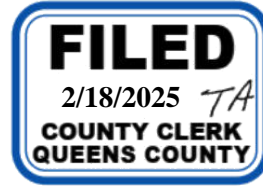


<b>YSNI Corp. v J. Solo Mgt. LLC</b>
2025 NY Slip Op 35395(U)
February 13, 2025
Supreme Court, Queens County
Docket Number: Index No. 709214/2022
Judge: Maurice E. Muir
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Short Form Order

NEW YORK SUPREME COURT – QUEENS COUNTY

Present: HONORABLE MAURICE E. MUIR  
Justice



YSNI CORP,

Plaintiff,

-against-

J. SOLO MANAGEMENT LLC,

Defendant.

IAS Part - 42

Index No.: 709214/2022

Motion Date: 7/20/23

Motion Cal. No. 50

Motion Seq. No. 1

The following electronically filed (“EF”) documents read on this motion by J. Solo Management, LLC (“Solo” or “defendant”) for an order: a) pursuant to CPLR § 3211(a)(1) on the grounds a defense is founded upon documentary evidence; b) pursuant to CPLR § 3211(a)(7) on the grounds the pleading fails to state a cause of action; and c) pursuant to CPLR § 3211(a)(3) Plaintiff lacks standing to commence this action; and d) granting such other and further relief as this Court may deem just and proper.

	Papers <u>Numbered</u>
Notice of Motion - Affidavits - Exhibits .....	EF 05-10, 12
Answering Affidavits – Exhibits- Memorandum of Law.....	EF 13-18
Reply Affirmation-Memorandum of Law.....	EF 20-23

Upon the foregoing papers it is ordered that the motion is determined as follows:

This is an action to recover damages for breach of contract and unjust enrichment. YSNI Corp. (“YSNI” or “plaintiff) alleges that on or about June 30, 2020, nonparty Yunsoo Lee (“Mr. Lee”) and defendant entered into a written lease agreement for property located at 102-07 Metropolitan Avenue, in the County of Queens (“subject premises”). Plaintiff further alleges that pursuant to the terms of the lease, Mr. Lee had

the unrestricted right to assign his rights and obligations under the lease to a corporation in which he was the primary shareholder; and that on July 15, 2020, he notified Solo that he was exercising his right and assigning his rights and obligations under the lease to plaintiff. Moreover, the plaintiff has alleged that due to Solo's actions, it was unable to obtain a liquor license, which deprived it of revenue. Moreover, on or about May 1, 2021, a fire occurred at an adjoining property, which caused significant damage to a portion of the subject premises, which rendered it unusable for plaintiff. Additionally, the plaintiff alleges that Solo has, among other things, failed to make any repairs, refused to abate any portion of the rent, and demanded money not owed under the lease agreement.

Notwithstanding the same, Solo now moves to dismiss the complaint pursuant to CPLR § 3211(a)(1), (3), and (7). Under New York law, CPLR § 3211(a)(1) provides that “[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that ... a defense is founded upon documentary evidence...” “To successfully move to dismiss a complaint pursuant to CPLR § 3211(a)(1), the movant must present documentary evidence that ‘resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff’s claim’” (*AGCS Mar. Ins. Co. v. Scottsdale Ins. Co.*, 102 AD3d 899, 900 [2d Dept 2013], quoting *Nevin v. Laclede Professional Prods.*, 273 AD2d 453 [2d Dept 2000]; see *Leon v. Martinez*, 84 NY2d 83, 88 [1994]; *Bonavita v. Govt. Employees Ins. Co.*, 185 AD3d 892, 893 [2d Dept 2020]; see also *JPMorgan Chase Bank, National Association v. Klein*, 178 AD3d 788, [2d Dept 2019]). Documents that have traditionally qualified for evidentiary consideration under CPLR § 3211(a)(1) are those which are 1) unambiguous, 2) of undeniable authenticity, and 3) reflect content that is essentially undeniable (*Mehrhof v. Monroe-Woodbury Central School District*, 168 AD3d 713 [2d Dept 2019]). Moreover, documents that have been found to qualify as documentary evidence have included judicial records, mortgages, deeds, contracts, and other papers the contents of which meet the requirements of being essentially unambiguous, authentic, and undeniable. Conversely, letters, emails, and affidavits fail to meet the requirements for documentary evidence. (*Magee-Boyle v. Reliastar Life Ins. Co. of New York*, 173 AD3d 1157 [2d Dept 2019])

Furthermore, CPLR § 3211(a)(3) provides that “[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that: ... the party asserting the cause of action has not legal capacity to sue.” “ ‘On a defendant’s motion to dismiss the complaint based upon the plaintiff’s alleged lack of standing, the burden is on the moving defendant to establish, prima facie, the plaintiff’s lack of standing as a matter of law’ ” (*Ditech Fin., LLC v. Rapuzzi*, 187 AD3d 715 [2d Dept 2020], quoting *New York Community Bank v. McClendon*, 138 AD3d 805, 806 [2d Dept 2016]; see *U.S. Bank N.A. v. Guy*, 125 AD3d 845, 847 [2d Dept 2015]; *HSBC Mtge. Corp. [USA] v. MacPherson*, 89 AD3d 1061, 1062 [2d Dept 2011]).

Additionally, CPLR § 3211(a)(7) provides that a party may move to dismiss an action on the ground that “the pleading fails to state a cause of action.” “On a motion to dismiss pursuant to CPLR § 3211, the complaint is to be afforded a liberal construction” (*Benitez v. Bolla Operating LI Corp.*, 189 AD3d 970 [2d Dept 2020]; CPLR § 3026; see *Gorbatov v. Tsirelman*, 155 AD3d 836 [2d Dept 2017]; *Feldman v. Finkelstein & Partners, LLP*, 76 AD3d 703, 704 [2d Dept 2010]; *Maddicks v. Big City Property, LLC*, 34 NY3d 116 [2019]; *Patel v. Gardens at Forest Hills Owners Corp.*, 181 AD3d 611 [2d Dept 2020]). “ ‘In reviewing a motion pursuant to CPLR 3211 (a) (7) to dismiss the complaint for failure to state a cause of action, the facts as alleged in the complaint must be accepted as true, the plaintiff is accorded the benefit of every possible favorable inference, and the court’s function is to determine only whether the facts as alleged fit within any cognizable legal theory’ ” (*Benitez v. Bolla Operating LI Corp.*, 189 AD3d at 970, quoting *Mendelovitz v. Cohen*, 37 AD3d 670, 671 [2d Dept 2007]; see *Bianco v. Law Offices of Yuri Prakhin*, 189 AD3d 1326 [2d Dept 2020]; *Gorbatov v. Tsirelman*, 155 AD3d at 836).

As an initial matter, to the extent that Solo has made arguments regarding the statute of frauds, the court notes that it has not moved pursuant to CPLR § 3211(a)(5). Furthermore, to the extent that defendant argues that plaintiff does not have standing to bring the action as it is not the tenant of record, a review of paragraph 12 of the terms of the lease agreement as well as the assignment of lease dated July 15, 2020, has

sufficiently demonstrated that Mr. Lee assigned the lease to plaintiff, who acted as, and was treated as defendant's tenant (CPLR § 3211 [a] 3]).

As to the first cause of action for breach of contract, a thorough review of the allegations set forth in the complaint has demonstrated that plaintiff has sufficiently alleged the elements of this cause of action (CPLR § 321(a)(7); *see WMC Realty Corp. v. City of Yonkers*, 193 AD3d 1018 [2d Dept 2021]), and that, contrary to defendant's contention, the documentary evidence does not resolve all factual issues as a matter of law and does not conclusively dispose of plaintiff's cause of action (CPLR 3211 [a] [1]; *see Bonavita v Govt. Employees Ins. Co.*, 185 AD3d at 893). Lastly, defendant failed to address the second cause of action for unjust enrichment. Therefore, based upon the above, defendant is not entitled to the relief sought on the motion.

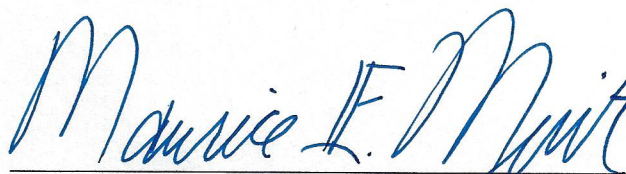
The parties' remaining contentions have been considered and found to be unavailing. Accordingly, it is hereby

ORDERED, that the defendant's motion, pursuant to CPLR §§§ 3211(a)(1), (3), and (7), is denied, in its entirety; and it is further,

ORDERED, that plaintiff shall serve a copy of this decision and order with notice of entry upon the defendant on or before March 5, 2025.

The foregoing constitutes the decision and order of the court.

Dated: February 13, 2025  
Long Island City, New York



MAURICE E. MUIR, J.S.C.

