

Marina Towers Assoc., L.P. v Baumgarten

2025 NY Slip Op 34013(U)

October 16, 2025

Supreme Court, New York County

Docket Number: Index No. 655399/2024

Judge: Lyle E. Frank

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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. LYLE E. FRANK **PART** **11M**

Justice

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MARINA TOWERS ASSOCIATES, L.P.,
Plaintiff,

INDEX NO. 655399/2024

MOTION DATE 07/16/2025

MOTION SEQ. NO. 001

- v -

SIDNEY BAUMGARTEN, TERRY PALADINI
Defendant.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34

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

Plaintiff commenced this action seeking damages based on defendants’ use and occupancy of 355 South End Avenue, Apt 31J, New York, NY 10280, as a hold over tenant, as well as breach of the lease. Plaintiff moves for summary judgment and to dismiss defendants’ affirmative defenses. Defendants oppose the instant motion. For the reasons set forth below, plaintiff’s motion is granted.

Background

Pursuant to lease dated August 27, 1992 (“Lease”), Federal Plaza International Ltd (“Federal Plaza”), formerly a corporation duly formed under the laws of the State of New York, rented the subject premises from plaintiff’s predecessor-in-interest for a term expiring on September 30, 1994. Defendant, Terry Paladini (“Paladini”) personally executed the guaranty made a part of the lease and guaranteed the performance of the lease.

Federal Plaza was dissolved on September 28, 1994. Following the expiration of the lease defendant Sidney Baumgarten (“Baumgarten”) continued to sign lease renewals for the subject premises on behalf of Federal Plaza.

The parties continued to renew the lease and Paladini remained the guarantor. The last lease renewal was for a term commencing on January 1, 2021, and expiring on December 31, 2021, at a rent of \$3,625.03 per month.

Pursuant to the terms of the September 11, 2020, renewal, in the event the tenant holds over in the Premises past the expiration of the Lease, monthly use and occupancy shall be in the amount of the last monthly rate, plus an increase in the amount of 2.5%, plus an additional \$500.00. Accordingly, the use and occupancy following expiration of the September 11, 2020, renewal was in the amount of \$4,215.65 per month.

Summary Judgment Standard

It is a well-established principle that the "function of summary judgment is issue finding, not issue determination." *Assaf v Ropog Cab Corp.*, 153 AD2d 520, 544 [1st Dept 1989]. As such, the proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law. *Alvarez v Prospect Hospital*, 68 NY2d 320, 501 [1986]; *Winegrad v New York University Medical Center*, 64 NY 2d 851 [1985]. Courts have also recognized that summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted.

Discussion

Preliminarily, plaintiff seeks dismissal of defendants' affirmative defenses as legally deficient; defendants do not substantively oppose that portion of plaintiff's motion, accordingly that portion of plaintiffs' motion is granted without opposition. The Court agrees with plaintiff and finds that defendants' affirmative defenses are insufficient as a matter of law.

In support of its motion plaintiff annexes the original lease and guaranty, subsequent renewals, the rental ledger and the affirmation of Gregory Tumminia agent of plaintiff. Plaintiff along with Mr. Tumminia's affirmation, establish that because the corporate entity was dissolved and the defendants remained in possession of the premises, there is no other necessary party to this action.

The main contentions of defendants in opposition are that they did not receive service of the summons and complaint, that the non-existent corporate entity is a necessary party, and that numerous issues of fact preclude summary judgment. As to the argument that defendants were never served, they failed to seek dismissal of the complaint for lack of personal jurisdiction, nor do they offer any admissible evidence to refute plaintiff's prima facie showing of sufficient service. Moreover, defendant has failed to substantively oppose the motion, they have not refuted the factual allegations, or the documentary evidence submitted. The Court rejects defendants' contentions and finds that they have failed to raise a triable issue of fact.

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment is granted as to liability; and it is further

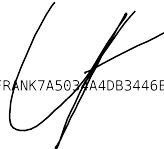
ORDERED that plaintiff has established entitlement to judgment as a matter of law as to its first and second causes of action in the amount of \$78,627.76; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff as against defendants, jointly and severally in the amount of \$78,627.76; and it is further

ORDERED that an assessment of damages against defendants for, plaintiff's third cause of action, attorney's fees shall be had before this court; and it is further

ORDERED that plaintiff shall, within 20 days from entry of this order, serve a copy of this order with notice of entry upon counsel for all parties hereto and upon the Clerk of the General Clerk’s Office (60 Centre Street, Room 119) and shall serve and file with said Clerk a note of issue and statement of readiness and shall pay the fee therefor, and said Clerk shall cause the matter to be placed upon the calendar for such trial before the undersigned; and it is further

ORDERED that such service upon the General Clerk’s Office 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 at the address www.nycourts.gov/supctmanh).


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10/16/2025
DATE

LYLE E. FRANK, 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