

Leo Kayser III, P.C. v EH Realty Ventures, Inc.

2025 NY Slip Op 34380(U)

November 18, 2025

Supreme Court, New York County

Docket Number: Index No. 651583/2025

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

-----X

LEO KAYSER III, P.C.,

Plaintiff,

- v -

EH REALTY VENTURES, INC., EDWARD W. HAYES

Defendant.

-----X

INDEX NO. 651583/2025

MOTION DATE 10/29/2025

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67 were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, the motion is granted in part.

Background

In 2011, defendant Edward W. Hayes and his business EH Realty Ventures became subletters of Plaintiff, a law firm. In 2019, Defendants began to fall behind on rent, a situation that appears to have continued to present. In connection with the rental arrears, Defendant Hayes executed a series of promissory notes beginning in January of 2020, as well as a mortgage. All three promissory notes were signed by both Defendants. Defendants have made a few payments over the years, amounting to \$30,421.28, but has failed to pay the notes off by the maturity dates. After accounting for the partial payments and the annual interest provided for in the notes, the amount outstanding is \$666,536.59.

Plaintiff initiated this proceeding as a CPLR § 3213 motion in March of 2025, seeking to enforce the promissory notes. Defendants appeared, and in opposition to the motion claimed that the signatures on the promissory notes were forged and provided an affidavit from a handwriting expert stating that the signatures were likely not those of Defendant Hayes. Plaintiff argued that

the mortgage in question disproved the Defendants' claims that they were not obligated to pay rent. The Court decline to grant the CPLR § 3213 motion on the grounds that the issue of fact raised by Defendants required a resort to outside documents, thus making it inappropriate for § 3213 relief. Plaintiff then attempted to engage in discovery, but it appears that Defendants have not appeared for depositions or responded to discovery requests. Plaintiff brings the present motion, seeking summary judgment in their favor and to strike Defendants' answer. Defendants have failed to oppose the motion.

Standard of Review

Under CPLR § 3212, a party may move for summary judgment and the motion "shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." CPLR § 3212(b). Once the movant makes a showing of a prima facie entitlement to judgment as a matter of law, the burden then shifts to the opponent to "produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action." *Stonehill Capital Mgt. LLC v. Bank of the W.*, 28 N.Y.3d 439, 448 [2016]. The facts must be viewed in the light most favorable to the non-moving party, but conclusory statements are insufficient to defeat summary judgment. *Id.*

Discussion

As a preliminary matter, to the extent that Plaintiff's motion seeks discovery-related relief, it is denied. As per the part rules, parties are not permitted to file discovery motions without first conferencing the matter with the Court. No party has requested a conference in this matter with the Court, and therefore the portion of the motion that seeks to strike and/or preclude Defendants' testimony and answer is denied.

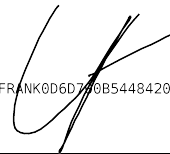
Turning to the portion of the motion that seeks summary judgment on the breach of contract, the issue is whether there remains a genuine material issue of fact. Plaintiff has provided the promissory notes, the mortgage that was recorded with Defendants as the borrower and referenced one of the promissory notes, as well as Plaintiff's internal emails referencing the mortgage. They have affidavits from various witnesses who affirm that they saw Defendant Hayes sign the notes. They produced the sublease and the rental arrears statements that led to the execution of the promissory notes. Plaintiff has established a prima facie entitlement to summary judgment in their favor on a breach of contract cause of action. The burden therefore shifts to Defendants to "come forward with evidentiary proof sufficient to raise an issue" of fact that would constitute a defense to the claim. *Gard Entertainment, Inc. v. Country in N.Y., LLC*, 96 A.D.3d 683, 684 [1st Dept. 2012]. Unsubstantiated and conclusory assertions are insufficient to counter a showing of prima facie entitlement. *See, e.g., Quadrant Mgt. Inc. v. Hecker*, 102 A.D.3d 410, 410 [1st Dept. 2013].

This matter is similar to that of *1424 Millstone*. There, a defendant raised an issue of fact through an affidavit that cast doubt on the authenticity of his signature on a lease extension. *1424 Millstone Rd., LLC v. James B. Fairchild, LLC*, 136 A.D.3d 556, 557 [1st Dept. 2016]. But other evidence provided by the plaintiff constituted "essentially undeniable evidence" that refuted the forgery claim and entitled the plaintiff to summary judgment as to liability. *Id.* Here, the evidence produced by Plaintiff similarly constitute essentially undeniable evidence refuting the claim that the Defendant's signatures are forged. Plaintiff is also requesting attorneys' fees and expenses for this proceeding, pursuant to the terms of the promissory notes. They have submitted an attorney affirmation and a billing record to support their request for \$45,096.12.

The Court finds that in addition to establishing a prima facie entitlement to summary judgment on liability, Plaintiff has also established a sum certain. Accordingly, it is hereby

ADJUDGED that the motion is granted unopposed as to summary judgment; and it is further

ORDERED that plaintiff Leo Kayser III, P.C. d/b/a Kayser & Redfern is entitled to judgment against defendants EH Realty Ventures, Inc. and Edward W. Hayes, in the amount of \$666,536.59, plus attorneys' fees and costs in the amount of \$45,096.12, and the Clerk of the Court is directed to enter judgment accordingly.

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11/18/2025
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED		
<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED

<input type="checkbox"/>	NON-FINAL DISPOSITION		
<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN

<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

CHECK IF APPROPRIATE: