use and occupancy at \$6,110 per month. Then in May, the parties entered into another Stipulation of Settlement (the “May Stipulation”), wherein among other things the parties acknowledged that Defendant had paid \$6,110 “representing one month’s rent.” The May Stipulation also stated that that Plaintiff

“reserves any and all claims under the lease, including but not limited to legal fees” and that Defendant reserved any defenses to said claims.

In May, Defendant vacated the apartment. Plaintiff emailed them the summary of what they determined were the outstanding amounts owed. This amount included \$14,324.50 of legal fees. Defendant disputed the amount of legal fees and contested that Plaintiff had failed to account for the \$6,000 security deposit. In July, Defendant tendered a check for \$10,125 to Plaintiff, which was the amount of outstanding use and occupancy at a rate of \$6,110 per month minus the security deposit. Plaintiff refused to accept the check, stating that this was not a full payment of the money owed. Plaintiff then commenced this underlying proceeding, seeking a money judgement against Defendant and claiming use and occupancy at a rate of \$12,000 per month. Defendant brings the present pre-answer motion to dismiss.

Standard of Review

It is well settled that when considering a motion to dismiss pursuant to CPLR § 3211, “the pleading is to be liberally construed, accepting all the facts alleged in the pleading to be true and according the plaintiff the benefit of every possible inference.” *Avgush v. Town of Yorktown*, 303 A.D.2d 340 (2d Dept. 2003). Dismissal of the complaint is warranted “if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery.” *Connaughton v. Chipotle Mexican Grill, Inc*, 29 N.Y.3d 137, 142 (2017).

CPLR § 3211(a)(1) allows for a complaint to be dismissed if there is a “defense founded upon documentary evidence.” Dismissal is only warranted under this provision if “the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law.” *Leon v. Martinez*, 84 N.Y.2d 83, 88 (1994). CPLR § 3211(a)(5) allows for a

complaint to be dismissed because of a valid release. While a valid release generally “constitutes a complete bar”, for a signed release the burden shifts to the plaintiff to “show that there has been fraud, duress, or some other fact which will be sufficient to void the release.” *Centro Empesarial Cempresa S.A. v. América Móvil, S.A.B. de C.V.*, 17 N.Y.3d 269, 276 (2011).

Discussion

Defendant moves to dismiss the complaint in its entirety. The complaint contains two causes of action, the first for a monetary judgment for rent, additional rent, and prior legal fees, and the second for legal fees in connection with this proceeding. There are two main arguments that Defendant brings in support of their motion to dismiss: 1) that the settlement agreements, as well as the doctrines of res judicata and collateral estoppel, bar Plaintiff’s claim for use and occupancy at a rate of \$12,000 per month; and 2) that the doctrines of res judicata and collateral estoppel also bar Plaintiff’s claims for legal fees because Plaintiff could have pursued that claim in the holdover action and did not do so. Defendant also argues that the amount of legal fees sought is unreasonable. Plaintiff opposes the motion. For the reasons that follow, Defendant’s motion is granted as to the use and occupancy claim but denied as to the legal fees provision.

The Use and Occupancy Claim Is Limited to the Stipulated Amount

Defendant points to the series of stipulations that all set use and occupancy at \$6,110 per month and argues that Plaintiff is bound by these agreements. Plaintiff does not challenge the validity of the agreements, but instead argues that the stipulation language reserving rights under the lease permits them to seek the liquidated damages use and occupancy amount set forth in the lease, instead of the stipulated use and occupancy amount. The relevant language from the Lease, Paragraph 50, reads that in the event of a holdover, “Tenant shall pay the Landlord a sum equal to Two Hundred (200%) percent of the monthly rent set forth in this Lease as liquidated damages

solely for the use and occupancy of the Unit” (emphasis added). Plaintiff claims that when they reserved the right to pursue claims under in the various stipulations, that included this provision.

On a pre-answer motion to dismiss, Plaintiff is entitled to every favorable inference. But even with this benefit, if the other party has documentary evidence that “conclusively establishes a defense to the asserted claims as a matter of law”, then dismissal is proper. *Gottesman Co. v. A.E.W., Inc.*, 190 A.D.3d 522, 524 (1st Dept. 2021). Furthermore, if there are no disputed issues of fact, then there is also no need for further discovery before dismissal. *Id.* Here, the March and May stipulations, setting as they did the agreed-upon amount for use and occupancy, conclusively defeats Plaintiff’s claim for the liquidated damages amount of use and occupancy. The Lease clearly states that the liquidated damages amount of twice the monthly rent is only available as a use and occupancy amount. The use and occupancy amount was agreed upon by the parties, in an undisputedly binding agreement, to be set \$6,110 per month. That is all that Plaintiff can seek for use and occupancy. Although Plaintiff did reserve the rights to bring claims under the Lease, this does not permit them to seek a claim that is squarely and completely in contradiction to the binding stipulations. Even with every favorable inference, Plaintiff cannot seek an amount that is directly opposed by the stipulations. Therefore, dismissal of the complaint to the extent that it seeks a use and occupancy amount greater than \$6,110 per month is proper.

The Attorneys’ Fees Claim Is Not Barred by the Stipulations or Collateral Estoppel

Defendant argues that because Plaintiff did not bring a claim for attorneys’ fees in the holdover proceeding, they are estopped from bringing such a claim here. But the Stipulations clearly state that Plaintiff had reserved their right to bring a claim for legal fees pursuant to the Lease. Such a reservation of rights defeats any estoppel argument. Defendant’s arguments as to

the amount of legal fees sought is a defense that is not a basis for dismissal of the claim for attorneys' fees. Accordingly, it is hereby

ADJUDGED that defendant's motion to dismiss the first cause of action is granted as to the portion seeking liquidated damages; and it is further

ADJUDGED that the defendant's motion to dismiss the claims for legal fees is denied.

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3/13/2025

DATE

LYLE E. FRANK, 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