

**Advance Mag. Publs. Inc. v Corporate Suites 825
LLC**

2020 NY Slip Op 34043(U)

December 4, 2020

Supreme Court, New York County

Docket Number: 651281/2018

Judge: Laurence L. Love

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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. LAURENCE L. LOVE PART IAS MOTION 63M

Justice

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ADVANCE MAGAZINE PUBLISHERS INC.,

Plaintiff,

INDEX NO. 651281/2018

MOTION DATE 10/21/2020

MOTION SEQ. NO. 001

- v -

CORPORATE SUITES 825 LLC, CORPORATE SUITES,
LLC, HAYIM GRANT

Defendants.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents,

The following read on plaintiff landlord's motion for summary judgment, CPLR 3212, for unpaid rent of approximately \$2,708,300.89 at 825 Third Avenue a/k/a 201 East 50th Street, New York, New York ("premises") against Corporate Suites 825 LLC ("tenant"), Corporate Suites LLC ("guarantor"), and Hayim Grant. Defendants cross-move to dismiss the complaint.

The complaint was filed on March 16, 2018 with causes of action for 1) breach of guaranty against guarantor; 2) use and occupancy against guarantor; 3) tortious interference with contract; 4) breach of contract; 5) fraud; and 6) attorney's fees against tenant and guarantor; and attorney's fees against guarantor. An answer was filed on April 18, 2018.

CPLR 3212(b) provides, in pertinent part, that a motion for summary judgment shall be granted upon all papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party.

To grant summary judgment, it must clearly appear that no material and triable issue of fact is presented (see *Glick & Dolleck Inc v Tri-Pac Export Corp*, 22 NY2d 439, 441 [1968]). The proponent of a motion for summary judgment carries the initial burden of presenting sufficient evidence to demonstrate as a matter of law the absence of a material issue of fact (see *Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]).

Plaintiff submits the affidavit of David Gifford, Vice President of Advance Magazine Publishers Inc. David Gifford affirms, “[i]t is undisputed that Tenant and Guarantor have breached the Order (defined below) and the Guaranty (defined below), by *inter alia*, failing to pay rent and/or use and occupancy due hereunder and Landlord has damages in the sum of \$2,708,300.89, plus legal fees and interest.”

Tenant possessed the entire second floor of the premises pursuant to a commercial sublease made between Robert Bennis, Senior Vice President of Advance Magazine Publishers Inc. and Hayim Grant, managing member of Corporate Suites 825 LLC.

The lease began in August 2006 with rent at \$67,354 per month for years 1 – 5, \$73,768.67 per month for years 6 – 9, and \$80,183.33 per month for years 10 until expiration. Tenant was also required to pay additional rent and real estate taxes. Tenant defaulted on or about August 11, 2016, and pursuant to a notice of termination, dated August 26, 2016, the lease was terminated as of September 8, 2016 and tenant held over in possession of the premises after the termination of the lease and failed to pay holdover rent.

Landlord commenced a summary holdover proceeding on November 14, 2016 in the Civil Court of New York, *Advance Magazien Publishers Inc v Corproate Suties 825 LLC, et al*, L&T Index No: 81813/16. The holdover proceeding was settled by a “so-ordered” stipulation

dated November 22, 2016 where guarantor guaranteed to pay landlord \$263,230. Tenant breached the order by failing to pay rent per an affidavit of default, in the sum of \$695,705.77.

Landlord submitted an affidavit of default to the marshal to evict, however guarantor and Hayim Grant interposed an OSC to stay the eviction on February 14, 2018. The Civil Court decided on February 26, 2018 that guarantor breached the agreement, that “a certain amount of ‘gamesmanship’ under the circumstances herein by filing the ex parte OSC in contravention of the spirit and terms of the stipulation governing the filing of such application to the court,” and on March 13, 2018 landlord successfully regained possession of the premises.

“Once the proponent has met its burden, the opponent must now produce competent evidence in admissible form to establish the existence of a triable issue of fact.” *Zuckerman v City of New York*, 49 NY2d 557 (1980).

Defendant cross moves to dismiss plaintiff’s complaint and submits the affidavit of Hayim Grant, named defendant, guarantor, and managing member of Corporate Suites 825 LLC, and Corporate Suites LLC. Hayim Grant affirms, “[s]ince before entering into the Lease in August 2006, Plaintiff knew that Corporate Suites had been in business in New York City for years and managed various office business centers licensed to various small businesses, even startups. Corporate Suites would locate floors in buildings throughout New York City, lease them under a separate entity, subdivide the floor(s) into numerous offices ranging in various sizes. The lease for the premises was ultimately entered into between 825 and Plaintiff on or about August 28, 2006. After approximately ten (10) years into the Lease, and three (3) years before it was scheduled to expire pursuant to its terms, to wit, April 29, 2019, Plaintiff decided to draw down upon 825’s original Security Deposit in the sum of \$336,770 and apply it to rental arrears.” The lease was terminated effective September 8, 2016. “Plaintiff and 825 entered into

a Stipulation of Settlement filed with the Court on November 22, 2016 ... under L&T Index Number 81813/2016 before the Civil Court of New York, County of New York (“Holdover Proceeding”).

“On or about February 8, 2018 the Marshall then apparently issued a Notice of Eviction scheduling an eviction for February 20, 2018. The Notice of Eviction threatened the eviction of not only 825, but also the Licensees. The Civil Court issued a Decision and Order on the Order to Show Cause six days later, February 26, 2018 denying Corporate Suites application.”

Hayim Grant disputes the amount owed, “[b]y its own invoice through and including February 2018 rent and additional rent that amount cannot be greater than \$693,108.64.”

Plaintiff’s complaint states, “[o]n the first cause of action, an amount to be determined by the Court but in no event less than \$263,230, plus applicable interest.” The second through fifth causes of action have “an amount to be determined by the Court,” and the sixth and seventh causes of action have “an amount ... in no event less than \$10,000.”

Plaintiff submits a rent ledger from November 2017 to April 2019 with a sum total of \$1,745,990.93 (see NYSCEF Doc. No. 32).

On summary judgment, facts must be viewed in the light most favorable to the non-moving party (see *Vega v Restani Constr Corp*, 18 NY3d 499, 503 [2012]). Summary judgment should not be granted where there is any doubt as to the existence of a factual issue or where the existence of a factual issue is arguable (see *Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 315 [2004]).

Plaintiff’s motion for summary judgment only comes attached with the affidavit of David Gifford. This affidavit affirms rent due for the various time periods of the lease but does not give an accounting of how the amount of \$2,708,300.89 became due and owing. Plaintiff

submits a real estate tax bill, electric bill, porter wages, and tenant's rent ledger, but this Court cannot determine whether certain amounts of rent were paid with the security deposit or not.

ORDERED that plaintiff's motion for summary judgment is DENIED; and it is further

ORDERED that defendant's cross-motion to dismiss is DENIED.

12/4/2020

DATE

LAURENCE L. LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE