

**Beekman Partnership, L.P. v Capital Parking LLC**

2022 NY Slip Op 34409(U)

December 23, 2022

Supreme Court, New York County

Docket Number: Index No. 656549/2020

Judge: Debra A. James

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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. DEBRA A. JAMES**

**PART 59**

*Justice*

-----X

THE BEEKMAN PARTNERSHIP, L.P.,

Plaintiff,

- v -

CAPITAL PARKING LLC,

Defendant.

-----X

INDEX NO. 656549/2020

MOTION DATE 04/09/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31

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

ORDER

Upon the foregoing documents, it is

ORDERED that the motion of defendant for leave to serve an amended answer to interpose a counterclaim is DENIED; and it is further

ORDERED that the motion of plaintiff for summary judgment is granted to the extent that plaintiff is granted a partial summary judgment of liability against defendant on its first cause of action for breach of contract; and it is further

ORDERED that the issue of damages comprised of the outstanding monthly rent and additional rent consisting of reasonable attorneys' fees and legal expenses from December 2019 to date, plus interest at the statutory rate, incurred by defendant is

referred to a Special Referee to hear and determine pursuant to CPLR 4317(b); and it is further

ORDERED that the aforesaid assessment of damages hearing is hereby referred to the Special Referee Clerk for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh) at the "References" link ), shall assign this matter at the initial appearance to an available JHO/Special Referee to determine as specified above; and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR; and it is further

ORDERED that counsel shall immediately consult one another and counsel for plaintiff shall, within twenty (20) days from the date of this Order, submit to the Special Referee Clerk by e-mail (Room 119M, 646-386-3028 or [spref@nycourts.gov](mailto:spref@nycourts.gov)) an Information Sheet (accessible at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed with the hearing, on the date fixed by the Special Referee Clerk for the initial appearance in the Special Referees Part, subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue(s) specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly; and it is further

ORDERED that counsel shall file memoranda or other documents directed to the assigned JHO/Special Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and the Special Referees (available at the "References" link on the court's website) by filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules); and it is further

ORDERED and ADJUDGED that pursuant to CPLR 4319, the Clerk is directed to enter judgment in favor of plaintiff THE BEEKMAN PARTNERSHIP, LP and against defendant CAPITAL PARKING LLC in accordance with the report of the aforementioned Special Referee without any further application.

DECISION

This court agrees with plaintiff that defendant's proposed amended answer that interposes a counterclaim for a declaratory judgment lacks merit as Real Property Law § 235-e(d) is inapplicable to commercial tenancies. See 41 East 11<sup>th</sup> Street, LLC v WSIP Realty Corp, 66 Misc3d 834, 838 (NYC Civil Court, NY County, 2020).

Plaintiff has prima facie established its entitlement to a partial summary judgment of liability on its first cause of action for breach of lease and defendant raises no issues of fact as to its liability therefor, as defendant's affirmative defenses lack merit. See 558 Seventh Ave Corp v Times Square Photo Inc, 194 AD3d 561 (1<sup>st</sup> Dept 2021).

Plaintiff has not come forward with evidence sufficient to prima facie establish its entitlement to summary judgment on its second cause of action for an account stated, as plaintiff has set forth no admissible evidence that it presented the Arrears Report

dated February 9, 2021, to defendant. See American Express Centurion Bank v Cutler, 81 AD3d 761, 762-763 (2d Dept 2011).

*Debra A. James*

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12/23/2022

DATE

DEBRA A. JAMES, J.S.C.

CHECK ONE:

CASE DISPOSED  
 GRANTED  DENIED

NON-FINAL DISPOSITION  
 GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE