

FC Beekman Assoc. LLC v Ameri

2014 NY Slip Op 30224(U)

January 22, 2014

Sup Ct, New York County

Docket Number: 152374/13

Judge: Anil C. Singh

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANIL C. SINGH
SUPREME COURT JUSTICE Justice

PART 61

Index Number : 152374/2013
FC BEEKMAN ASSOCIATES LLC
VS.
AMERI, ALLEN
SEQUENCE NUMBER : 001
SUMMARY JUDGMENT

INDEX NO.
MOTION DATE
MOTION SEQ. NO. 001

The following papers, numbered 1 to 3, were read on this motion to/for

Notice of Motion/Order to Show Cause — Affidavits — Exhibits No(s) 1
Answering Affidavits — Exhibits No(s) 2
Replying Affidavits No(s) 3

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed memorandum opinion.

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

DECIDED IN ACCORDANCE WITH
DECIDED IN ACCORDANCE WITH

Dated: 1/22/14

HON. ANIL C. SINGH, J.S.C.
SUPREME COURT JUSTICE

- 1. CHECK ONE: CASE DISPOSED, NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED, DENIED, GRANTED IN PART, OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER, SUBMIT ORDER, DO NOT POST, FIDUCIARY APPOINTMENT, REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

-----X
FC BEEKMAN ASSOCIATES LLC,

Plaintiff,

-against-

ALLEN AMERI,

Defendant.

-----X

DECISION AND
ORDER

Index No.
152374/13

HON. ANIL C. SINGH, J.:

Plaintiff/landlord moves pursuant to CPLR 3212 to strike defendant/former tenant's affirmative defenses and answer and for summary judgment, contending that defendant defaulted under the lease by vacating the premises prematurely. Defendant opposes the motion.

Plaintiff FC Beekman Associates LLC entered into a written residential lease agreement dated April 2, 2011, with defendant Allen Ameri for apartment 14D at 8 Spruce Street in Manhattan. The term of the lease was one (1) year beginning on June 1, 2011, and ending on May 31, 2012.

On August 5, 2011, defendant's employer informed defendant that he was being transferred from New York to Los Angeles, effective September 16, 2011.

Immediately after being informed of the relocation, defendant informed Jeff Cohen, plaintiff's managing agent, that he wanted to "break" his lease. Landlord gave

defendant two options. First, defendant was given permission to sublet the apartment. Second, he could pay a cancellation fee.

Defendant vacated the premises in September 2011. Efforts to secure a subtenant were unsuccessful, and the parties were unable to negotiate a mutually acceptable cancellation fee.

Landlord commenced the instant action by filing a summons and complaint on March 14, 2013. The first cause of action seeks damages for unpaid rent in the sum of \$23,641.50. The second cause of action seeks legal fees pursuant to paragraph 20(A)(5) of the lease agreement.

Defendant filed an answer asserting eleven affirmative defenses.

Landlord exhibits the sworn affidavit of Jeff Cohen, the managing agent. He contends that the landlord never agreed to release the defendant from the balance of the terms of the lease, either in writing or orally. Further, he asserts that the lease agreement prohibits an oral agreement to terminate the lease.

The Court finds that the sworn affidavit of Jeff Cohen is sufficient to make out a prima facie case in favor of plaintiff.

In opposition, defendant Allen Ameri asserts that before he signed the lease, one of plaintiff's agents promised that if defendant's employer required him to relocate, plaintiff would "work with" defendant to come to a "reasonable resolution." The agent refused, however, to put such a promise into the written lease agreement.

Instead, the standard form lease was presented to defendant on a “take it or leave it” basis. Defendant contends that he relied on the statements made by plaintiff’s agents in deciding to sign the lease. In addition, Mr. Ameri asserts that the lease does not list defendant’s age accurately; plaintiff has not produced supporting documentation and evidence of the date the apartment was rented to a new tenant; and the rent ledger is inaccurate and does not include a basis for certain fees included in the ledger, including electricity.

In a reply affidavit, Jeff Cohen contends that the landlord never told defendant that he could just “walk away” from his lease without any liability whatsoever.

Discussion

“In the absence of a surrender or an agreement to discharge the tenant’s liability, the lessee’s abandonment of the premises and repudiation of the lease constitute a breach of the lease for which an action for damages may be maintained, or the landlord may refuse to accept an abandonment and treat the lease as continuing, in which event the lessee remains liable for rent accruing” (74 N.Y.Jur.2d Landlord and Tenant section 113).

Paragraph 17 of the lease agreement states in part:

You default under the lease if ... you and other legal occupants of the apartment move out permanently before this lease ends.

(Motion, exhibit C, pp. 3-4, para. 17).

Paragraph 18 states in part:

If this lease is ended by owner because of your default, the following are the rights and obligations of you and owner:

A. You must pay your rent until the lease has ended....

...

C. Whether the apartment is re-rented or not, you must pay to the owner as damages:

1. The difference between the rent in this lease and the amount, if any, of the rents collected in any later lease or leases of the apartment for what would have been the remaining period of this lease; and
2. Owner's expenses for advertisements, broker's fees and the cost of putting the apartment in good condition for re-rental; and
3. Owner's expenses for attorney's fees.

(Motion, exhibit C, p. 4, para. 18).

Paragraph 20(A)(5) states that a tenant must reimburse landlord for

[a]ny legal fees and disbursements for legal actions or proceedings brought by owner against you because of a lease default by you....

(Motion, exhibit C, p. 4, para. 20(A)(5)).

Finally, the preamble to the lease states:

Once you and the owner sign this lease, you and owner will be presumed to have read it and understood it. You and owner admit that all agreements between you and owner have been written into this lease.

You understand that any agreements made before or after this lease was signed and not written into it will not be enforceable.

(Motion, exhibit C, p. 1)

It appearing to the Court that plaintiff is entitled to judgment on liability and that the only triable issues of fact arising on plaintiff's motion for summary judgment relate to the amount of damages to which plaintiff is entitled, it is

ORDERED that the motion is granted with regard to liability; and it is further

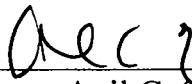
ORDERED that the issue of damages is referred to a Special Referee to hear and report; and it is further

ORDERED that that portion of plaintiff's action that seeks the recovery of attorneys' fees is severed and the issue of the amount of reasonable attorneys' fees plaintiff may recover against the defendant is referred to a Special Referee to hear and report; and it is further

ORDERED that counsel for plaintiff shall, within 30 days from the date of this order, serve a copy of this order with notice of entry, together with a completed Information Sheet,¹ upon the Special Referee Clerk in the Motion Support Office (Room 119M), who is directed to place this matter on the calendar of the Special Referee's Part for the earliest convenient date.

The foregoing constitutes the decision and order of the court.

Date: JAN 22, 14
New York, New York



Anil C. Singh
HON. ANIL C. SINGH
SUPREME COURT JUSTICE

¹Copies are available in Rm. 119M at 60 Centre Street and on the Court's website.