

CIT Fin., LLC v Real Time Reporting, Inc.
2019 NY Slip Op 32047(U)
July 8, 2019
Supreme Court, New York County
Docket Number: 654791/2016
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM

Justice

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INDEX NO. 654791/2016

CIT FINANCE, LLC,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 001

- v -

REALTIME REPORTING, INC.,

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23

were read on this motion to/for JUDGMENT - SUMMARY.

In this action for breach of an equipment lease agreement, CIT Finance, LLC (CIT) moves for summary judgment pursuant to CPLR § 3212 against Realtime Reporting, Inc. (Realtime). For the reasons set forth below, CIT's motion is granted as to liability, and the matter is referred to a Special Referee for a determination of damages.

Pursuant to a Lease Agreement with Supplier Maintenance (the Lease Agreement), dated February 21, 2014, between CIT and Realtime, CIT agreed to lease one Sharpe Mxm623N copier and one Sharp Mxn465n copier to Realtime for a term of sixty-three months with lease payments of \$746 per month (NYSCEF Doc. No. 2, Lease Agreement, at 1). Realtime further agreed to pay taxes and maintain insurance on the leased equipment (id., ¶¶ 4, 6). Upon default by Realtime, the Lease Agreement authorizes CIT to accelerate the entire outstanding balance, including all past-due lease payments and all future payments discounted at four percent, together with the present value of CIT's residual interest in the leased equipment, also

discounted at four percent, and all other amounts due under the Lease Agreement (*id.*, ¶ 9). The Lease Agreement also provides that, in the event of a dispute arising from the Lease Agreement, the prevailing party is entitled to the reasonable costs of enforcing or defending its rights, including costs, expenses, and attorneys' fees (*id.*).

Realtime defaulted on the Lease Agreement on or about May 22, 2015 by failing to make payments when due (Complaint, ¶ 9). In a demand letter dated August 3, 2016, CIT demanded payment of the accelerated balance of \$32,034.08 from Realtime (Complaint, ¶ 12; NYSCEF Doc. No. 4). The demand letter further advised Realtime that CIT would take necessary action if payment was not received within ten days from the date of the letter, including commencing a legal action to recover all amounts owed, with interest and attorneys' fees, and to obtain possession of the leased equipment (NYSCEF Doc. No. 4). Realtime failed to remit payment or return the equipment. CIT commenced this action by filing a summons and complaint asserting causes of action for breach of contract, replevin, and unjust enrichment (Complaint, ¶¶ 5-19). Realtime filed an answer with affirmative defenses. CIT now moves for summary judgment pursuant to CPLR § 3212.

Summary judgment will be granted only when the movant presents evidentiary proof in admissible form that there are no triable issues of material fact and that there is either no defense to the cause of action or that the cause of action or defense has no merit (CPLR § 3212 [b]; (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986])). The proponent of a summary judgment motion carries the initial burden to make a *prima facie* showing of entitlement to judgment as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d at 324). Failure to make such a *prima facie*

showing requires denial of the motion (*id.*, citing *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). Once this showing is made, the burden shifts to the opposing party to produce evidence in admissible form sufficient to establish the existence of a triable issue of fact (*Alvarez*, 68 NY2d at 324).

To establish entitlement to summary judgment in a cause of action alleging breach of an equipment lease, a plaintiff must demonstrate the existence of an equipment lease agreement and proof of non-payment (*AGFA Photo USA Corp. v Chromazone, Inc.*, 82 AD3d 402, 403 [1st Dept 2011]). A demand notice may serve as proof of non-payment (*id.*). Here, CIT has submitted proof of the Lease Agreement (NYSCEF Doc. No. 2), and proof of nonpayment in the form of its demand letter (NYSCEF Doc. No. 4). This showing shifts the burden to Realtime to come forward with evidentiary proof in admissible form sufficient to raise a triable issue of fact. Realtime argues that (i) there is a service charge for equipment maintenance built into the monthly lease payments that Realtime should not be required to pay (ii) and the monthly payment amounts used by CIT in its calculation of the accelerated balance is not the monthly payment amount set forth in the Lease Agreement.

As to the service charges, there is an issue of fact as to whether Realtime should be required to incur such charges with respect to the accelerated future payments. As for the monthly payment amounts, CIT uses the monthly payment amount of \$521 per month, whereas the Lease Agreement provides for monthly payments of \$746 per month. This discrepancy is not explained by CIT in its complaint or in its moving papers. The service charge and monthly payment amounts are issues of fact regarding the amount of damages to which CIT is entitled.

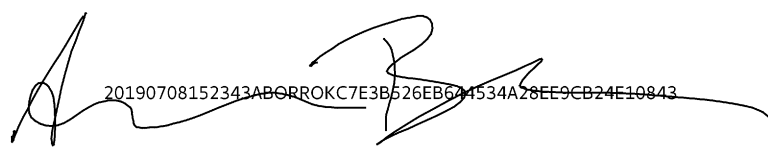
Therefore, CIT's motion for summary judgment is granted on the issue of liability, and the action is severed for a computation of damages.

Accordingly, it is

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

ORDERED that, to the extent that Realtime has not returned the leased equipment, CIT is awarded possession of the leased equipment and Realtime is directed to turn over possession of the leased equipment to CIT or its agent within 60 days of the date of this order; and it is further

ORDERED that the plaintiff shall file note of issue on before July 18, 2019.



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7/8/2019
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> GRANTED IN PART
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"/> DENIED	<input type="checkbox"/> OTHER
		<input type="checkbox"/> REFERENCE