

511 E. Both St., LLC v Segal
2018 NY Slip Op 33058(U)
November 30, 2018
Supreme Court, New York County
Docket Number: 160589/2017
Judge: Joel M. Cohen
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT:	<u>HON. JOEL M. COHEN</u>	PART	IAS MOTION 45
		<i>Justice</i>	
		-----X	
		INDEX NO.	<u>160589/2017</u>
511 EAST 80TH STREET, LLC		MOTION DATE	<u>10/03/2018</u>
	Plaintiff,		
		MOTION SEQ. NO.	<u>001</u>
	- V -		
KAREN SEGAL,			
	Defendant.		DECISION AND ORDER

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24

were read on this motion to/for STRIKE ANSWER/SUMMARY JUDGMENT

Upon the foregoing documents:

Plaintiff 511 East 80th Street, LLC (“511 East”) seeks an Order striking Defendant’s Answer as lacking in merit pursuant to CPLR 3211(b). Plaintiff also seeks Summary Judgment and an award of \$19,258.00, plus interest, for unpaid rent as well as reasonable legal fees incurred. For the following reasons, Plaintiff’s motions are Denied.

511 East entered into a lease with tenant Lisa Rosenstein (“Rosenstein”) which was effective from August 1, 2015 to July 31, 2017 (“Lease”). Defendant Karen Segal (“Segal”) entered into a guaranty agreement with 511 East guaranteeing the full performance of the Lease by Rosenstein, including payment of rent and other money charges. *See* NYSCEF 10.

As this matter pertains to the outstanding rent allegedly due and owing, a brief recitation of the rental payment history is warranted. The monthly rent for Rosenstein’s apartment, unit 11E, is \$4,600/month. In late 2016 Rosenstein began to fall behind on payments and by December 2016 owed approximately \$14,100.00 (*see* NYSCEF 13). Based on this unpaid

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balance, 511 East commenced a summary nonpayment proceeding which was settled pursuant to an April 24, 2017 Stipulation (*see* NYSCEF 11). Under the Stipulation, the summary proceeding was converted to a holdover proceeding and Rosenstein was to move out of her apartment by June 30, 2017. *Id.* Eviction was stayed pending receipt of May and June 2017 rent at the rate of \$4,300 per month. Rosenstein was directed to make 24 installments of \$1,146.00 commencing July 2017, totaling \$27,500.00, in full satisfaction of the debt. *Id.*

Rosenstein failed to make the May 2017 payment and was evicted. Tenant was temporarily restored to possession pursuant to a post-eviction stipulation dated May 31, 2017, whereby she was allowed to remain in the apartment until June 30, 2017, if she paid \$10,100 to 511 East. Rosenstein paid that amount and vacated the premises on June 30, 2017. Pursuant to the May 31, 2017 stipulation, all other terms of the April 24, 2017 stipulation remained in effect. (NYSCEF 12).

According to 511 East's payment ledger, since entering the April 24, 2017 stipulation Rosenstein remitted the following payments: \$10,111.00 on June 2, 2017; \$1,146.00 on July 25, 2017; \$1,150.00 on August 17, 2017; \$500 on September 11, 2017; and \$1,146.00 on February 8, 2018 (*see* NYSCEF 13). By Order dated May 8, 2018, the Civil Court, under Index No 84304/2016, issued a Decision and Order granting 511 East a money judgment over Rosenstein in the amount of \$24,704.00 (*see* NYSCEF 14). No payments have been made by Rosenstein since the entry of the May 8th Order.

Despite having an Order from the Civil Court in the amount of \$24,704.00, 511 East now claims there were calculation errors and misstatements contained in Affidavits submitted to the Civil Court to obtain its May 2018 Judgment. (*Fredmer Affid.*, ¶¶ 13, 14). Mr. Fredmer, 511 East's Comptroller, explains that the previous affidavit offered to the Court "failed to take into

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account the application of the \$8,600.00 security deposit and a \$500.00 payment made September 11, 2018 {sic} and the addition of July 2018 rent {sic}¹. The judgment also did not reflect the final payment made by [Rosenstein] of \$1,146.00 of February 8, 2018." Based on these discrepancies, 511 East now purports to seek payment of \$19,258.00 as well as legal fees incurred in attempting to collect this rent.

Segal disputes these figures. She notes (via an affidavit from Rosenstein) that the attempted addition of the July 2017 rent has no legal basis as she vacated the premises on June 30, 2017. She also questions the accuracy of 511 East's ledger. While credit for \$500 was given for a September 11, 2017 payment according to 511 East's ledger, Rosenstein avers that she actually paid \$1,146.00, claiming \$646 (paid with a bank check) is not accounted for. (*Rosenstein Affid.*, ¶6.) Moreover, the tenant ledger offered by 511 East in support of the instant motion indicates only \$14,333.00 is due and owing as of July 2018. (NYSCEF 13; *see also Fredmer Affid.*, ¶4).

Given the admitted accounting inconsistencies on the part of 511 East, and the other factual disputes noted above, the Court finds there are sufficient issues of fact as to how much money is owed to Plaintiff to warrant denial of Summary Judgment.² *O'Brien v Port Auth. of New York and New Jersey*, 29 N.Y.3d 27, 37 (2017) (summary judgment is a drastic remedy reserved for those cases where there is no doubt as to the existence of material and triable issues of fact).

¹ The Court notes, based on the ledger, it appears that the year should be 2017, not 2018.

² The Court declines to strike Defendant's Answer as there have been no arguments advanced by Plaintiff in support of this relief sought. Moreover, the Court finds as there is an issue of fact as to how much money Defendant remit, Defendant's answer claiming it made various payments is not without merit (see NYSCEF 3).

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Therefore, it is:

ORDERED Plaintiff's motion to strike the Answer and for Summary Judgment is denied; it is further

ORDERED Defendant is to serve this Order with Notice of Entry within 5 days of receipt and it is further

ORDERED all parties are to appear for a Preliminary Conference on January 15, 2019 at 10:00 a.m. in room 412.

HON. JOEL M. COHEN

J.S.C.



JOEL M. COHEN, J.S.C.

11/30/2018
DATE

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