

Parklex Assoc. v HB Home NYC, LLC

2018 NY Slip Op 31250(U)

June 7, 2018

Supreme Court, New York County

Docket Number: 160178/2017

Judge: David B. Cohen

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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. DAVID BENJAMIN COHEN

PART 58

Justice

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PARKLEX ASSOCIATES,

INDEX NO. 160178/2017

Plaintiff,

MOTION DATE 2/6/2018

- v -

MOTION SEQ. NO. 001

HB HOME NYC, LLC, DAN BARSANTI

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31

were read on this application to/for Judgment - Summary.

Upon the foregoing documents, it is

Plaintiff's motion for summary judgment is granted and plaintiff's motion to dismiss the affirmative defenses pursuant to CPLR 3211(b) is also granted.

The following facts are undisputed. Plaintiff and HB Home entered into a lease. The payments of the lease were guaranteed by defendant Barsanti. HB surrendered the premises prior to the end of the lease on October 31, 2017. Defendants do not dispute the amount sought for base rent. Defendants argue that plaintiff has not established a *prima facie* case for the water bills and real estate taxes. Defendant does not specifically dispute that the amount sought is incorrect. Summary judgment is a drastic remedy that should not be granted where there exists a triable issue of fact (*Integrated Logistics Consultants v. Fidata Corp.*, 131 AD2d 338 [1st Dept 1987]; *Ratner*

v. Elovitz, 198 AD2d 184 [1st Dept 1993]). On a summary judgment motion, the court must view all evidence in a light most favorable to the non-moving party (*Rodriguez v. Parkchester South Condominium Inc.*, 178 AD2d 231 [1st Dept 1991]). The moving party must show that as a matter of law it is entitled to judgment [*Alvarez v. Prospect Hosp.*, 68 NY2d 320 324 [1986]). The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]). After the moving party has demonstrated its *prima facie* entitlement to summary judgment, the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring a trial (*Zuckerman v City of New York*, 49 NY2d 557 [1980]).

Plaintiff commenced this action against HB for breach of the lease and against Barsanti under the guarantee and has moved herein for summary judgment and to dismiss the affirmative defenses. Defendants argument that plaintiffs have failed to meet its required burden of proof is unpersuasive. Plaintiff has established through the submission of the exhibits to this motion, including but not limited to, the lease, rent ledger and the affidavit of Michael Shaughnessy, *prima facie* entitlement to summary judgment. Further, the Appellate Division recently held that a plaintiff seeking summary judgment succeeded in making “a *prima facie* showing for rent arrears accruing. . .by submitting the original lease. . .and a detailed statement documenting outstanding rent arrears” (*Dee Cee Assoc. LLC v 44 Beehan Corp.*, 148 AD3d 636, 641 [1st Dept 2017]). Here, plaintiff has provided the Court with both a copy of the original lease and a detailed statement documenting outstanding rent and the guarantee. Therefore, plaintiff has successfully made its requisite *prima facie* showing.

Thus, to prevail, defendants have the burden to demonstrate by admissible evidence the existence of a factual issue requiring a trial (*see Zuckerman*, 49 NY2d at 557). Defendants has failed to do so. Defendants have not submitted any evidence showing that they did not owe the rent at issue or that the water bill and real estate taxes were incorrectly calculated. Instead, defendant offered the affidavit of defendant Barsanti questioning the amount and questioning whether plaintiff has relet the premises. However, Barsanti's affirmation is completely devoid of any disputed facts. As found by the Court in *Dillenberger v Fifth Avenue Owners Corp.*, "...mere conclusory allegations regarding the existence of questions of fact are insufficient to defeat a motion for summary judgment" (155 AD2d 327 [1st Dept 1989]). Therefore, defendants have failed to meet their required burden demonstrating evidence of existing factual issues. Similarly, the fifth affirmative defense that HB surrendered the lease does not raise any disputed issue. The surrender did not relieve tenant of its lease obligation and did not relieve Barsanti of amounts owed prior to the surrender.

The laundry list of affirmative defenses are also dismissed as they are insufficient to raise a genuine issue of fact (*see Scholastic Inc. v Pace Plumbing Corp.*, 129 AD3d 75 [1st Dept 2015] ["[M]oreover, neither plaintiff nor the court ought to be required to sift through a boilerplate list of defenses, or 'be compelled to wade through a mass of verbiage and superfluous matter' (*Barsella v City of New York*, 82 AD2d 747, 748 [1st Dept 1981]), to divine which defenses might apply to the case."]).

Finally, plaintiff's motion for attorneys fees is granted to the extent of setting the matter down for a fees hearing in front of a special referee. Plaintiff's application to amend the amount sought against HB to account for further rent accrued through March 31, 2018 is granted. Accordingly, it is therefore

ORDERED that plaintiff's motion for summary judgement is granted; and it is further ORDERED that the affirmative defenses are dismissed; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff and against defendant HB Home NYC, LLC in the sum of \$86,403.05, for rent and additional rent due through March 31, 2018, and interest thereafter at the statutory rate, as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk; and it is further

ORDERED that that the Clerk is directed to enter judgment in favor of plaintiff and against defendant Barsanti in the sum of \$61,482.58, for rent and additional rent due through October 31, 217, and interest thereafter at the statutory rate, as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk; and it is further

ORDERED that that plaintiff's cause of action seeking attorney's fees is granted to the extent of setting down the issue for a hearing. A hearing is granted to determine the amount of fees to be awarded. Plaintiff shall cause the matter to be placed upon the calendar for such trial. Plaintiff shall, within 20 days from the date of this order, serve a copy of this order upon (counsel for) all parties hereto by regular mail and upon the Clerk of the General Clerk's Office (60 Centre Street, Room 119) and shall serve and file with said Clerk a note of issue and statement of readiness and shall pay the fee therefor, and said Clerk shall cause the matter to be placed upon the calendar for such trial.

This constitutes the decision and order of the Court.

6/7/2018
DATE


DAVID BENJAMIN COHEN, J.S.C.

**HON. DAVID B. COHEN
J.S.C.**

CHECK ONE:

- CASE DISPOSED
- GRANTED
- SETTLE ORDER
- DO NOT POST

DENIED

- NON-FINAL DISPOSITION
- GRANTED IN PART
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: