Wythe Berry Fee Owner LLC v Isla Café Williamsburg LLC
2025 NY Slip Op 33589(U)
September 25, 2025
Supreme Court, Kings County
Docket Number: Index No. 516593/2024
Judge: Anne J. Swern

At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 25th day of September 2025.

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

WYTHE BERRY FEE OWNER LLC.,

Plaintiff(s),

-against-

ISLA CAFÉ WILLIAMSBURG LLC d/b/a ISLA & CO., and PARCHED HOSPITALITY GROUP, INC.,

Defendant(s).

DECISION & ORDER
Index No.: 516593/2024

Calendar No.: 53

Motion Seq.: 001

Recitation of the following papers as required by CPLR 2219(a):

	Papers Numbered
Notice of Motion and Supporting Documents (NYSCEF 13-30)	1, 2
Affirmation and Exhibits in Opposition (NYSCEF 32-34)	3
Reply Affirmation (NYSCEF 35)	4

Upon the foregoing papers and after oral argument, the decision and order of the Court is as follows:

This is an action to recover unpaid rent under a sublease and personal guaranty. Plaintiff has now moved this Court for an order per (1) CPLR § 3211 [b] dismissing defendant's affirmative defenses; (2) CPLR § 3211 [a] [1], [6] and [7] dismissing the counterclaims asserted by defendants; and (3) CPLR 3212 granting plaintiff summary judgment.

Facts

Plaintiff, Wythe Berry Fee Owner LLC, is the former owner of a property located at 55 Wythe Avenue, Brooklyn, New York (the "premises"), that includes a building and outdoor space. Plaintiff entered into a ground lease with non-party Wythe Berry LLC ("Wythe Berry") in

February 2017.[1] Based on Wythe Berry's breach of the ground lease by failing to tender the February 1, 2021 rent payment, plaintiff served a Notice of Cancellation and Termination on May 1, 2021. Wythe Berry did not surrender the premises in response to the notice. Thereafter, Wythe Berry entered into a sublease with defendant Isla Café Williamsburg LLC d/b/a Isla & Co. ("Isla") for an indoor retail space plus an outdoor space in December 2021.[2] The sublease was subject to and subordinate to the ground lease between plaintiff and Wythe Berry. On March 27, 2023, defendant Parched Hospitality Group, Inc. ("Parched") executed a personal guaranty for Isla's lease.[3]

Plaintiff entered bankruptcy in 2022 and obtained summary judgment against Wythe Berry for past rent payments, as per an order of the Bankruptcy Court dated October 5, 2023.[4] This order also directed Wythe Berry to vacate the premises immediately. Wythe Berry had notified plaintiff in September 2023 that it would vacate the premises on October 31, 2023.[5] Plaintiff then notified Isla that, as the master Lessee, (1) it had succeeded to the rights of the lease with Wythe Berry and (2) "Effective immediately, all rents under the Lease which are now due and unpaid, or may hereafter become due, shall be paid to [plaintiff]" starting on November 1, 2023.[6]

Isla failed to make rent payments on November 1, 2023, December 1, 2023 and January 1, 2023. On January 19, 2024, plaintiff served a rent demand of $61,090.02, representing

[1] NYSCEF 16
[2] NYSCEF 17
[3] NYSCEF 23
[4] NYSCEF 18, pp.40-46
[5] NYSCEF 19
[6] NYSCEF 20

$59,000.00 in outstanding rent, plus $950 late fees and $1,140.02 real estate charges.[7] Isla continued to fail to remit rent payments through and including the payment due on May 1, 2024.[8]

Plaintiff commenced this action on 6/14/2024 with a Summons with Notice seeking $174,290.02 for unpaid rent, late fees, and real estate charges. The complaint was served in response to defendants' demand. Defendants served an answer with counterclaims; plaintiff replied.

The answer asserted affirmative defenses, *to wit:* (1) failure to state a cause of action, (2) plaintiff is not the owner of the premises, (3) lack of privity of contract between plaintiff and defendant, and (4) failure of plaintiff to provide an itemized account statement. The answer also asserted two counterclaims of (1) harassment by reason of the fact that plaintiff is not the proper party to commence this action, and (2) plaintiff has interfered with Isla's business.

Plaintiff's Motion

In support of the motion for summary judgment, plaintiff submits an affidavit together with a ledger for an amount due of $180,290.02. This amount includes late fees, real estate taxes, and a "Security Deposit True-Up" that was outstanding.[9] Plaintiff argues that the affirmative defenses and counterclaims are without merit. In opposition, defendant submits an affidavit stating that plaintiff is not the landlord, and defendants are entitled to know the breakdown of the rent and charges.

Summary judgment may be granted only when no triable issue of fact exists (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]). "A party moving for summary judgment must make prima facie showing of entitlement to judgment as a matter of law, producing sufficient evidence

[7] NYSCEF 21
[8] NYSCEF 22
[9] NYSCEF22

to demonstrate the absence of any material issue of fact. Failure to demonstrate *prima facie* entitlement to summary judgment motion requires a denial of the motion regardless of the adequacy of the opposing papers" (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993], *citing Alvarez v Prospect Hospital,* 68 NY2d 324). "Once this showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution" (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003] and *Alvarez v. Prospect Hospital*, 68 NY2d 324).

The Court's only role upon a motion for summary judgment is to identify the existence of triable issues, and not to determine the merits of any such issues (*Vega v Restani Construction Corp.,* 18 NY3d 499, 505 [2012]) or the credibility of the movant's version of events (see *Xiang Fu He v Troon Management, Inc.,* 34 NY3d 167, 175 [2019] [internal citations omitted]). The Court must view the evidence in the light most favorable to the nonmoving party, affording them the benefit of all reasonable inferences that can be drawn from the evidence (*see Negri v Shop & Stop, Inc*., 65 NY2d 625, 626 [1985]). The motion should be denied where the facts are in dispute, where different inferences may be drawn from the evidence, or where the credibility of the witnesses is in question (*see Cameron v City of Long Beach*, 297 AD2d 773, 774 [2d Dept. 2002]).

The motion is granted. For the months alleged in the complaint and the rent ledger, defendants do not claim that the rent or a portion thereof was paid to non-party Wythe Berry or plaintiff. The ledger submitted in support of the motion, demonstrate a breakdown of the months, amounts, and related charges that plaintiff seeks to recover. Additionally, based on the ground lease between plaintiff and Wythe Berry, and the sublease agreement between Wythe Berry and Isla, plaintiff has established as a matter of law that it is Wythe Berry's successor in

interest, as defined in the lease between Isla and Wythe Berry and the guaranty between Parched and Wythe Berry. As the owner of the property and Wythe Berry's successor in interest, plaintiff is entitled to collect rent under the sublease. (*see Karpovich v City of New York*, 162 AD3d 996, 997 [2d Dept 2018] *citing Mawere v Landau*, 130 AD3d 986, 987 [2d Dept 2015]; *see also Beal Sav. Bank v Sommer,* 8 NY3d 318, 324 [2007] [The construction of an unambiguous contract is a matter of law.], *Goshen v Mutual Life Insurance Co. of N.Y.*, 98 NY2d 314, 326 [2002] and CPLR § 3211 [a] [1]; CPLR § 3212). Therefore, defendants' arguments that plaintiff is not the landlord and does not have contractual privity with defendants are without merit. (*Id.*).

Moreover, defendants state in a conclusory manner that plaintiff interfered in Isla's business. The affidavit alludes to "evidence" in support of its counterclaims, but defendants do not submit the same in opposition to the motion for summary judgment. Specifically, Isla states without particularity or the source of defendants' knowledge that the plaintiff diverted guests from Isla's business. An affidavit from an individual with personal knowledge of dates and times of such conduct was not submitted in opposition to the motion.

Based on the foregoing, defendants' affidavit failed to demonstrate any issues of material fact that require resolution by a jury, and defendants' affirmative defenses and counterclaims are dismissed. (*Giuffrida v Citibank*, 100 NY2d 81; *Alvarez v Prospect Hospital*, 68 NY2d 324).

The Court has considered the parties remaining arguments and find same to be either academic or without merit.

Accordingly, it is hereby

ORDERED that plaintiff's motion for an order per CPLR 3212 is granted, and it is further

ORDERED that plaintiff's motion for an order per CPLR 3211 [a] [1], [6] and [7] is granted, and it is further

ORDERED that plaintiff shall serve a copy of this Order with Notice of Entry within 30 days of entry in NYSCEF, and it is further

ORDERED that plaintiff shall submit a proposed Judgment in the amount of $180,290.20, together with an Affirmation of Attorneys' Fees, and a bill of costs within 30 days after service of this Order with Notice of Entry, and it is further

ORDERED the Clerk of the Court shall enter a judgment in the amount of $180,290.20, plus attorneys' fees and costs.

The Court has considered the parties' remaining arguments and finds them to be without merit.

This constitutes the decision and order of the Court.

E N T E R:

Hon. Anne J. Swern, J.S.C.
Dated: 9/25/2025