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| Marina Towers Assoc., L.P. v Yu |
| 2018 NY Slip Op 32958(U) |
| November 15, 2018 |
| Supreme Court, New York County |
| Docket Number: 650086/2014 |
| Judge: Gerald Lebovits |
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. GERALD LEOVITS PART IAS MOTION 7EFM

Justice

-----X INDEX NO. 650086/2014

MARINA TOWERS ASSOCIATES, L.P.

MOTION SEQ. NO. 002

Plaintiff,

- v -

EDWARD SANCHIEN YU,

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 91, 92, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124

were read on this motion to/for

DISCOVERY

Kirschenbaum & Phillips, P.C. (Ira R. Sitzer of counsel), for plaintiff Marina Towers Associates, L.P.

Catherine Yu of counsel, for defendant Edward Shanchien Yu.

Gerald Lebovits, J.

Defendant moves for an order under CPLR 3124 and 3126 to (a) compel plaintiff to serve full and verified responses, without objection, to interrogatories Nos. 1, 3-6, 9-16, 18-22, 24-40 and 45-63; (b) compel plaintiff to produce all responsive documents, without objection, to the 2017 Document Requests Nos. 2, 9-12, 14-16 and 18-22; (c) extend defendant's receipt of plaintiff's full and verified responses to Interrogatories and 2017 Document Requests; and (d) sanction plaintiff by: 1) striking plaintiff's 2017 complaint and reply to counterclaim; or (2) in the alternative, issuing a conditional order precluding plaintiff from entering into evidence any materials responsive to Interrogatories and 2017 Document Requests if plaintiff fails to produce complete and verified responses by the deadline this court sets.

Plaintiff cross-moves for summary judgment to enforce the terms of the Lease and Guaranty to require defendant to pay the full amount of the money judgments as well as additional sums alleged, due and owing to plaintiff under the Lease and Guaranty.

Plaintiff's summary-judgment motion is granted.

Given that summary judgment is granted for plaintiff, defendant's motion to compel and sanction is denied, as academic.

Background

On or about August 2, 1995, plaintiff's predecessor's interest, Hudson Towers Housing Co. (Hudson Towers or "Original Landlord") entered into a written lease agreement with defendant's predecessor-in-interest, House of Sanaa, Inc. ("Original Tenant"), for the premises on the ground floor and basement located at 301 South End Avenue in the building known as 223 Gateway Plaza, New York, New York ("Premises"), for a term of 15 years.

The Original Landlord entered into two lease amendments with the Original Tenant.

On or about April 6, 2004, the lease was assigned to and assumed by Joman Restaurant Inc. ("Joman"). Hudson Towers requested defendant to execute a Good Guy Guaranty ("Guaranty"). Defendant signed and duly executed the guaranty on April 6, 2004.

On or about April 27, 2005, Hudson Towers and plaintiff Marina Towers Associates, L.P., entered into an assignment and assumption agreement for Gateway Plaza, POD III, 345-395 South End Avenue, Battery Park City, New York, New York. The Premises located at 301 South End Avenue were and remain a sub-unit designated for commercial use located within the premises described in plaintiff's assignment and assumption as Gateway Plaza, POD III, 345-395 South End Avenue, Battery Park City, New York, New York.

Around March 2011, Joman defaulted in its monetary obligation due to plaintiff under the lease and two lease amendments.

Plaintiff brought an action against Joman in the New York City Civil Court, New York County, that resulted in a money judgment for \$113,182.80 and a second money judgment for \$73,736.35.

Plaintiff's Cross-Motion for Summary Judgment

The issue here is whether plaintiff may enforce the written guaranty defendant signed. Defendant claims that the guaranty is not enforceable because the guaranty was not assigned to plaintiff but to its predecessor, Hudson Towers. Based on defendant's claim, defendant moves to compel and sanction plaintiff. Plaintiff cross-moves for summary judgment under four causes of action for balance due with interest: \$113,182.80 with interest from August 30, 2013; \$73,736.35 with interest from October 25, 2013; and \$19,100.75 with interest from April 23, 2013, with not less than \$61,805 in attorney fees, plus costs and disbursements.

Summary judgment is a drastic remedy that should be used only when there is no doubt about the absence of triable issues. (*Andre v Pomeroy*, 35 NY2d 361, 364 [1974].) For summary judgment, the opposing party must show facts sufficient to require a trial and "must make his showing by producing evidentiary proof in admissible form." (*Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065, 1067, 1068 [1979].) The proponent of summary judgment must make a prima facie showing of entitlement to judgment as a matter

of law, providing sufficient evidence to establish the absence of any material issues of fact. (*Jacobsen v New York City Health & Hospitals Corp.*, 22 NY3d 824 [2014].)

An assignment is a transfer of the tenant's entire interest in its premises for the entire time remaining on the lease; the assignor does not retain a reversionary interest. (*Banque Nationale de Paris v 1567 Broadway Ownership Assoc.*, 202 AD 2d 251, 252 [1st Dept 1994].) An assignment of a lease is defined as a transaction by which the tenant transfers his entire interest in the demised premises for the unexpired term of the original lease. (*Howard Stores Corp v Robison Rayon Co.*, 315 NYS2d 720 (App.Term.1st Dept. 1970).)

In this case, the Original Landlord, Hudson Towers, has assigned the lease and all the rights to its successor, Marina Towers, without reservation. Hudson Towers agreed: "Assignor hereby assigns, transfers, releases and sets over unto Assignee the estate of Assignor as tenant under the POD III Lease, together with all of Assignor's right, title and interest in, to and under the POD III Lease." (Assignment and Assumption Agreement by and between Hudson Towers and Marina Towers). "[T]he best evidence of what parties to a written agreement intend is what they say in their writing." (*Slamow v Del Col*, 79 NY2d 1016, 1018 [1992].) Here, "all" means everything that relates to the assigned properties, there is no need for plaintiff to state the detail of the properties. Since an assignment transfers all rights and assets used by the assignor in the business, the lease and the guaranty are included. The assignee is empowered to use all the property of the assignor, which means there is an absolute transfer of the lessee's entire interest in the property. Further, the guaranty was made for the execution of the lease and it is within the assignor's interests. Hence, plaintiff neither needs to notify defendant of the assignment nor show extra evidence for the validity of the guaranty, and plaintiff has the legal standing to enforce the guaranty.

First and Second Causes of Action

The New York City Civil Court, New York County, under index LT- 90510/10 has already granted plaintiff's motion for summary judgment against Joman for rent, use and occupancy and additional rent due owing for the Premises. The judgment is enforceable against defendant. Thus, plaintiff's motion for partial summary judgment on the first two causes of action is granted in the amounts claimed.

Third Cause of Action

As for the third cause of action, plaintiff allegedly incurred an additional \$19,100.75 in expenses as a result of Joman's default under the lease. But plaintiff does not explain to the court why these expenses were necessary or why the lease compels this court to find defendant responsible for that. Plaintiff's cross-motion for summary judgment on the third cause of action is denied.

Fourth Cause of Action

Plaintiff seeks attorney fees for the fourth cause of action. The entire issue fees will be resolved when all the cause of actions are resolved.

Accordingly it is,

ORDERED that defendant's motion is denied and plaintiff's cross-motion for summary judgment is granted to the extent of granting the first and second causes of action, and plaintiff shall have a judgment for \$113,182.80 with interest from August 30, 2013, and \$73,736.35 with interest from October 25, 2013, plus costs and disbursements, and the cross-motion is otherwise denied; and plaintiff shall serve a copy of this order with notice of entry on defendant and the County Clerk's Office, which is directed to enter judgment accordingly; and it is further

ORDERED that the parties must appear for a compliance conference on February 20, 2019, at 10:00 a.m., in Part 7, room 345, at 60 Centre Street.

Dated: November 15, 2018

J.S.C.



11/15/2018
DATE

GERALD L. BOBOVITS, J.S.C.

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| CHECK ONE: | <input type="checkbox"/> | CASE DISPOSED | <input checked="" type="checkbox"/> | NON-FINAL DISPOSITION | |
| | <input type="checkbox"/> | GRANTED | <input type="checkbox"/> | GRANTED IN PART | <input checked="" type="checkbox"/> |
| | | | <input type="checkbox"/> | DENIED | OTHER |
| APPLICATION: | <input type="checkbox"/> | SETTLE ORDER | <input type="checkbox"/> | SUBMIT ORDER | |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/> | FIDUCIARY APPOINTMENT | <input type="checkbox"/> |
| | | | | | REFERENCE |