

Bradley Acquisition LLC v Quest Bldrs. Group, Inc.

2026 NY Slip Op 30464(U)

February 4, 2026

Supreme Court, New York County

Docket Number: Index No. 651073/2022

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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BRADLEY ACQUISITION LLC, 242 WEST 30TH STREET
LLC, RUSHITA LLC, HSR 242 LLC, ACGC 242 LLC

Plaintiff,

- v -

QUEST BUILDERS GROUP, INC.,

Defendant.

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INDEX NO. 651073/2022

MOTION DATE 10/31/2025

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84

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

Upon the foregoing documents, the motion is granted as to liability.

Background

This motion for summary judgment arises out of a commercial landlord/tenant dispute. Plaintiffs are the owners of a building located at 242 West 30th Street. In 2004, Plaintiffs and Defendant entered into a lease that was amended several times throughout the following years (collectively, the "Lease"), with the latest amendment setting the lease termination date as February 28, 2026. Defendant alleges that there were several disruptive building conditions beginning in 2017, primarily Local Law 11 façade work but also including elevator and security failures. They claim to have repeatedly complained to Plaintiffs about the building conditions. On October 28, 2021, Defendant sent Plaintiffs a letter stating that they were surrendering the premises. On that date, Defendant vacated the premises, delivered the keys, and paid amounts billed through October 31, 2021. They have not paid any amounts accruing between October and the end of the lease in February of this year.

In March of 2022, Plaintiffs commenced this action. The complaint contains two causes of action, for breach of contract and for attorneys' fees pursuant to the contract. Defendant timely answered, and in June this Court issued an order dismissing two of Defendant's affirmative defenses. Discovery has taken place, and Plaintiffs now move for summary judgment.

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

Plaintiffs move for summary judgment on the complaint and Defendant opposes. Both of Plaintiffs claims sound in breach of contract. The elements of a claim for breach of contract are "the existence of a contract, the plaintiff's performance thereunder, the defendant's breach thereof, and resulting damages." *Harris v. Seward Park Hous. Corp.*, 79 A.D.3d 425, 426 [1st Dept. 2010]. In support of their motion, Plaintiffs have submitted a copy of the Lease, their rent ledger showing a failure to pay rent beginning in December of 2021, deposition transcripts, and an affirmation from their General Counsel and Director of Operations (the "Hirsch Affidavit").

The Lease contains a provision stating that Defendant is obligated to pay rent and additional rent “when due, without any set-off or deduction.” Plaintiffs have established a prima facie entitlement to summary judgment for a breach of the Lease. The analysis then turns to whether Defendant raises an issue of material fact that would defeat summary judgment. For the reasons that follow, they do not.

The Hirsch Affirmation and Ledger

Defendant argues that the Hirsch Affirmation is unreliable, and that the ledger provided by Plaintiffs is an inaccurate assessment of rents and fees owed. They question the extent to which Hirsch had full personal knowledge of the business records at hand and their creation. While these are issues that go to the extent of damages, they do not go to the issue of liability for the undisputedly unpaid rent since Defendant’s unilateral surrender of the property. The Hirsch Affirmation suffices for establishing Plaintiffs’ prima facie case, regardless of his personal knowledge of Plaintiffs’ day-to-day operations, as he attests to personal knowledge of the ledger in question. *See Muslar v. Hall*, 214 A.D.3d 77, 80 – 82 [1st Dept. 2023]. To the extent that Defendant’s questioning of the ledger and Mr. Hirsch’s reliability creates an issue of fact, it is solely as regards the extent of damages and not liability for unpaid rents under the Lease. *See 558 Seventh Ave. Corp. v. Times Sq. Photo Inc.*, 194 A.D.3d 561, 562 [1st Dept. 2021] (holding that summary judgment on liability should still be granted when issues raised as to extent of damages).

Constructive Eviction and Breach of the Covenant of Quiet Enjoyment Defenses are Barred by the Terms of the Lease

Defendant argues that the allegations about the building conditions creates issues of fact going to constructive eviction and breach of the covenant of quiet enjoyment. This argument

fails for several reasons. First, the Lease contains provisions explicitly waiving the right to assert constructive eviction. These waiver provisions are upheld by the courts in commercial leases, as is the case here. *See, e.g., Schwartz, Karlan & Gutstein v. 271 Venture*, 172 A.D.2d 226, 228 [1st Dept. 1991]. Secondly, even if the Lease did not waive any liability for repairs or failure to make repairs, the brunt of Defendant's allegations concern Local Law 11 work. A claim for constructive eviction requires a wrongful act by the landlord. *See, e.g., Barash v. Pennsylvania Terminal Real Estate Corp.*, 26 N.Y.2d 77, 83 [1970]. Repairs authorized by a lease are not wrongful. *See, e.g., Carlyle, LLC v. Beekman Garage LLC*, 133 A.D.3d 510, 510 [1st Dept. 2015].

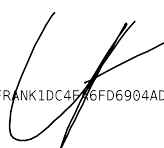
The Lease also contained an exclusive-remedy clause stating that Defendant's sole remedy for any failure to comply with a covenant or lease provision by the Plaintiffs is "an action for damages for breach of contract", not unilateral surrender of the property or rent abatements. And finally, the Lease required that any notice under the Lease, such as of the building conditions that allegedly interfered with the quiet enjoyment of the premises, be sent in writing via certified mail. Defendant does not allege that they sent such a notice, rather that because the conditions were alleged to be building wide, that was sufficient notice. But such a conclusory statement cannot contradict the plain requirements of the Lease. *See, e.g., Pacific Coast Silks, LLC v. 247 Realty, LLC*, 76 A.D.3d 167, 176 [1st Dept. 2010]. Therefore, Defendant has created no issue of fact going to whether Plaintiffs performed under the Lease or Defendant's liability for unpaid rents. Accordingly, it is hereby

ADJUDGED that the motion is granted as to liability; and it is further

ORDERED that an assessment as to damages and attorney's fees is directed; and it is further

ORDERED that a copy of this order with notice of entry be served by the movant upon the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who is directed, upon the filing of a note of issue and a certificate of readiness and the payment of proper fees, if any, to place this action on the appropriate trial calendar for the assessment hereinabove directed; and it is further

ORDERED that such service upon the Clerk of 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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LYLE E. FRANK, J.S.C.

2/4/2026
DATE

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