SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. VERNA L. SAUNDERS, JSC** **PART 36**

Justice

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SYLVAN HOSPITALITY GROUP, INC.
Plaintiff,

- v -

ST. GILES HOTEL, LLC,
Defendant.

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INDEX NO. 150582/2022

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114

were read on this motion to/for **SUMMARY JUDGMENT**.

Plaintiff, Sylvan Hospitality Group, Inc. ("Sylvan"), brings this action seeking to recover damages from defendant, St. Giles Hospital, LLC ("St. Giles") for terminating a management agreement with Sylvan to lease a restaurant and bar located in a hotel owned by St. Giles (*see* Complaint, NYSCEF Doc. No. 74). St. Giles now moves, pursuant to CPLR 3212, to dismiss the complaint in this action for, among other things, breach of a management agreement.

The following facts are gleaned from the submission of the parties. Sylvan is a New York corporation with an address at 120 East 39th Street, New York, New York (*see id.*). Sylvan's sole asset is a high-end New York City steakhouse, with rights to operate under an agreement with St. Giles (*id.*). St. Giles is a Delaware limited liability company with an address at 120 East 39th Street, New York, NY (*id.*). St. Giles operated a now closed hotel at that address (*id.*). On January 14, 2019, St. Giles, as hotel owner, agreed to allow Sylan, as manager, to "manage and operate" the restaurant and bar facility on a portion of the ground floor of the hotel (the, "Restaurant"), as an independent contractor, pursuant to a Management Agreement (*see Management Agreement*, NYSCEF Doc. No. 83). Sylvan asserts that the Management Agreement was "a traditional lease" (NYSCEF Doc. No. 74, p 2). St. Giles does not dispute that the Management Agreement was a lease (see *St. Giles' Mem. of Law*, NYSCEF Doc. No. 90, p 2).

On September 11, 2019, St. Giles served Sylvan with a Notice of Termination of the Management Agreement based on Sylvan's alleged failure to make payments pursuant to the agreement and failure to provide required permits for the Restaurant (*see* Notice of Termination, NYSCEF Doc. No. 84). The Notice of Termination advised Sylvan that it was required to vacate the Restaurant by October 11, 2019, when the term of the agreement expired, and that failure to vacate would result in a summary holdover proceeding (*id.*). St. Giles asserts that the lease ended on October 1, 2019, as a result of the service of the Notice of Termination (see *Bhaumik Affd*, NYSCEF Doc. No. 9, p 1).

On October 30, 2019, when Sylvan did not vacate, St. Giles commenced a holdover proceeding styled *St. Giles Hotel, Ltd. v Sylvan Hospitality Group, Inc.* (L&T Index No. 71107/2019 [Civil Ct, NY County 2019]), essentially claiming that Sylvan defaulted under the Management Agreement (see *Petition*, NYSCEF Doc. No. 95). Sylvan answered, generally denying the allegations in the petition, asserting multiple affirmative defenses, and alleging counterclaims for, among other things, constructive eviction (*see* Answer, NYSCEF Doc. No. 96).

Sylvan maintains that after several adjournments, the holdover proceeding was marked final for trial (*see* NYSCEF Doc. No, 74, *supra*). Sylvan also asserts that the holdover proceeding was marked "settled," subject to a stipulation, when the parties agreed that St. Giles would either buy out Sylvan's interest in the leasehold or allow Sylvan to sell the leasehold to someone else (*id.*). However, Sylvan states that the "final deal never materialized" (*id.*). Sylvan further insists that the lease "was never terminated;" that "it was agreed to be in place;" and that the only issue was whether the holdover proceeding "would be settled by a buyout or sale" (*id.*).

St. Giles agrees that the holdover proceeding was never resolved but insists that the lease was properly terminated (NYSCEF Doc. No. 9, *supra*).

The COVID-19 pandemic required closure of the hotel and Restaurant in March 2020 (*see* NYSCEF Doc. No. 74, *supra*). In addition, a flood that originated on the floors above the Restaurant on February 3, 2021, resulted in severe damage to the Restaurant (*id.*). Sylvan states that it could no longer occupy the area and the Restaurant never reopened (*id.*). Insurers for both Sylan and St. Giles, and adjusters retained by those insurers, have been involved in adjusting the losses from the flood (*id.*).

St. Giles asserts that the flood damage to the hotel was so severe that it determined that it would not be able to restore Sylvan to occupancy within 180 days. On March 18, 2021, St. Giles sent Sylvan another Notice of Termination, stating, in part:

> "As you know, it is the position of St. Giles Hotel, LLC that your tenancy of the Premises pursuant to the Management Agreement by and between St. Giles Hotel, LLC and Sylvan Hospitality Group Inc. dated January 14, 2019 (the "Agreement") was validly terminated by notice pursuant to Section 8(a)(i) of the Agreement in September 2019. Without waiver of that termination and without intending to create or revive any rights in your favor, please take notice that your occupancy of the Premises pursuant to the Management Agreement and on any other putative basis is hereby terminated effective April 26th, 2021, pursuant to Section 22(a)(ii) of the Agreement, on the grounds that in St. Giles Hotel, LLC's reasonable business judgment the damage to the Premises sustained as a result of the flood that occurred on February 2nd 2021, cannot be repaired within 180 days from the date of the casualty"

(*Notice of Termination*, NYSCEF Doc. No. 12).

Sylvan claims that it recently learned that St. Giles put the hotel on the market, and Sylan believes that St. Giles is not informing prospective buyers that it has a leasehold interest in the

restaurant in the hotel (*see* NYSCEF Doc. No. 74, *supra*). Sylvan further asserts that because the lease is not recorded, third parties have no knowledge of its leasehold, memorialized in the lease, unless St. Giles discloses it (*id.*). However, St. Giles maintains that it never reinstated Sylvan's tenancy under the Management Agreement, but that Sylvan continued to occupy the restaurant as a holdover tenant without paying use and occupancy (*see* NYSCEF Doc. No. 90, *supra*).

On January 22, 2022, Sylvan filed a Notice of Pendency against St. Giles seeking to quiet title and a constructive trust over real property (*see* Notice of Pendency, NYSCEF Doc. No. 2). The ensuing complaint alleges causes of action for quiet title (first cause of action); unjust enrichment (second cause of action); breach of lease (third cause of action); and constructive trust (fourth cause of action) (*id.*).

At an examination before trial ("EBT") held on July 16, 2024, Mirsad Lekic, a representative of Sylvan, testified, among other things, that Sylvan never paid any rent to St. Giles for the Restaurant (see *Lekic EBT*, NYSCEF Doc. No. 76, pp 23-24). Sylvan states that when the Restaurant was permitted to reopen after the pandemic, it spent money creating an entry way, renovating the space, and incurring related charges (*id.*). Sylvan seeks damages in the amount of $5 million, a declaration that the Management Agreement creates a leasehold interest in the Restaurant, a constructive trust over the Restaurant for the improvements it made to the space, as well as attorney's fees, costs, and disbursements (*id.*).

By order entered January 24, 2023, this court canceled the Notice of Pendency and dismissed the causes of action for quiet title, unjust enrichment, and constructive trust, leaving only the cause of action for breach of lease (*see* Decision & Order, NYSCEF Doc. No. 37). The Appellate Division unanimously affirmed, to the extent appealed from, the dismissal of the cause of action for quiet title (see *Decision & Order*, NYSCEF Doc. No. 48). St. Giles now seeks summary judgment dismissing the cause of action for breach of lease.

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 demonstrate the absence of any material issues of fact (see *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Failure to make such *prima facie* showing requires a denial of the motion, regardless of the sufficiency of the opposing papers (see *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). Once such proof has been offered, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (see *Zuckerman v City of New York*, *supra*, at 562). In reviewing a motion for summary judgment, the court must view the evidence in the light most favorable to the nonmoving party (see *Branham v Loews Orpheum Cinemas, Inc.*, 8 NY3d 931, 932 [2007]). Mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient to defeat summary judgment (see *Zuckerman v City of New York*, *supra*).

To prevail on a cause of action for breach of lease, Sylvan must establish the existence of a valid, binding lease, its performance thereunder, and St. Giles' failure of performance under the lease, resulting in damages (see *Markov v Katt*, 176 AD3d 401, 402-403 [1st Dept 2019]). Here, Sylvan alleges a breach of the lease based on St. Giles' "actions and omissions," including,

among other things that Sylvan "spent $1,000,000 renovating the space which [St. Giles] is trying to steal by throwing [Sylvan] out after a few months of operation" (NYSCEF Doc. No. 74, pp 4, 8).

In seeking summary judgment, St. Giles denies breaching the Management Agreement. Rather, St. Giles maintains that it was within its rights to terminate the agreement in accordance with its unambiguous provisions. St. Giles insists that it properly terminated the agreement on September 11, 2019, pursuant to §8(a)(i) thereof, following Sylvan's failure to make payments and obtain proper permits. St. Giles also asserts that it never reinstated the agreement, but that Sylvan remained in possession for an extended period while the parties sought to resolve the holdover proceeding and because the COVID-19 pandemic essentially froze the situation in place. St. Giles further argues that it properly terminated the agreement again on March 18, 2021, pursuant to §22(a), following the devastating flood.

Section 8 of the Management Agreement, entitled "Default," states, in part:

> "(a) Termination by Hotel Owner. Hotel Owner may elect, at its option, to terminate the appointment of Manager as Manager of the Restaurant and terminate this Agreement upon the occurrence of any of the following events and in the manner set forth below:
> (i)in the event of any failure of Manager to comply with the terms and conditions of this Agreement or to perform its obligations hereunder (each, a 'Default'), then Manager shall have the opportunity to cure such Default as hereinafter provided in this Section 8(a)(i). Owner shall give Manager a notice ("Notice of Default") stating the Default(s) by Manager, and Manager shall have 10 days after the receipt of the notice within which to cure the Default, or if such Default(s) is a non-monetary Default that cannot be fully cured in such 10-day period, to commence the cure within such 10-day period and thereafter diligently and promptly proceed to cure as soon as possible. If Manager does not cure the Default(s) within such 10-day period or commence the cure within such period and thereafter complete the cure as soon as is possible, then Hotel Owner may terminate this Agreement at any time thereunder by notice to Manager specifying the effective date of termination"

(NYSCEF Doc. No. 83, *supra*).

Section 22(a) of the agreement, entitled "Damage and Destruction, states, in part:

> "Insured Loss. Subject to the other provisions of this Section 22, in the event that the Premises are damaged by fire or other insured casualty, Hotel Owner shall (provided that sufficient insurance proceeds are made available to Hotel Owner) repair the Premises as promptly as reasonably practicable, provided, however, that if (i) 8% or more, in value or in floor area, of the Hotel building or 30% or more of the Premises have been so
>
> damaged, or (ii) if Hotel Owner, in its reasonable business judgment

> determines that the damage cannot be repaired within one hundred eighty (180) days from the date of the casualty, then Hotel Owner shall have the option to give notice of termination to Manager at any time within sixty (60) days after such damage (provided that Hotel Owner has elected to terminate the Agreements for all other retail areas of the Hotel similarly affected), in which case this Agreement shall terminate as of a date to be specified in such notice, which date shall not be less than thirty (30) nor more than sixty (60) days after the giving of such notice (unless, if Hotel Owner has not elected to terminate this Agreement due to damage to the Hotel outside of the Premises, Manager elects to repair the damage to the Premises at its expense). In no event shall Hotel Owner be responsible for the repair or restoration of Manager's improvements and personal property" (*id.*).

In describing the term "Premises," the Management Agreement states:

> "The Hotel includes a Restaurant and bar facility formerly known as 'Sushi Box' on a portion of the ground floor of the Hotel (the 'Restaurant'), as well as the indoor and outdoor special event space located on the top floor of the Hotel and storage space in the basement of the Hotel, all of which is more particularly described in Exhibit A attached hereto and which by this reference is made part hereof (the 'Premises')" (*id.*).

It is axiomatic that when interpreting a contract, the terms of the agreement "are construed in accordance with the intent of the parties" and "a written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms" (*Goldman v White Plains Ctr for Nursing Care, LLC.*, 11 NY3d 173, 176 [2008]). This is particularly true in real property transactions where "the instrument was negotiated between sophisticated, counseled business people negotiating at arm's length" (*TAG 380, LLC v ComMet 380, Inc.*, 10 NY3d 507, 513 [2008]). Interpretation of an unambiguous contract is a matter of law for the court (see *W.W.W. Assocs., Inc. v Giancontieri*, 77 NY2d 157, 162-163 [1990]). In interpreting a contract, "the document must be read as a whole to determine the parties' purpose and intent, giving a practical interpretation to the language employed so as that the parties' reasonable expectations are realized" (*Snug Harbor Sq. Venture v Never Home Laundry, Inc.*, 252 AD2d 520, 521 [2d Dept 1998]). "Further, a court should not adopt an interpretation which would leave any provision without force an effect" (*id.*).

The Court determines, and the parties do not dispute, that the terms of §§8(a)(i) and 22(a) of the Management Agreement are unambiguous. Section 8 permits St. Giles to terminate the agreement if Sylvan fails to comply with terms and conditions or fails to perform its obligations thereunder. As stated, St. Giles commenced a holdover proceeding, essentially alleging that Sylvan failed to make payments pursuant to the agreement and failed to provide required permits for the Restaurant. Sylvan denies the allegations, and it is undisputed that the holdover proceeding was never resolved. Absent a determination as to whether Sylvan failed to comply with the terms and conditions of the agreement or failed to perform its obligations thereunder, triable issues of fact remain that preclude summary judgment based on §8 of the Management

Agreement. Therefore, the branch of the motion that seeks summary judgment dismissing the complaint based on §8(a)(i) of the Management Agreement is denied.

Section 22(a) permits St. Giles to terminate the Management Agreement in the event that the "Premises" is damaged by fire or other insured casualty, if St. Giles, in its reasonable business judgment determines that the damage cannot be repaired within 180 days from the date of the casualty. A lease provision that permits a landlord to terminate a tenancy if the premises are rendered wholly unusable is enforceable (see *Mawardi v Purple Potato, Ltd.*, 187 AD 2d 569 [2d Dept 1992]).

St. Giles asserts that it exercised its reasonable judgment to determine that the flood damage could not be repaired within 180 days since the flood had gravely affected the entire hotel, including the Restaurant. To support its position, St. Giles offers, among other things, the Management Agreement (*see* NYSCEF Doc. 83, *supra*), photographs of the damage (see NYSCEF Doc. Nos. 85; 86) and a report from its building construction consultant, Christopher Dollbaum, opining that:

> "Based on the severe flood damage to the hotel and restaurant space, including damage to the restaurant space's mechanical, electrical, plumbing, and life-systems, it would not have been possible to restore Sylvan to tenancy within 180 days of the flood, and it was reasonable for the landlord to so conclude in the aftermath of the flood … . Additionally, due to supply-chain shortages during the COVID-19 pandemic, there were extended lead times for unplanned construction projects …"

(see *Dollbaum Affm*, NYSCEF Doc. No. 89).

In opposition, Sylvan argues that triable issues of fact exist as to whether St. Giles properly terminated the Management Agreement after the flood. Sylvan offers, among other things, an affirmation from its general contractor, to dispute the assertion that the repair work could not have been performed within 180 days (see *Saranovic Affm*, NYSCEF Doc. No. 103). The affirmation states, in part, that "[t]he time to complete the work itemized in the proposal was definitely less than 180 days" (*id.*).

Sylvan also asserts that St. Giles' building construction consultant never saw the damaged property after the flood, only got involved after the repairs were done, and merely recited the timeline of events that preceded his involvement, determining that they were reasonable. Sylvan states that the consultant did not consider whether the Restaurant could have been repaired before the hotel, since §22 contemplates the leased space, not the entire hotel.

Sylvan further argues that St. Giles breached the covenant of good faith and fair dealing, implied in all contracts, by causing the conditions that gave rise to the flood on the upper floors of the hotel, delaying the repair work to the Restaurant so that insurance could be involved, and by prematurely destroying Sylvan's valuable business. Sylvan submits, among other things, a Balance Sheet dated October 31, 2019, an Income Statement for the ten months ending October 31, 2019, and Financial Statements as of July 24, 2020, to support its position (*see* NYSCEF Doc. No. 77).

On review of the submissions, the court concludes that Sylvan sufficiently raises triable issues of fact that preclude summary judgment as to whether St. Giles properly terminated the Management Agreement, pursuant to §22(a) thereof, based on its determination that the flood damages to the Premises could not be repaired within 180 days from the date of the casualty. Questions of fact exist as to whether St. Giles considered the time needed to repair the "Premises," as contemplated by the agreement, rather than the time needed to repair the flood damage throughout the hotel. The competing affidavits bolster the factual dispute. Thus, the request for summary judgment dismissing the complaint based on §22(a) of the Management Agreement is also denied. Accordingly, it is

ORDERED that the motion for summary judgment by defendant St. Giles Hotel, LLC is denied; and it is further

ORDERED that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for plaintiff shall serve a copy of this decision and order, with notice of entry, upon defendant.

This constitutes the decision and order of this court.

July 8, 2025

HON. VERNA L. SAUNDERS, JSC

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED	X	DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE