

35 W. Realty Co., LLC v Booston LLC

2025 NY Slip Op 33076(U)

July 23, 2025

Supreme Court, New York County

Docket Number: Index No. 653674/2015

Judge: Margaret A. Chan

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 49M

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35 WEST REALTY CO., LLC,

INDEX NO.

653674/2015

Plaintiff,

- v -

BOOSTON LLC, FRIEDPHIL REALTY CORP.

Defendant.

DECISION AFTER TRIAL

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CHAN. J.:

The facts of this decade-long case are well-documented in several prior orders. Succinctly, in 2000, defendant Booston LLC (Booston) entered into a lease with Fred H. Hill, of defendant FriedPhil Realty Corp. to rent a restaurant space at 35 West 57th Street from the years 2000 through 2020 (Pltf's Exh¹ 1; Def's Exh G). The lease was amended at least three times (Pltf's Exs. 2, 3, 6; Def's Exs. H, I, L). In 2006, the building was sold to plaintiff (Pltf's Exh 4).

This case concerns a disputed fourth amendment (the third chronologically) dated March 29, 2005, which allegedly extended the lease through October 31, 2040 (Disputed Amendment) (Pltf's Exh 11; Def's Exh J [copy]; Def's Exh LL [wet ink version]). This Disputed Amendment was allegedly signed by Fred Hill, as landlord. Despite entering a subsequent lease amendment with plaintiff in 2008 (Pltf's Exh 6; Def's Exh L) and bringing at least one other lawsuit in 2012 to obtain a *Yellowstone* injunction (Pltf's Exh 8), Booston did not bring the Disputed Amendment to anyone's attention until 2014, after Fred Hill had passed. Plaintiff and co-defendant Friedphil Realty Corp. (Friedphil) therefore claim the Disputed Amendment is a forgery.²

A five-day bench trial was held from June 16 through June 24, 2025. During the trial, the court heard testimony from Fariborz Roshanfekar, Booston's principal; Steven M. Cherniak, the former chief executive officer of non-party Solow Realty and Development Company, LLC (Solow); Kenneth Greene, Mr. Hill's nephew; and the parties' competing handwriting experts, Beverly East for plaintiff, and Richard T. Picciochi for Booston.

¹ The trial exhibits are available in the VEC in NYSCEF.

² Plaintiff's claims for use and occupancy and all claims against defendant Friedphil were severed on the first day of trial (*see* NYSCEF # 421, 6/16/2025 Tr., at 16:15-21, 17:10-18, 21:7-9).

A significant issue before and during the trial was the testimony of the parties' experts. Booston asserted in motions *in limine* and at trial that plaintiff's handwriting expert Ms. East, who was first trained as a graphologist, was not qualified to give expert testimony given her credentials. But Ms. East was also a court-qualified forensic document examiner (*see* 6/16/2025 Tr. at 75:6-16). It is true that Ms. East's credentials are very different than Mr. Picciochi's, but it matters not because, ultimately, they came to the same conclusion. Specifically, both experts determined that the same person could not have signed both the Disputed Amendment and the two other documents purportedly signed by Mr. Hill.

That these two experts agreed on this salient point is not obvious at first glance. Both experts compared Mr. Hill's signature on the Disputed Amendment to his signature on several "known" documents—documents that all parties agreed were signed by Mr. Hill. Both experts created "graphics" to visually compare various aspects of the signatures. However, Ms. East's report mislabeled and misdated the "known" documents she reviewed, thereby making it difficult to tell just from her report what documents she relied on. As relevant here, her graphics claimed to compare signatures from "K1," which she labeled on the graphics as "Exh 4" to the report and dated "1.1.2020," as well as "K2," which she labeled "Exh 3" and did not date (*see e.g.*, Def's Exh X, East Report, at Graphic 1). The 2020 date for K1 makes little sense given Mr. Hill passed away before this litigation even began. K1 also seems to be mislabeled because earlier in the report, K1 is defined as "Exh 2," not Exhibit 4 (*id.* at 3). While K2 is consistently defined as Exh 3, the inaccuracy in K1 raised questions about whether any of the signatures were correctly identified.

At trial, Ms. East clarified that the document labeled "K1" on the graphics in her report was actually the January 22, 2003 letter amending the lease (Pltf's Exh 3; Def's Exh I); and the document labeled "K2" was actually the November 26, 2001 letter amendment from Mr. Hill to Booston promising to maintain the same rent from 2002 through 2003 (Pltf's Exh 2; Def's Exh H; *see also* East Report at Graphic 1). Ms. East consistently held to this correction during her testimony on direct and in *voir dire*. For example, when asked on direct where she found the "raw material" for her graphics, Ms. East answered that "K1 is [Plaintiff's] Exhibit 3 in [the exhibit binder provided to Ms. East at trial] and . . . K2 is [Plaintiff's] Exhibit 2" (6/16/2025 Tr. at 106:13-17).

Similarly, when asked on *voir dire* why her report misdated K1 on one of her graphics, she reiterated that "when I look graphically at this signature it matches [Plaintiff's] Exhibit 3, but the date on [Plaintiff's] Exhibit 3 says 22nd of January 2003, and [the date on the graphic] says 1/1/2020. I'm not sure what happened there" (*id.* at 115:8-11).

Ms. East also had the following exchange regarding the document she labeled K2:

“Q. Now, you also identified as K2, a signature from a letter dated November 26, 2001, correct?”

A. There is no date on –

Q. Yes, I see that. What is the date of the document that that came from?

A. 26 of November 2001.

Q. That is not in your graphics at all, correct?

A. The signature from that document, Exhibit 2, this is the signature from Exhibit 2

Q. But you, your document doesn't say that, isn't that right?

A. No, it doesn't say the date.

Q. It doesn't identify the document at all, does it?

A. I identified that it is K2.”

(*id.* at 115:17-116:6 [emphasis added]). Given Ms. East's consistent testimony during trial that K1 in her graphic is the January 22, 2003 letter amendment and K2 is the November 26, 2001 letter amendment, and based on a visual comparison of the relevant signatures, Ms. East has cogently cured her error.

Ms. East compared K1 and K2 to the Disputed Amendment and a disputed commission agreement signed at the same time as the Disputed Amendment (Pltf's Exh 12; Def's Exh K; *see* East Report at Graphics 2-8). And after explaining her methods and analysis, Ms. East determined that the person who signed the November 26, 2001 (K2) and January 22, 2003 (K1) documents could not have signed the Disputed Amendment and commission agreement because the signatures were too different (East Report at Graphics 2-8; *see* 6/16/2025 Tr at 120:7-124:15, 127:8-131:1).

Similarly, Mr. Picciochi compared the signatures on the Disputed Amendment, a wet-ink version of the Disputed Amendment (Def's Exh LL; *see also* NYSCEF # 423, 6/18/2025 Tr at 450:18-20, 452:4-6), and the disputed commission agreement to known signatures of Mr. Hill (*see* Def's Exh P, Picciochi Report). However, where Ms. East was given only five examples of known signatures and compared just two to the disputed documents, Mr. Picciochi was given twenty-five known signatures to compare (*id.* at 1-2). Mr. Picciochi concluded that the signatures on the disputed documents were consistent with Mr. Hill's signature on twenty-three of the twenty-five documents he examined (*id.* at 4).

However, due to “inexplicable differences” in the signatures, Mr. Picciochi concluded that whoever signed the majority of the known documents—and by extension whoever signed the Disputed Amendment—could not have been the same person who signed the documents he labeled “K4” and “K5” (*id.*). Mr. Picciochi reiterated this conclusion on cross-examination:

“Q: . . . looking at Page 4 of your report next to the last paragraph, you had another conclusion about K4 and K5, respectively the 2001 and 2003 letters, do you recall that? Do you want to refresh your memory by reading on Page 4? It begins, an exception to the internal consistency, and it goes onto the next page if you need that?”

A. Yes. That is why I didn’t press for the originals [of K4 and K5].

Q. Okay. So in your expert opinion, you didn’t think K4 or K5 was signed by Fred Hill; is that correct?

A. They are inconsistent with the other known signatures.

Q. If I forced you to say yes or no to my question, did you think that K4 and K5 contained authentic Fred Hill signatures, what could you say?

A. I do not think they were genuine signatures.”

(6/18/2025 Tr. at 516:5-20 [emphasis added]). As revealed both during the quoted testimony and earlier in his report, K4 and K5 are the November 26, 2001 letter amendment and the January 22, 2003 letter amendment, respectively—the exact same documents that Ms. East concluded could not have been signed by the signor of the Disputed Amendment (*see* Picciochi Report at 2, 4-5). Therefore, while they disagree as to who signed what document, both Mr. Picciochi and Ms. East agree that Mr. Hill could not have signed *both* the Disputed Amendment and the 2001 and 2003 letter amendments.

Mr. Picciochi and Ms. East’s agreement is significant because it directly contradicts Mr. Roshanfekr’s testimony. Mr. Roshanfekr testified that he personally observed Mr. Hill sign the January 22, 2003 letter amendment as well as the Disputed Amendment in 2005 and testified that he recognized Mr. Hill’s signature on the November 26, 2001 letter amendment (Jun. 17, 2025 Tr at 309:14-310:7, 352:22-353:11, 354:7-19, 355:5-13, 357:13-16, 358:15-359:9, 362:7-23, 362:24-25, 367:12-15, 368:5-13). For example, when asked how he first received a copy of the January 22, 2003 letter amendment, Mr. Roshanfekr testified that “[w]hen we [Mr. Roshanfekr and Mr. Kohan, his business partner] went to [Mr. Hill’s] office he signed this, he gave us the copy” (NYSCEF # 422, 6/17/2025 Tr., at 362:4-23). When asked about a seal affixed to the Disputed Amendment to verify its signing, Mr. Roshanfekr had the following exchange on cross:

“Q. . . . you testified, questioned by [Booston’s counsel], that you observed Mr. Hill affix the seal to that document, correct?”

A. Yes.

Q. Okay. And you were in the room with Mr. Hill, Mr. Kohan and yourself, correct?

A. Yes.

Q. No one else, right?

A. No one else.”

(*id.* at 368:5-13).

As to the November 26, 2001 letter amendment, Mr. Roshanfekar was asked on cross how he knew it was signed by Mr. Hill (NYSCEF # 422, 6/17/2025 Tr. at 353:1). Mr. Roshanfekar responded that “we [he and his business partner] know Mr. Hill’s signature. He send, he made to us, he used to send us so many letters” (*id.* at 353:2-3). Yet at his deposition, Mr. Roshanfekar testified that he watched Mr. Hill sign the November 26, 2001 letter amendment at Mr. Hill’s office (*id.* at 358:15-359:9).

In short, Mr. Roshanfekar testified that he personally observed Mr. Hill sign two of the documents examined by the experts, and contradicted his deposition testimony that he observed Mr. Hill sign the third. The fact that both experts agree the same person could not have signed the 2001, 2003, and Disputed Amendment therefore undermines Mr. Roshanfekar’s credibility. When combined with his personal interest in the case, his self-contradictory testimony, his poor memory and lack of preparation, and the fact that he is the only witness who claimed to have personally observed Mr. Hill sign the Disputed Amendment, there is significant reason to doubt that the Disputed Amendment is authentic.

This doubt is only further strengthened by the confusing chronology required to believe Booston’s claims. Mr. Roshanfekar testified that the Disputed Amendment was signed approximately three years before he was notified that the building was sold (*id.* at 341:6-10). That timeline is clearly false based on the face of the documents, as the Disputed Amendment was signed on March 29, 2005, while the building was sold in an agreement dated September 11, 2006 (*compare* Pltf’s Exh 11 *with* Pltf’s Exh 4).³ Additionally, the amendment in 2008 between plaintiff and Booston is inexplicably titled the “First Amendment” despite there being at least

³ It does make sense, however, when considering that the previous amendment was the January 22, 2003 letter, which was indeed three years prior to sale of the building.

two and potentially three amendments that preceded the "First Amendment" (*see* Pltf's Exh 6; Def's Exh L).

Further, Booston had brought an action in this court for a *Yellowstone* injunction in 2012 and did not mention the Disputed Amendment or the 2040 expiration date at all (*see* Pltf's Exh 7, Complaint in *Booston LLC d/b/a Great American Health Bar and d/b/a Caf Classico v. 35 West Realty Co. LLC*, Index No. 103501/12; Pltf's Exh 8, Kohan Aff from same case, at ¶ 12 [averring in 2012 that the lease term ends October 31, 2020]). It is highly suspect that Booston did not raise the Disputed Amendment at any of these relevant times and instead waited until 2014, long after Mr. Hill's passing.


Based on the above evidence, the only logical conclusion is that the Disputed Amendment is a forgery. It is therefore

ORDERED and ADJUDGED that plaintiff's claim for declaratory judgment against Booston LLC is granted, and the March 29, 2005 Disputed Amendment is declared a forgery; and it is further

ORDERED that the remaining claims, including that portion of the plaintiff's action that seeks the recovery of attorney's fees against defendant Booston LLC, plaintiff's use and occupancy claim, all claims against Friedphil, and any counter- or cross-claims, are severed and referred to a Special Referee to hear and determine pursuant to CPLR 4317(b), in that the only issue remaining appears to be issues of damages separately triable and not requiring a trial by jury; and it is further

ORDERED that counsel for the plaintiff shall, within 30 days from the date of this order, serve a copy of this order with notice of entry, together with a completed Information Sheet, upon the Special Referee Clerk in the General Clerk's Office, who is directed to place this matter on the calendar of the Special Referee's Part for the earliest convenient date; and it is further

ORDERED that such service upon the Special Referee Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website).

<u>7/23/2025</u> DATE	 MARGARET A. CHAN, J.S.C.			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION		
	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART	<input checked="" 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 checked="" type="checkbox"/> REFERENCE	