

864 Broadway Corp. v Ladizinski

2005 NY Slip Op 30569(U)

July 21, 2005

Supreme Court, New York County

Docket Number: 100437/05

Judge: Richard F. Braun

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. RICHARD F. BRAUN

PART 23

J.S.C.
Justice

864 BROADWAY CORP.

- v -

LADIZINSKI, ANNA

INDEX NO.

100437/05

MOTION DATE

6/9/05

MOTION SEQ. NO.

003

MOTION CAL. NO.

The following papers, numbered 1 to 3 were read on this motion to/for SUMMARY JUDGMENT
IN LIEU OF COMPLAINT

Notice of Motion/Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits

Replying Affidavits

PAPERS NUMBERED

1

2

3

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is granted to the extent of awarding plaintiff summary judgment against defendants in the amount of \$ 84,899.50, plus ^{reasonable attorney's fees and} costs, and it is further

ORDERED that the Clerk shall enter judgment accordingly, and it is further

ORDERED that defendants shall pay plaintiff a total of \$100 motion costs.

This constitutes the decision and order of this Court, see separate Opinions.

FILED

JUL 26 2005

NEW YORK
COUNTY CLERK'S OFFICE

ENTER

Dated: New York, New York, July 20, 2005

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 23**

-----X
864 BROADWAY CORP.,

Index No. 100437/05

Plaintiff,

OPINION

-against-

ANNA LADIZINSKI and EDWARD ZHUBRAK,

Defendants.

-----X

RICHARD F. BRAUN, J.:

This is an action on a guaranty. Plaintiff moves for summary judgment in lieu of complaint, pursuant to CPLR 3213, and an inquest for attorney's fees. Due to plaintiff's failure to appear for oral argument on the motion, it was denied by this court's April 14, 2005 decision and order. By stipulation, the default and the order were vacated, and the motion restored to this court's calendar.

Defendants guaranteed the tenant's performance under the subject lease with plaintiff. The tenant defaulted under the lease in the amount sought. Paragraph 1 (x) of the guaranty provides that plaintiff can collect reasonable attorneys' fees from defendants.

Defendant Edward Zhubrak has not shown any basis upon which to deny the motion as to him. In spite of her allegations, defendant Anna Ladizinski is conclusively bound by the guaranty (see *Arnav Indus., Inc. Retirement Trust v Brown, Raysman, Millstein, Felder & Steiner*, 96 NY2d 300, 304 [2001]; *Sterling Nat. Bank & Trust Co. of N.Y. v I.S.A. Merchandising Corp.*, 91 AD2d 571, 572 [1st Dept 1982]). The lease has not expired, and paragraph 31 thereof permits plaintiff to continue to retain the security deposit. Paragraph 4 (i) of the guaranty states that it shall not be

affected by plaintiff's holding a security deposit.

Therefore, by this court's separate July 20, 2005 decision and order, this court has awarded plaintiff partial summary judgment against defendants in the amount of \$84,899.50, reasonable attorney's fees to be assessed at an inquest, and costs. Pursuant to CPLR 8106 and 8202, plaintiff has been awarded a total of \$100 motion costs against defendants.

Dated: New York, New York
July 21, 2005



RICHARD F. BRAUN, J.S.C.

FILED
JUL 26 2005
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