

**HC Tech., LLC v 622 Third Ave. Co. LLC**

2025 NY Slip Op 33903(U)

October 8, 2025

Supreme Court, New York County

Docket Number: Index No. 655948/2023

Judge: Ashlee Crawford

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. ASHLEE CRAWFORD

PART 38

*Justice*

-----X

INDEX NO. 655948/2023

HC TECHNOLOGIES, LLC

MOTION DATE 10/14/2024

Plaintiff,

MOTION SEQ. NO. 002

- v -

622 THIRD AVENUE COMPANY LLC,

**DECISION + ORDER ON  
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 47, 48, 49, 51, 53

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents, it is

Plaintiff HC Technologies, LLC asserts two causes of action, for breach of contract and conversion, for the return of a \$246,700.00 security deposit from its former landlord, defendant 622 Third Avenue Company, LLC. Defendant asserts a single counterclaim alleging that plaintiff breached the lease by causing damage to, and vacating, the premises located on the 6th Floor at 622 Third Avenue, New York, New York.

Plaintiff now moves pursuant to CPLR 3212 for summary judgment on its claims. The motion is unopposed.

Background

The parties entered into a lease for the premises, which commenced August 26, 2015, and expired June 30, 2023 (Lease ¶¶ 2.01[a] [NYSCEF Doc. 40]; Answer ¶ 9). Pursuant to Section 36.01 of the lease, plaintiff provided defendant a \$246,700.00 security deposit concurrent with the execution of the lease (*id.* ¶ 36.01; Sohl Affirm. ¶ 3 [NYSCEF Doc. 38]). By letter dated May 5, 2023, plaintiff notified defendant that it would not renew the lease upon its termination,

by its terms, on June 30, 2023 (Non-Renewal Letter [NYSCEF Doc. 39]; Sohl Affirm. ¶ 4).

Plaintiff timely surrendered the premises in good condition (Sohl Affirm. ¶ 5).

Section 36.01 of the lease requires defendant to return plaintiff's security deposit within 20 days of plaintiff's surrender of the premises, conditioned on plaintiff's compliance with the terms of the lease (id. ¶ 36.01). After the 20-day deadline passed, plaintiff made several demands to defendant for the return of the security deposit, to no avail (10/12/23 Demand Letter and Emails [NYSCEF Doc. 42]).

#### Discussion

A party seeking summary judgment “must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 [1985]). Once this showing is made, the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of triable issues of fact (Zuckerman v City of New York, 49 NY2d 557, 562 [1980]). “[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient” to defeat summary judgment (id.). Summary judgment is a drastic remedy and must be denied if there is any doubt as to the existence of a triable issue of material fact (Rotuba Extruders, Inc. v Ceppos, 46 NY2d 223, 231 [1978]).

To establish a claim for breach of contract, plaintiff must prove the existence of a contract, plaintiff's performance thereunder, defendant's breach thereof, and resulting damages (Markov v Katt, 176 AD3d 401, 401-02 [1st Dept 2019]; Second Source Funding, LLC v Yellowstone Capital, LLC, 144 AD3d 445, 445-46 [1st Dept 2016]). Plaintiff has met its burden under this standard.

Additionally, plaintiff is entitled to summary judgment on its conversion claim premised on a violation of General Obligations Law § 7-103, which precludes the commingling of security deposit funds with personal funds and requires the deposit to be submitted to a banking organization with written notification thereof.

“While [GOL] section 7-103 does not provide any specific penalty or sanction for its breach, it has been uniformly held that a commingling constitutes a conversion and entitles the tenant to the immediate recovery of his deposit or advances” (LeRoy v Sayers, 217 AD2d 63, 69 [1st Dept 1995]). A “[p]laintiff’s showing that defendant failed to give plaintiff written notice of the banking institution that held plaintiff’s security deposit, in violation of General Obligations Law § 7-103 (2), permit[s] an inference of commingling at the time of lease expiration, in violation of General Obligations Law § 7-103 (1)” (Dan Klores Assoc. v Abramoff, 288 AD2d 121, 121-122 [1st Dept 2001]). Furthermore, a “[d]efendant’s failure to deposit plaintiff’s security in an interest-bearing account create[s] a presumption that the funds were commingled from the first day they were provided” (U.S. Legal Support, Inc. v Eldad Prime, LLC, 125 AD3d 486, 488 [1st Dept 2015]). “It is the landlord’s burden to prove that it did not commingle the security deposit with other funds” (Harlem Capital Center., LLC v Rosen & Gordon, LLC, 145 AD3d 579, 580 [1st Dept 2016]). Here, plaintiff has met its prima facie burden on its conversion claim (see Sohl Affirm. ¶ 3), and defendant has not rebutted the inference that it commingled plaintiff’s security deposit upon receipt.

Accordingly, it is hereby

**ORDERED** that plaintiff’s motion for summary judgment on its claims for breach of contract and conversion is GRANTED without opposition; and it is further

**ORDERED** that the Clerk is directed to enter judgment in favor of plaintiff HC Technologies, LLC, and against defendant 622 Third Avenue Company LLC, in the sum of \$246,700.00, with interest at the statutory rate from August 26, 2015, the date plaintiff provided the security deposit to defendant, until the date of the decision and order on this motion, as calculated by the Clerk, together with costs and disbursements to be taxed by the Clerk upon presentation of proper papers therefor; and it is further


**ORDERED** that the issue of defendant's counterclaim for money judgment and/or an offset against any judgment entered against defendant in this action is severed and continued; and it is further

**ORDERED** that plaintiff shall serve a copy of this order with notice of entry on defendant within 20 days of entry hereof; and it is further

**ORDERED** that plaintiff shall serve a copy of this order with notice of entry on the Clerk of the Court, who shall enter judgment accordingly; and it is further

**ORDERED** that the parties shall appear for a compliance conference on November 5, 2025, at 10:00 AM.

This constitutes the decision and order of the Court.

<u>10/8/25</u> DATE	 ASHLEE CRAWFORD, J.S.C.			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT