

**Success Acedemy Charter Schs., Inc. v Liberty Sq.  
Realty Corp.**

2026 NY Slip Op 31198(U)

March 24, 2026

Supreme Court, New York County

Docket Number: Index No. 654728/2018

Judge: Andrea Masley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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SUCCESS ACADEMY CHARTER SCHOOLS, INC.,

INDEX NO. 654728/2018

Plaintiff,

MOTION DATE \_\_\_\_\_

- v -

LIBERTY SQUARE REALTY CORP., HENRY  
WEINSTEIN, and BENJAMIN KLEIN,

MOTION SEQ. NO. 014

Defendants.

**DECISION + ORDER ON  
MOTION**

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 014) 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 401, 402, 403, 404, 409

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

In Motion 014, plaintiff, Success Academy Charter Schools, Inc., moves pursuant to CPLR 3212(b) for partial summary judgment on two of its remaining claims against the remaining defendant<sup>1</sup> Liberty Square Realty Corp. (Liberty) and the immediate return of its Advance Rent in the amount of \$2 million with statutory prejudgment interest from May 9, 2017.

The background of this action is set forth in the court’s January 10, 2024 decision and order on motion 010. (NYSCEF 328, Liberty’s Motion to Dismiss.)<sup>2</sup>

<sup>1</sup> The court partially dismissed the first cause of action for declaratory judgments against defendants Henry Weinstein and Benjamin Klein, but the claim stands against Liberty. (NYSCEF 328, January 10, 2024 Decision on motion sequence 010.) The fourth cause of action for fraudulent inducement was also dismissed. (*Id.*)

<sup>2</sup> Relevant to this motion, plaintiff paid Liberty rent upon execution of the Lease (Advance Rent). (NYSCEF 273, Second Amended Complaint ¶¶18,71.) Under the terms of the lease, Liberty was required to apply \$100,000 of the Advance Rent (totaling to \$2,100,000) to the cost of its architectural plans and hold the remaining funds in a

At the argument, the court determined that the lease between plaintiff and Liberty is unambiguous as to whether funds were to be segregated from personal funds. Liberty's failure to do so breached section 3.1(d) of the lease. (See NYSCEF 409, tr 37:7-14.) This decision supplements that decision.

Thus, it is undisputed that there was commingling and spending in violation of New York GOL § 7-103, which requires "that any deposit or advance rent paid by a tenant "shall continue to be the money of the person making such deposit or advance and shall be held in trust by the person with whom such deposit or advance shall be made and shall not be mingled with the personal moneys or become an asset of the person receiving the same."

As to the statute of limitations, plaintiff's conversion claim is subject to a three-year limitations period under CPLR 214[3]. The statute of limitations period begins "accruing when conversion takes place and not from discovery." (*Vigilant Ins. Co. of Am. v Housing Auth. of City of El Paso, Tex.*, 87 NY2d 36, 44 [1995].) However, "[i]f possession of the property is originally lawful, a conversion does not occur until the owner makes a demand and the refusal of the property." (*D'Amico v First Union Natl. Bank*, 285 AD2d 166, 172 [1st Dept 2001].)

Plaintiff deposited the Advance Rent in Liberty's account on May 9, 2017. Liberty mistakes this date as when conversion allegedly took place. (NYSCEF, 396 Liberty's MOL at 16.) Rather, this is the date when the Advance Rent came into the lawful possession of Liberty. It is undisputed that the commingling and the spending of the

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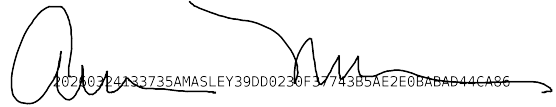
segregated account in trust until the Advance Rent was to be applied to certain monthly rent due. (NYSCEF 287, Lease § 3.1 [d]; NYSCEF 273, SAC ¶ 71.)

Advance Rent occurred after May 9, 2017, and continued to the end of December 2017, exhausting the entirety of the Advance Rent. (NYSCEF 273, Second Amended Complaint ¶¶ 75-76.) Plaintiff demanded the unapplied rent in the First Amended Complaint filed on October 24, 2019. (See NYSCEF 197.) It is irrelevant that plaintiff did not specify the violation of GOL § 7-103 because plaintiff's intent to seek recovery of the Advance Rent is clear. Plaintiff filed a motion for partial summary judgment again demanding the Advance Rent. (NYSCEF 68, Notice of Motion 004, April 2, 2021.) Plaintiff's motion 004 thus constitutes yet another demand for the purpose of a conversion claim. Plaintiff then demanded the Advance Rent via letter emailed to Liberty, but it failed to respond or return the Advance Rent. (NYSCEF 344, February 12, 2021 Letter.) Plaintiff again demanded the Advance Rent in the SAC, expressly citing the violation of GOL § 7-103. (See NYSCEF 273 November 4, 2021 SAC.) Thus, plaintiff's conversion claim is timely. Liberty's woefully late offer to cure the breach is rejected and does not stop the clock.

Accordingly, it is

ORDERED that motion 014 for partial summary judgment is granted, and the Clerk of the Court is directed to enter judgment accordingly in favor of plaintiff Success Academy Charter Schools, Inc. and against Liberty Square Realty Corp. in the amount of \$2 million with interest from December 31, 2017, at the statutory rate of 9% to the date of the judgment as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the parties shall appear for a virtual conference on April 6, 2026 at 2:30 to address the remaining claims, set a deadline for motions in limine, if appropriate, or, if no motions in limine, set a trial date. Parties should review Part 48 Trial Procedures.



3/24/2026

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE