

803 Partners LLC v Van Der Puye

2025 NY Slip Op 33774(U)

October 2, 2025

Supreme Court, New York County

Docket Number: Index No. 655291/2023

Judge: Kathleen Waterman-Marshall

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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. KATHLEEN WATERMAN-MARSHALL PART 31M

Justice

-----X

803 PARTNERS LLC,

Plaintiff,

- v -

SONIA VAN DER PUYE,

Defendant.

-----X

INDEX NO. 655291/2023

MOTION DATE 10/17/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25

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

Upon the foregoing documents, the motion by Plaintiff 803 Partners LLC (“803 Partners”) for an order granting it partial summary judgment against Defendant Sonia Van Der Puye (“Ms. Van Der Puye”), and striking her six counterclaims, is granted without opposition and on the merits.

Background

803 Partners owns the residential building located at 803 West 180th Street in Manhattan (“the Building”), which it purchased from the prior owner, 803 West 180th Street Company, Inc. (“the Prior Owner”) (NYSCEF Doc. No. 13). The Prior Owner entered into a residential lease agreement with Ms. Van Der Puye for Apartment 52 in the Building, with a lease term that commenced on December 15, 2016 (NYSCEF Doc. No. 12). The lease states, “You must pay your rent until this lease has ended. Thereafter, you must pay an equal amount for what the law calls ‘use and occupancy’ until you actually move out” (NYSCEF Doc. No. 12). The most recent lease renewal, which expired on December 31, 2021, lists the legal rent as \$3,073.26 and the preferential rent as \$2,730.97 (*id.*).

On January 13, 2022, 803 Partners became the owner and landlord of the Building (NYSCEF Doc. No. 13). On that same day, the Prior Owner and 803 Partners also executed an Assignment of Arrears and Assignment of Leases and Rents, pursuant to which Ms. Van Der Puye’s lease and the authority to collect rent/use and occupancy as outlined in the lease agreement was assigned to 803 Partners (NYSCEF Doc. Nos. 14-15).

From February 2022, when 803 Partners took title to the Building, until March 31, 2023, when Ms. Van Der Puye vacated, she allegedly did not pay use and occupancy and accrued \$36,181.08 in arrears (“Current Arrears”) (NYSCEF Doc. No. 11 ¶ 13). 803 Partners also claims that Ms. Van Der Puye consistently did not pay rent prior to its ownership of the Building, resulting in arrears of \$28,988.92 (“Prior Arrears”) (*id.* at ¶ 11). The Human Resources Administration (“HRA”) sent checks for less than the monthly rent to 803 Partners on Ms. Van Der Puye’s behalf from July 2022 until January 2024 (*id.* at ¶¶ 12,14). The checks received after she vacated the apartment in March 2023 were applied to the Prior Arrears (*id.* at ¶ 14).

803 Partners commenced this action on October 25, 2023 (NYSCEF Doc. No. 13). Ms. Van Der Puye filed her answer with counterclaims on December 29, 2023 (NYSCEF Doc. No. 5), to which 803 Partners replied on February 5, 2024 (NYSCEF Doc. No. 6). This motion for partial summary judgment and the dismissal of Defendant's counterclaims followed (NYSCEF Doc. Nos. 10, 24).

The Nonpayment Proceeding

Ms. Van Der Puye's counterclaims reference a prior nonpayment proceeding between her and Prior Owner and an alleged appeal (*see* NYSCEF Doc. No. 5 [803 W. 180th St. Co., Inc. v Van Der Puye, Civ Ct, New York County, Index No. LT-063798-19]). The nonpayment proceeding was settled by an August 16, 2019 stipulation, which gave Ms. Van Der Puye time to pay off the arrears and granted the Prior Owner a judgment and warrant (NYSCEF Doc. No. 17). After Ms. Van Der Puye failed to pay off the arrears, she and the Prior Owner stipulated to give her more time to finish payments (*id.*).

In March 2020, Ms. Van Der Puye moved to vacate the August 16, 2019 and October 15, 2019 stipulations, including the judgment and warrant that issued on August 26, 2019 (*id.*). The order to show cause also sought to serve an amended answer with counterclaims and conduct discovery so as to include allegations that the Prior Owner inflated the Individual Apartment Improvements ("IAI") and overcharged Ms. Van Der Puye rent (*id.*). On December 2, 2020, Judge Eleanora Ofshtein denied Ms. Van Der Puye's request in its entirety (*id.*). The court found that she provided insufficient evidence that Prior Owner engaged in a fraudulent scheme to inflate the remodeling amounts to increase the rent and that HCR records indicate improper rent increases (*id.*). On January 8, 2021, Ms. Van Der Puye moved to renew and reargue and filed a notice of appeal (NYSCEF Doc. Nos. 22-23). On May 21, 2024, Judge Ofshtein denied the motion as moot because Prior Owner sold the building, and Ms. Van Der Puye had vacated the apartment (NYSCEF Doc. No. 23).

Discussion

Partial Summary Judgment

On a motion for summary judgment under CPLR § 3212, the moving party 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 (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). If the moving party makes that prima facie showing, the burden then shifts to the nonmoving party to establish the existence of material issues of fact requiring a trial (*id.*). The evidence should be analyzed in the light most favorable to the nonmoving party (*Bazdaric v Almah Partners LLC*, 41 NY3d 310, 316 [2024]). Even in the absence of opposition, the court must deny a motion for summary judgment if the moving party does not establish its prima facie entitlement to judgment as a matter of law or if the evidence raises a genuine issue of material fact (*Yonkers Ave. Dodge, Inc. v BZ Results, LLC*, 95 AD3d 774, 774-775 [1st Dept 2012]).

To recover on a claim for breach of contract, a plaintiff must establish that "(1) the parties entered into a valid agreement, (2) plaintiff performed, (3) defendant failed to perform, and (4) damages" (*VisionChina Media Inc. v Shareholder Representative Servs., LLC*, 109 AD3d 49, 58 [1st Dept 2013]).

Here, 803 Partners has submitted evidence establishing a prima facie case for breach of contract by showing the existence of a lease, its performance under the lease, Ms. Van Der Puye's breach of the lease, and the resulting damages. In support of the motion, 803 Partners has presented the renewal lease, under which the legal rent was \$3,073.26 per month but assessed a \$2,730.97 preferential rent adjustment through December 31, 2021, the deed to the Building, and the Assignment of Arrears and Assignment of Leases and Rents (NYSCEF Doc. Nos. 12-15). When considered together, these documents establish an agreement between 803 Partners and Ms. Van Der Puye (*see* N.Y. Real Prop. Law § 223).

Moreover, 803 Partners submitted an Affirmation in Support from its managing agent, Jerry Edelman, who had personal knowledge of the facts and circumstances in the instant action. The affirmation stated that 803 Partners performed its portion of the agreement by providing Ms. Van Der Puye with housing from February 1, 2022 through March 31, 2023 (NYSCEF Doc. No. 11). Mr. Edelman's affirmation and the rent ledger (NYSCEF Doc. No. 16) show, prima facie, that Ms. Van Der Puye did not perform because she failed to pay use and occupancy as required by the lease. These documents also show that the outstanding use and occupancy from February 2022 through March 2023 amounts to \$36,181.08, which is 803 Partners' damages (NYSCEF Doc. No. 11 ¶ 13). As there is no opposition, the court grants Plaintiff's motion for partial summary judgment on its breach of contract claim to the extent of awarding it \$36,181.08.

Defendant's Counterclaims

Differences between a counterclaim and an affirmative defense are "not merely semantic; these are substantive differences" (*P.J.P. Mech. Corp. v Commerce & Indus. Ins. Co.*, 65 AD3d 195, 200 [1st Dept 2009]). The distinction is that "[a] counterclaim is a cause of action asserted by a defendant against a plaintiff (CPLR 3019 [a]). By its very nature, a counterclaim seeks affirmative relief. Affirmative defenses, on the other hand, cannot seek such relief" (*id.*). Here, defendant's first five counterclaims do not seek affirmative relief. Accordingly, they are improperly pled and the court considers them as affirmative defenses.

Pursuant to CPLR § 3211(b), "[a] party may move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no merit" (CPLR § 3211[b]). When moving to dismiss a defense under CPLR § 3211(b), the plaintiff carries the burden of showing that the defense lacks merit as a matter of law (*534 E. 11th St. Hous. Dev. Fund Corp. v Hendrick*, 90 AD3d 541, 541 [1st Dept 2011]). The allegations in the answer are to be viewed in the light most favorable to the defendant (*182 Fifth Ave. v Design Dev. Concepts*, 300 AD2d 198, 199 [1st Dept 2002]). "[T]he defendant is entitled to the benefit of every reasonable intendment of the pleading, which is to be liberally construed" (*534 E. 11th St. Hous. Dev. Fund Corp.*, 90 AD3d at 542). Further, a defense with remaining questions of fact requiring a trial should not be dismissed (*id.*). Counterclaims that are vague and conclusory are properly dismissed (*Rapaport v Strategic Fin. Solutions, LLC*, 190 AD3d 657, 658 [1st Dept 2021]).

Here, Ms. Van Der Puye's first, second, third, and fourth defenses allege, in the main, that the rent/arrears amount sought by 803 Partners is incorrect. The first affirmative defense asserts: "Incorrect rent amount: the rent claimed is incorrect and subject to appeal" (NYSCEF Doc. No. 5); the second affirmative defense asserts: "Legal rent determination: the rent amount is subject to DHCR guidelines for IAI's" (*id.*); the third affirmative defense asserts: "Unaccounted rent payments: additional rent payments paid [by] NYHRA are not included" (*id.*); and the fourth affirmative defense asserts: "Assignment of Arrears: assigned arrears contains undetermined amounts in pending appeal, casting doubt on the accuracy and validity of the claimed arrears" (*id.*). There have been several nonpayment proceedings against Ms. Van Der Puye brought by the Prior Owner during which she had the opportunity to challenge the accuracy of the rent and arrears claimed. The stipulations of settlement between Ms. Van Der Puye and the Prior Owner included agreements to pay the some of the arrears that she currently challenges. Further, the Housing Court denied Ms. Van Der Puye's motion to vacate the stipulations of settlement and challenge the rents in question. Accordingly, these defenses have no merit.

Ms. Van Der Puye's fifth affirmative defense asserts: "Preservation of rights: the defendant does not waive any claims past, present, or future that may arise given the nature of this case, due to pending appeal" (*id.*). This defense attempts to reserve the right to assert additional claims and fails to state an affirmative defense. Therefore, dismissal is warranted.

Finally, Ms. Van Der Puye’s sixth counterclaim seeks damages “to be determined at trial and all allowable under contract and DHCR housing laws plus prejudgment and post judgment interest” (*id.*). This counterclaim is conclusory and vague and subject to dismissal.

Accordingly, it is hereby

ORDERED that 803 Partners’ motion for partial summary judgment on its breach of contract claim against Ms. Van Der Puye, and awarding it the sum of \$36,181.08 is granted; and it is further

ORDERED that 803 Partners’ motion to strike Ms. Van Der Puye’s counterclaims is granted; and it is further

ORDERED, ADJUDGED AND DECREED that plaintiff 803 PARTNERS LLC shall have judgment and does recover as against defendant SONIA VAN DER PUYE the amount of \$36,181.08 together with costs and interest at the statutory rate as calculated by the Clerk of the Court from the date judgment is entered in New York; and it is further

ORDERED, ADJUDED AND DECREED that the counterclaims asserted by defendant SONIA VAN DER PUYE are dismissed; and it is further

ORDERED that judgment granting plaintiff 803 Partners LLC partial summary judgment against defendant Sonia Van Der Puye in the sum of \$36,181.08 and dismissing defendant’s counterclaims, shall be submitted to the Clerk of the Court, and not to chambers or the Part, unless directed otherwise by the Clerk of the Court; and it is further

ORDERED that the remaining requests by 803 Partners LLC are severed and continue.

10/2/2025

DATE

KATHLEEN WATERMAN-MARSHALL,
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