

**25 W. 26th St., Inc. v Claudia G. Andrei Psychologist
P.C.**

2026 NY Slip Op 30370(U)

January 29, 2026

Supreme Court, New York County

Docket Number: Index No. 656547/2020

Judge: Arlene P. Bluth

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

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25 WEST 26TH STREET, INC.,

Plaintiff,

- v -

CLAUDIA G. ANDREI PSYCHOLOGIST P.C. D/B/A
CLAUDIA ANDREI PSYCHOLOGIST, P.C.,

Defendant.

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INDEX NO. 656547/2020

MOTION DATE N/A, N/A

MOTION SEQ. NO. 005 006

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 231, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 295, 301, 302, 303, 304, 305, 306, 307, 308, 309

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

The following e-filed documents, listed by NYSCEF document number (Motion 006) 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 232, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 296, 297, 298, 299, 300

were read on this motion to/for SUMMARY JUDGMENT.

Motion Sequence Numbers 005 and 006 are consolidated for disposition. Plaintiff's motion for summary judgment (MS005) is denied and defendant's motion (MS006) for summary judgment dismissing the complaint and on certain of its counterclaims is denied.

Background

This commercial landlord-tenant dispute arises out of plaintiff's contention that defendant failed to pay outstanding rent. Defendant entered into a ten year and four-month lease for the premises in August 2016; the lease was to expire on November 30, 2026. Plaintiff argues that in

March 2020, it offered a rent discount to defendant and that defendant responded by stating that the discount was not sufficient to keep it in business. According to plaintiff, defendant purported to vacate the premises in late April 2020. Plaintiff says it rejected this surrender in May 2020 and that it now seeks unpaid rent from May 2020 through the end of the lease.

Defendant offers a drastically different account of its tenancy. It explains that the building was in disarray and that it faced many, many issues with the building. Defendant stresses that it negotiated to include a reference to the fact that because it provided mental healthcare, its patients' medical records would be kept on site and so the landlord/plaintiff was required to have the tenant/defendant present whenever the landlord was on the premises.

Defendant insists that it paid upwards of \$170,000 to build out the premises in order to provide mental health therapy to patients, which meant that its obligation to pay rent did not start until December 2016. Defendant built out 14 offices with the intention to license out the spaces to therapists pursuant to license agreements. It explains that the building had two entrances, each of which utilized a fob system. Defendant maintains that it installed, with the permission of plaintiff in the lease, a buzzer system for their side (the East side) of the building. It observes that the elevator for the East side was routinely out of service and that the fob system was unreliable which often left defendant's licensees (defendant rented out space to therapists) unable to access the building. Defendant also details that the building was often without water and, on at least one occasion, there were no functioning toilets.

Defendant's main complaint is that plaintiff did not do enough to secure the building. Defendant observes that there was a break-in in January 2018 in which iPads and laptops were stolen. It claims it asked plaintiff for surveillance footage but that plaintiff did not cooperate. On April 20, 2020, defendant says it learned that the premises were burglarized again. One licensee

visited her office and discovered what she believed to be evidence that people were living in the premises (obviously, this was at the height of the COVID-19 pandemic). This licensee found dirty clothes, old food and noticed a putrid smell.

The next day, the office manager went to the premises and encountered another licensee who had witnessed two additional unauthorized people in the office that the police eventually removed. Defendant attached dozens and dozens of photos to document the break-ins (NYSCEF Doc. No. 220). It also contends that many items were stolen, including electronics, and that confidential patient files were ripped out of filing cabinets. Defendant argues that plaintiff was basically unresponsive following defendant's report about the break-ins.

Defendant says that during discovery in this case, it purportedly learned that the tenant on the third floor had experienced break-ins in March 2020 and contends that plaintiff did not do anything to address the apparent ease with which individuals could gain access to the building.

On April 23, 2020, defendant says that it issued a notice to vacate to its licensees on the ground that the premises were no longer safe. It claims there was yet another burglary over the weekend of April 24-26, 2020 and that defendant reported it on April 27, 2020. Defendant contends that it had its handyman to clean out the premises. On April 29, 2020, defendant sent a notice of intent to vacate that cited, among many issues, the recent break-ins (NYSCEF Doc. No. 203). It emphasizes that plaintiff had not done anything to secure the building and had not even changed the locks following the burglaries (*id.* at 3).

In response, plaintiff argues that the lease required defendant to give plaintiff a reasonable time to remedy the issues and that the notice of vacatur dated April 29, 2020 was actually delivered on April 30, 2020—the day that defendant intended to vacate.

Discussion

The Court denies both motions as there are clear issues of fact that prevent the Court from granting summary judgment to either party. Even if defendant met its burden to show that there was constructive eviction, plaintiff correctly pointed to Section 37.02 of the lease.

This provision states that:

“Tenant agrees that in the event of any act or omission by Landlord, Tenant will not exercise any right to terminate this Lease and/or deduct the cost thereof from rent due hereunder until Tenant shall have given written notice of such act or omission to the holder of any first mortgage who shall have furnished in writing such holder's last address to Tenant and until a reasonable time for remedying such act or omission shall have elapsed following the giving of such notices, during which time such mortgage holder shall have the right but shall not be obligated, to remedy or cause to be remedied such act or omission” (NYSCEF Doc. No. 194, ¶ 37.02).

Here, after an apparent rash of burglaries, defendant sent a notice of its intent to vacate that was delivered on April 30, 2020 (NYSCEF Doc. No. 203 at 8 of 10) and that set defendant’s vacatur date that same day. This Court is not in a position to find that this notice was sufficient to terminate the lease, or conversely, that the notice was insufficient. A fact finder might conclude that the severity of these burglaries and potential squatting was so extreme that defendant was right to vacate soon thereafter and that it was constructively evicted. “[A]n issue of fact exists as to whether the parties substantially and materially deprived [the tenant] of the beneficial use and enjoyment [of the premises]” (*Incredible Christmas Store-New York, Inc. v RCPI Tr.*, 307 AD2d 816, 816 [1st Dept 2003]).

Or, conversely, a fact finder might find that defendant did not give enough time for plaintiff to remedy the problem and that, therefore, defendant did not properly terminate the lease and/or show constructive eviction. Certainly, plaintiff will also contend that defendant’s business was impacted by the COVID-19 pandemic and that this was the true motivation for defendant to

attempt to surrender the premises. It attached an email thread from late March 2020 in which defendant noted it would need a more substantial rent discount (plaintiff had offered five percent) in order to stay in business past April (NYSCEF Doc. No. 161).

Also factoring into the Court's determination is a decision by the previous judge assigned to this case that imposed an adverse inference "at trial or upon any dispositive motion with respect to the missing records of other tenants [sic] complaints to plaintiff about the conditions upon which defendant bases its counterclaims for constructive eviction" (NYSCEF Doc. No. 155). Although the Court finds that this adverse inference is not dispositive for defendant's motion, it does present a partial basis to deny plaintiff's motion as it goes to defendant's constructive eviction claims.


Summary

The Court acknowledges that the parties have been waiting a long time for this decision—it seems the prior judge may have had oral argument back in July 2025 and then simply forgot about these motions. The Court apologizes for this needless delay.

In any event, the record on these motions shows a hotly contested issue. Defendant apparently paid up its rent through the end of April 2020 and then it claims that a series of burglaries (in addition to some other issues in the building) made it feel unsafe and that the premises were no longer usable. On the other hand, plaintiff argues that defendant was going out of business anyway and that it did not have enough time to fix the issues prior to defendant's request to surrender. This Court cannot make a conclusive finding based on these papers.

Accordingly, it is hereby

ORDERED that plaintiff's motion (MS005) and defendant's motion (MS006) are both denied.

<u>1/29/2026</u> DATE					 ARLENE P. BLUTH, J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE