

**Trigon 52 LLC v Carlisle Etcetera LLC**

2025 NY Slip Op 34314(U)

November 12, 2025

Supreme Court, New York County

Docket Number: Index No. 150014/2024

Judge: Verna L. Saunders

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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. VERNA L. SAUNDERS, JSC PART 36

Justice

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INDEX NO. 150014/2024

TRIGON 52 LLC,
Plaintiff,

MOTION SEQ. NO. 001

- v -

CARLISLE ETCETERA LLC,
Defendant.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36

were read on this motion to/for

SUMMARY JUDGMENT

In this action seeking damages for breach of a commercial lease, plaintiff Trigon 52 LLC (hereinafter, "Trigon") moves, pursuant to CPLR 3212, for an order granting summary judgment on plaintiff's first, second, and third causes of action against defendant Carlisle Etcetera LLC (hereinafter, "Carlisle"). Trigon also moves, pursuant to CPLR 3025(c), for an order to amend the pleadings to conform to the evidence for all amounts due.

Defendant Carlisle cross-moves, pursuant to CPLR 3212, for an order granting summary judgment and dismissing plaintiff's complaint on the ground that it is barred by the doctrine of res judicata.

The instant action was commenced on January 2, 2024. (See NYSCEF Doc. No. 1). The complaint alleges that on July 1, 2012, plaintiff, as landlord, and defendant, as tenant, entered into a written lease agreement "for the entire rentable portion of the sixteenth (16th) floor and east mezzanine of the building located at 16 East 52nd Street, New York, New York 10022 ... for a term commencing on July 1, 2012 and expiring on June 30, 2013." (id. at ¶ 3). Plaintiff and defendant subsequently entered into a written agreement on June 17, 2013, extending the term of the lease. (id. at ¶ 4).

Plaintiff alleges that defendant has defaulted on its monetary obligations under the lease and owes plaintiff \$95,125.32 in rental arrears from June 2021 through September 2021. (id. at ¶¶ 5-9). Plaintiff further alleges that defendant owes plaintiff \$7,037.15 for electricity charges from June 1, 2021, through September 2021. (id. at ¶¶ 10-14). The complaint alleges that defendant owes plaintiff \$24,732.75 representing interest charges from June 2021 through September 2021. (id. at ¶¶ 15-19). Plaintiff also argues that pursuant to the lease, plaintiff "is entitled to recover from [d]efendant the reasonable attorneys' fees, costs and disbursements incurred in the commencement and prosecution of this action in connection with [d]efendant's default." (id. at ¶ 22). Plaintiff also alleges that in addition to the instant action it "incurred legal fees in a prior action between the parties in New York County bearing Index No. 158543/2020...a portion of which, accruing after May 2021, and remain unpaid by [d]efendant." (id. at ¶¶ 25- 27).

Plaintiff now moves, pursuant to 3025(c) to amend the pleadings “to conform to the evidence adduced herein thereby including all amounts due and outstanding through the date this motion is to be heard.” (See NYSCEF Doc. No. 4). Plaintiff argues that CPLR 3025(c) “permits the Court to amend the pleadings at any stage to conform to the evidence.” (*id.* at pg 2). Plaintiff also seeks an order for summary judgment awarding a money judgment in the amount of \$148,863.46 plus statutory interest, costs, fees, and disbursements.” (*id.*). Plaintiff argues that defendant “defaulted under the [l]ease by failing to timely and fully pay base rent and additional rent.” (See NYSCEF DOC. NO. 8 at pg. 4).

Plaintiff alleges that this is for a period of June 2021 through September 2021 and that tenant defendant “failed to make any payments due pursuant to the [l]ease.” (*id.*). Plaintiff also seeks “reasonable legal fees and costs expended in the action between the parties in Supreme Court, New York County captioned *Trigon 52 L.L.C., v Carlisle Etcetera LLC* and bearing the index number 158543/2020 in an amount to be determined by the Court.” (*id.*).

Defendant cross-moves for summary judgment to dismiss plaintiff’s complaint. Defendant alleges that all issues now before the court were previously resolved in plaintiff’s original action commenced on October 13, 2020. (See NYSCEF Doc. No. 29 at pg 5). Defendant argues that “[w]hile [p]laintiff did not initially make a claim for all of the rent and additional rent due when it filed its initial Complaint...it filed a motion pursuant to CPLR 3025(c) to amend its Complaint to add monthly fixed rent and additional rents.” (*id.*). Defendant argues that after oral argument was held on October 27, 2021, plaintiff only sought additional rent due through May 31, 2021 “rather than the total rent and additional rent allegedly due and owing that had accrued at that time through September 30, 2021.” (*id.* at pg 6). Defendant cites to the oral decision by Justice Saunders that reads:

“With respect to the motion before the Court and reviewing the procedural history...there was an order granting a final judgment, there was a specific limited issue that was brought before the referee, that portion of the matter was resolved, and inasmuch as those things occurred, this case was disposed.

.....

Inasmuch as this additional matter that is brought and raised in sequence four is post-final judgment, despite what the nomenclature is indicated by plaintiff, and his post-Stipulation of Settlement as to the outstanding issue that remained after the judgment, and the decision and order of the Court, that was resolved by virtue of a Stipulation of Settlement, and inasmuch as there is a satisfaction filed in connection with this case, this matter is hereby dismissed and the motion is denied.”

(See NYSCEF Doc. No. 29 at pg 8; *see also* NYSCEF Doc. No. 21 at pg. 9).

Defendant thus argues that plaintiff’s current claims are barred by the doctrine of *res judicata* as this matter was previously decided by the court. Defendant further argues that at the conclusion of the previous action, plaintiff submitted a letter to the court seeking an order to

“indicat[e] that the dismissal is without prejudice to allow [p]laintiff to pursue its rights in a new action.” (See NYSCEF Doc. No. at pg 9). Defendant argues that the court responded that it does not entertain letter briefs and therefore the court’s order was not without prejudice. (*id.*). Defendant also argues that to the extent this action is not dismissed, there are questions of fact regarding damages, namely the alleged amounts owed to plaintiff. (See NYSCEF Doc. No. 29 at pg 12-14).

In opposition to the cross-motion and in further support of its motion, plaintiff argues “the damages sought in this action were never granted or denied with prejudice in an order issued in the [prior action].” (*id.* at NYSCEF Doc. No. at pg 7). Plaintiff argues that the court “took issue with an Amended Complaint being filed after disposition of the [prior action].”

It is well-settled that “[t]he proponent of a summary judgment motion 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” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986], citing *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). Once the movant has made a *prima facie* showing, the burden shifts to the opposing party to “present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact” (*Casper v Cushman & Wakefield*, 74 AD3d 669, 669 [1st Dept 2010], *lv dismissed* 16 NY3d 766 [2011] [internal quotation marks and citation omitted]).

The court’s function on summary judgment is “issue-finding rather than issue-determination” (*Mayo v Santis*, 74 AD3d 470, 471 [1st Dept 2010]). In deciding the motion, “the court should draw all reasonable inferences in favor of the nonmoving party” and deny summary judgment if there is any doubt as to the existence of a material issue of fact (*Assaf v Ropog Cab Corp.*, 153 AD2d 520, 521 [1st Dept 1989] [citations omitted]). “[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient” to defeat a motion for summary judgment (*Siegel v City of New York*, 86 AD3d 452, 455 [1st Dept 2011], quoting *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

Furthermore, since summary judgment is a drastic remedy, it should never be granted when there is any doubt as to the existence of a triable issue of fact (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]). When the existence is even arguable or debatable, summary judgment should be denied (*Stone v Goodson*, 8 NY2d 8, 12 [1960]).

Under the transactional approach to res judicata, “once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy.” (*Marinelli Associates v Helmsley-Noyes Co., Inc.*, 265 AD2d 1, 5 [1st Dept 2000], quoting *O’Brien v City of Syracuse*, 54 NY2d 353, 357 [1981]). In accordance with this approach, the *res judicata* doctrine “bars not only claims that were actually litigated but also claims that could have been litigated, if they arose from the same transaction or occurrence.” (*id.*). Moreover, *res judicata* is generally afforded to determinations in summary proceedings. (*McNamara v Guazzoni*, 16AD3d 107 [1st Dept 2005]).

Here, plaintiff's claims are barred under a doctrine of *res judicata*. Plaintiff commenced its first action on October 13, 2020, seeking rent and additional rent under the lease. (*See Trigon 52 LLC v Carlisle Etcetera, LLC*, Index No. 158543/2020 (Sup Ct, NY County), NYSCEF Doc. No. 1). Subsequently on March 24, 2021, plaintiff filed a motion pursuant to CPLR 3025(c) to amend its complaint to add rent and additional rent due after the commencement of the action and simultaneously moved for summary judgment on the amended pleading. (*id.* at NYSCEF Doc. No. 32).

In an order dated March 24, 2022, this court granted plaintiff's motion and entered a final judgment on May 5, 2022, in the amount of \$158,230.61, resolving all claims for which evidence had been submitted. (See NYSCEF Doc. No. 58). This court also severed the issue of additional rent owed to landlord through May 2021 for reference to a Special Referee. (*id.*). Subsequently, all parties entered a "Stipulation of Settlement As To The Order of Reference Only" whereupon defendant agreed to pay \$19,681.73 to plaintiff for rent due through May 2021. (*See* NYSCEF Doc. No. 27).

Then, on September 14, 2022, nearly six months after a final decision was rendered, plaintiff attempted to file another motion pursuant to CPLR 3025(c) to amend its complaint to add additional rent in the amount of \$147,411.72 plus interest from June 2021 through September 2021. (*See* NYSCEF Doc. No. 19). Plaintiff also sought an order for summary judgment awarding the allegedly owed rent through September 2021. (*id.*).

Oral argument was held on October 4, 2023 with respect to plaintiff's subsequent motion, whereupon the court held "[i]nasmuch as this additional matter that is brought and raised in sequence four is post-final judgment, despite what the nomenclature is indicated by plaintiff... and inasmuch as there is a satisfaction filed in connection with this case, this matter is hereby dismissed and the motion is denied." (*See* NYSCEF Doc. No. 21 at pg 9). Plaintiff's motion was denied in its entirety on October 4, 2023, with the court explicitly holding that post-final judgment claims could not be asserted. (*id.*).

Here, plaintiff's claims arise from precisely the same transaction and alleged non-payment of rent that was addressed and decided in the first action. At this juncture, plaintiff had every opportunity to assert the full scope of its rent claims prior to the entry of final judgment, including all rent owed pursuant to the lease agreement, and failed to do so. As such, plaintiff's action is barred by *res judicata*. Defendant has met its burden on summary judgment and has established entitlement to same, dismissing the complaint against it. Accordingly, plaintiff's motion is denied in its entirety. Defendant's motion is granted, and the instant action is dismissed. Lastly, any unaddressed arguments of movants' motions are denied as moot. Accordingly, it is

**ORDERED**, that TRIGON 52 LLC's motion seeking an order to amend the pleadings pursuant to CPLR 3025(c) and granting summary judgment against CARLISE ETCETERA LLC is denied in its entirety; and it is further

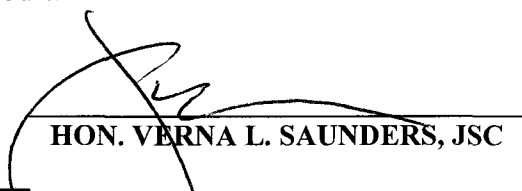
**ORDERED**, that CARLISE ETCETERA LLC's cross-motion seeking an order granting summary judgment against TRIGON 52 LLC is granted and the complaint is dismissed; and it is further

**ORDERED** that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for defendant shall serve a copy of this decision and order, with notice of entry, on the defendant, as well as, the Clerk of the Court, who shall enter judgment accordingly; and it is further

**ORDERED** that service upon the Clerk of the Court 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](http://www.nycourts.gov/supctmanh)).

This constitutes the Decision and Order of the Court.

November 12, 2025

  
HON. VERNA L. SAUNDERS, JSC

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE