

**Amtad LLC v SOSH Architects, P.A.**

2025 NY Slip Op 32601(U)

July 1, 2025

Supreme Court, New York County

Docket Number: Index No. 655247/2024

Judge: Arthur F. Engoron

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON PART 37

Justice

-----X

AMTAD LLC,

Plaintiff,

- v -

SOSH ARCHITECTS, P.A., SYKES, O'CONNOR,
SALERNO & HAZEVEH, P.A.,

Defendants.

-----X

SYKES, O'CONNOR, SALERNO & HAZEVEH, P.A.,

Plaintiff,

-against-

NORY HAZEVEH

Defendant.

-----X

DECISION + ORDER ON MOTION

Third-Party
Index No. 595505/2025

The following e-filed documents, listed by NYSCEF document number (Motion 003) 52, 53, 54, 55, 56, 57, 58, 61,

were read on this motion to DISMISS

Upon the foregoing documents, and for the reasons stated hereinbelow, plaintiff's motion, pursuant to CPLR 3211, to dismiss defendant's counterclaims is granted in part and denied in part.

Background

On May 20, 2020, defendant, SOSH Architects, P.A. ("SOSHNY"), and plaintiff, Amtad LLC ("Amtad"), entered into a fifth amendment of lease agreement (the "Lease") that, inter alia, provided SOSHNY with occupancy of certain commercial office space on the eleventh and twelfth floors (the "Premises") of the building located at 145 West 57th Street, New York, New York 10019 (the "Building"). NYSCEF Doc. No. 2.

On January 1, 2021, and January 1, 2022, SOSHNY entered into Rental Deferral Agreements ("Rent Deferral Agreements") with plaintiff. NYSCEF Doc. Nos. 54, 55. The Rent Deferral Agreement dated January 1, 2021 states at paragraph one subsection (i) that

- (i) effective of December 31, 2020, SOSHNY was in arrears in the payment of Rent in the aggregate amount of \$90,186.68 (being \$22,546.67 Fixed Rent for the months of September, October, November, and December 2020) (herein the “Delinquent Rent”). Landlord acknowledges that Tenant has delivered two (2) checks to Landlord, each in the amount of \$45,093.34, in payment of the Delinquent Rent;

Id.

Furthermore, the Rent Deferral Agreements each state at paragraph two that

Tenant represents and warrants to Landlord that: (a) Landlord is not in default in the performance or observance of any of the terms, covenants, conditions, or obligations on Landlord’s part to be performed or observed under the Lease, as amended hereby; (b) Tenant has no claims, abatement, counterclaims, defenses, causes of action, disputes, offsets, deductions, or credits whatsoever against Landlord with respect to the Lease or the Premises or the enforcement of any terms and conditions of the Lease, as amended hereby, or otherwise;

Id.

In December 2022, SOSHNY allegedly ceased paying rent. NYSCEF Doc. No. 1. On June 7, 2024, plaintiff sent SOSHNY a Notice of Default, claiming that the earliest missed rental payment occurred in December 2022 and that the last payment had been made on October 13, 2023. NYSCEF Doc. No. 4. On June 26, 2024, plaintiff sent SOSHNY a Notice of Termination, effective July 2, 2024. NYSCEF Doc. No. 5.

On July 1, 2024, SOSHNY abandoned the Premises. NYSCEF Doc. No. 44 ¶ 18.

On October 3, 2024, plaintiff commenced the instant breach of contract action, asserting three causes of action: (1) pre-termination damages, particularly failure to pay rent; (2) post-termination damages, particularly failure to pay rent; and (3) certain costs and expenses. NYSCEF Doc. No. 1.

On December 5, 2024, SOSHNY filed an Amended Answer with Counterclaims, asserting seven affirmative defenses and five counterclaims: (1) breach of lease; (2) breach of covenant of quiet enjoyment; (3) constructive eviction; (4) breach of covenant of good faith and fair dealing; and (5) tenant harassment. NYSCEF Doc. No. 44.

Plaintiff now moves, pursuant to CPLR 3211(a)(1) and (7), to dismiss SOSHNY’s counterclaims. NYSCEF Doc. No. 52.

Plaintiff argues, inter alia, that SOSHNY: failed to allege plausibly that it performed under the lease; failed to allege that landlord breached any provision of the lease; waived its right to assert a constructive eviction claim and failed to comply with the Lease’s Notice Requirements for defects; failed to allege a non-duplicative breach of covenant of good faith and fair dealing claim; and failed to state a claim for tenant harassment. NYSCEF Doc. No. 56.

In opposition, SOSHNY argues, inter alia, that: it was not in default; the Rent Deferral Agreements are not properly authenticated and therefore inadmissible; and that plaintiff breached

the lease by, inter alia, allowing leaks, allowing construction noise and activity, refusing building access at certain times, engaging in bad faith communications, and failing to fix a broken skylight. NYSCEF Doc. No. 58. Furthermore, SOSHNY claims that the foregoing materially deprived it of use of the Premises, causing it to “abandon the Premises, on or about July 1, 2024.” Id.

### Discussion

Dismissal pursuant to CPLR 3211(a)(1) is warranted where “documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law.” Leon v Martinez, 84 NY2d 83, 87-88 (1994). And dismissal pursuant to CPLR 3211(a)(7) is warranted when, “afford[ing] the pleadings a liberal construction, tak[ing] the allegations of the complaint as true and provid[ing] plaintiff the benefit of every possible inference,” the complaint fails to assert facts that would make out a cause of action. EBC I, Inc. v Goldman, Sachs & Co., 5 NY3d 11, 19 (2005).

#### *Breach of Lease*

It is well-settled that a breach of contract claim requires a party to allege “the existence of a contract, the plaintiff’s performance pursuant to the contract, the defendant’s breach of his or her contractual obligations, and damages resulting from the breach.” Canzona v Atanasio, 118 AD3d 837, 838 (2d Dept 2014).

Here, SOSHNY’s counterclaim alleges the existence a contract (the Lease), that SOSHNY performed its obligations pursuant to the Lease, and that plaintiff breached the lease in myriad ways, prior to and subsequent to the parties entering the Rent Deferral Agreements, to SOSHNY’s detriment. SOSHNY waived any pre-Rent Deferral Agreements breaches, but SOSHNY did not waive any post-Rent Deferral Agreements breaches. Accordingly, construing the counterclaims liberally, that part of plaintiff’s motion seeking to dismiss SOSHNY’s first counterclaim should be denied.

#### *Breach of the Covenant of Quiet Enjoyment*

To make out a prima facie case of breach of the covenant of quiet enjoyment, a tenant must “establish that the landlord’s conduct substantially and materially deprived the tenant of the beneficial use and enjoyment of the premises. There must be an actual ouster, either total or partial, or if the eviction is constructive, there must have been an abandonment of the premises by the tenant.” Jackson v Westminster House Owners Inc., 24 AD3d 249, 250 (1st Dept 2005) (internal citations omitted).

SOSHNY has failed to plead that there was total or partial eviction. Also, SOSHNY did not “abandon” the Premises until July 1, 2024 – the day before the Lease was terminated. Therefore, SOSHNY’s counterclaim alleging breach of the covenant of quiet enjoyment should be dismissed.

#### *Constructive Eviction*

Constructive Eviction “exists where, although there has been no physical expulsion or exclusion of the tenant, the landlord’s wrongful acts substantially and materially deprive the tenant of the beneficial use and enjoyment of the premises. The tenant, however, *must abandon possession* in

order to claim that there was a constructive eviction.” Barash v Pa. Term. Real Est. Corp., 26 NY2d 77, 83 (1970) (emphasis added).

As SOSHNY did not “abandon” possession of the Premises until July 1, 2024, SOSHNY has failed to plead constructive eviction, and the counterclaim should be dismissed.

*Breach of the Covenant of Good Faith and Fair Dealing*

The implied covenant of good faith and fair dealing is breached “when a party acts in a manner that deprives the other party of the benefits of the contract. Generally, a breach of covenant of good faith and fair dealing is a breach of the contract itself.” Parlux Fragrances, LLC v S. Carter Enters., LLC, 204 AD3d 72, 74 (3d Dept 2022).

Here, any alleged breach of the Covenant of Good Faith and Fair Dealing is encompassed within SOSHNY’s breach of contract counterclaim, and, thus, this counterclaim should be dismissed.

*Harassment of Tenant*

Commercial tenant harassment “is any act or omission by or on behalf of a landlord that (i) would reasonably cause a commercial tenant to vacate covered property, or to surrender or waive any rights under a lease or other rental agreement or under applicable law in relation to such covered property,” and at least one other action including, as relevant here, “preventing a commercial tenant ... from entering a covered property” and “engaging in any other repeated or enduring acts or omissions that substantially interfere with the operation of a commercial tenant’s business.” New York City Administrative Code § 22-902(a)(8), (10).

Here, SOSHNY alleges that access to the Premises was frustrated due to plaintiff’s deficient doorperson services being “frequently nonexistent in the early morning, evenings, and off-hours.” NYSCEF Doc. No. 44. These alleged inadequate doorperson services could constitute tenant harassment, as SOSHNY was allegedly repeatedly prevented from entering the Premises, and, thus, plaintiff’s motion to dismiss this counterclaim should be denied.

This Court has considered the parties other arguments and finds them to be unavailing and/or non-dispositive.

Conclusion

Therefore, the motion of plaintiff, Amtad LLC, to dismiss the counterclaims of defendant SOSH Architects, P.A., is hereby granted as to the second, third, and fourth counterclaims and is denied as to the first (breach of contract) and fifth (harassment) and the Clerk is hereby directed to enter judgment accordingly.

**HON. ARTHUR F. ENGORON**  
ARTHUR F. ENGORON, J.S.C.

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|-------------------------|---|---------------------------------|---|------------------------------------|
| <u>7/1/2025</u><br>DATE |   |                                 |   |                                    |
| CHECK ONE:              | <input type="checkbox"/> CASE DISPOSED              | <input type="checkbox"/> DENIED | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION |                                    |
|                         | <input type="checkbox"/> GRANTED                    |                                 | <input checked="" type="checkbox"/> GRANTED IN PART       | <input type="checkbox"/> OTHER     |
| APPLICATION:            | <input type="checkbox"/> SETTLE ORDER               |                                 | <input type="checkbox"/> SUBMIT ORDER                     |                                    |
| CHECK IF APPROPRIATE:   | <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN |                                 | <input type="checkbox"/> FIDUCIARY APPOINTMENT            | <input type="checkbox"/> REFERENCE |