40 X Owner LLC v Masi
2021 NY Slip Op 30041(U)
January 7, 2021
Supreme Court, New York County
Docket Number: 156181/2020
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **IAS MOTION 14**

Justice

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INDEX NO. 156181/2020

40 X OWNER LLC

MOTION DATE 01/05/2021

Plaintiff,

MOTION SEQ. NO. 001

- v -

JANI MASI,

DECISION + ORDER ON MOTION

Defendant.

---X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25

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

The motion for a default judgment is granted and the cross-motion by defendant to dismiss or for a traverse hearing is denied.

Background

Plaintiff moves for a default judgment against defendant, the guarantor of a lease for office space in a building owned by plaintiff. It argues that defendant owes at least $237,546.27 in outstanding rent.

In opposition and in support of its cross-motion to dismiss (or for a traverse hearing), defendant claims that she was not properly served with the summons and complaint and that a recently-passed Administrative Code provision bars plaintiff's recovery against a guarantor where Covid-19 caused a tenant to default.

In reply, plaintiff asserts that service was proper and that the relevant Administrative Code section is inapplicable because it does not apply to office space.

Service

The affidavit of service contends that defendant was served via a person of suitable age and discretion at the leased premises and later mailed to that address (NYSCEF Doc. No. 2). In fact, the process server explains that the co-worker who was served with the papers promised to give the papers to defendant but acknowledged that defendant only occasionally went into the office because of the ongoing pandemic (*id.*). Notably, the co-worker did not deny that she was a co-worker or that defendant no longer worked there.

Although defendant claims she never got the papers and complains that the papers were not served at the address in the good guy guarantee, that does not justify dismissing the case or holding a traverse hearing. Plaintiff was entitled to serve defendant pursuant to the CPLR and it established its prima facie burden that it complied with its obligation. It may be that using the address in the good guy guarantee would have been more convenient for defendant but it does not mean this Court can overlook service that was effectuated pursuant to the CPLR.

Administrative Code Section

The relevant provision provides that:

> Personal liability provisions in commercial leases.
>
> A provision in a commercial lease or other rental agreement involving real property located within the city, or relating to such a lease or other rental agreement, that provides for one or more natural persons who are not the tenant under such agreement to become, upon the occurrence of a default or other event, wholly or partially personally liable for payment of rent, utility expenses or taxes owed by the tenant under such agreement, or fees and charges relating to routine building maintenance owed by the tenant under such agreement, shall not be enforceable against such natural persons if the conditions of paragraph 1 and 2 are satisfied:
>
> 1. The tenant satisfies the conditions of subparagraph (a), (b) or (c):
>
> (a) The tenant was required to cease serving patrons food or beverage for on-premises consumption or to cease operation under executive order number 202.3 issued by the governor on March 16, 2020;
> (b) The tenant was a non-essential retail establishment subject to in-person limitations under guidance issued by the New York state department of economic

development pursuant to executive order number 202.6 issued by the governor on March 18, 2020; or

(c) The tenant was required to close to members of the public under executive order number 202.7 issued by the governor on March 19, 2020.

2. The default or other event causing such natural persons to become wholly or partially personally liable for such obligation occurred between March 7, 2020 and March 31, 2021, inclusive.

(Administrative Code of City of NY § 22-1005).

The Court agrees with plaintiff's interpretation of the code—that the above provision does not apply in this case because this lease involved office space. It did not relate to "a non-essential retail establishment," a restaurant, or to a company that was required to close to members of the public (such as gyms). There is no basis to find that this Administrative Code provision applies to a tenant that leased office space and simply stopped paying rent, even if the downturn in business was due to Covid-19. Clearly, the intention of this provision was to help guarantors of leases for restaurants and retail stores that were forced to close and later limit occupancy due to the pandemic.

The City Council determined that it wanted to provide relief for guarantors of stores and restaurants that were temporarily closed due to pandemic-related restrictions. The Council wanted to avoid having business owners (who are often guarantors in commercial leases) close up shop to minimize their personal exposure. The Council clearly chose to try to protect the businesses that serve the local community – stores, restaurants, gyms – so that when the restrictions are lifted, the stores and restaurants would (hopefully) reopen and some semblance of community would return. The Council obviously wanted to avoid a situation where owners/guarantors, to protect their personal assets, had to turn in the keys and walk away from

their restaurant or store; if that happened, the neighborhoods would almost certainly be ghost towns with closed storefronts everywhere long after restrictions are lifted.

However, for an office space in a building, the tenant can vacate the premises, minimize the guarantor's exposure and take other office space if and when it desires. And while it undoubtedly has an effect on the community, it is not the type of establishment that the City Council decided to protect. The City Council specifically chose to provide relief to certain businesses that make up a neighborhood and have direct and frequent interactions with customers. And the Court declines to expand the reach of this provision to apply to every type of commercial lease.

The Court finds that an inquest is required to determine the amount due. Although plaintiff asks for a specific amount due, it also asks for an inquest to "determine the base and additional rent that has and will continue to accrue as well as costs, including attorneys' fees" (NYSCEF Doc. No. 23 at 7). The Court can only enter one judgment in a case, so an inquest is appropriate to determine the full amount due.

Accordingly, it is hereby

ORDERED that the motion by plaintiff for a default judgment is granted as to liability and the plaintiff is directed to file a note of issue for an inquest on or before January 27, 2021; and it is further

ORDERED that the cross-motion by defendant to dismiss is denied.

1/7/2021
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:	[ ]	**CASE DISPOSED**		[X]	**NON-FINAL DISPOSITION**	
	[ ]	**GRANTED**	[ ] **DENIED**	[X]	**GRANTED IN PART**	[ ] **OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**	
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ] **REFERENCE**