SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. MELISSA A. CRANE** **PART** 60M

Justice

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ADLER HOLDINGS II, LLC,

INDEX NO. 651639/2020

Plaintiff,

- v -

DECISION AFTER TRIAL

JILL STUART INTERNATIONAL, LLC,RONALD CURITS,

Defendant.

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This case concerns a commercial lease involving plaintiff Adler Holdings II, LLC ("Adler" or "Landlord") and defendants Jill Stuart International, LLC ("Jill Stuart" or "Tenant") Ronald Curtis A/K/A Ron Curtis ("Ron" or "Guarantor") (together, the "Defendants").

Adler is the net-lessee and landlord of the building located at 550 Seventh Avenue, New York, New York 10018 (the "Building"). Jill Stuart was a tenant that occupied the entire 24th floor, and the Penthouse Suite located on the 25th floor above (the "Premises"), pursuant to a written lease, dated January 13, 1999, between Adler Realty Company 550 [Adler's predecessor] as landlord and Jill Stuart International, Ltd. [Jill Stuart's predecessor] as tenant (plaintiff's exhibit 1). Ron, Jill Stuart's president, guaranteed the lease pursuant to a January 13, 1999 dated limited guaranty (the "Guaranty") (Doc 65 [Guaranty]; plaintiff's exhibit 2).

Procedural History

Adler commenced this case against Jill Stuart and Ron on March 3, 2020. Adler asserted claims for breach of the lease and Guaranty agreements. Adler sought judgment against Jill Stuart, as tenant, and Mr. Curtis, as Guarantor, jointly and severally: (1) on the first cause of action for $203,183.71; (2) on the second cause of action, for all base rent becoming due and owing over the

balance of the lease's term; and (3) on the third cause of action, for expenses and attorneys' fees incurred in connection with this case (Doc 1 [Summons & Complaint]). initially, neither of the defendants answered the complaint.

In Motion Sequence No. 01 Adler moved, pursuant to CPLR 3215, for leave to enter a default judgment against Jill Stuart and Ron in the amount of $447,474.72, and for an inquest on the issue of its attorneys' fees (Doc 4 [Notice of Motion MS 01]). Motion Seq. No. 01 was unopposed. On January 27, 2021, the court granted the motion in part (Doc 19 [1/27/19 Decision]), and Adler entered a judgment against defendants, jointly and severally, in the amount of $447,474.72 plus interest (Doc 22 [2/9/21 judgment]).

In Motion Sequence No. 02, Ron moved, pursuant to CPLR 5015(4), to: (a) vacate the default judgment entered against him on February 9, 2021; (b) dismiss the complaint as against him; (c) stay enforcement of the judgment entered against him pending a decision on the motion; (d) direct Adler to return to any money or property that was taken from him if the judgment is vacated; and (e) vacate any account restraints, property executions, levies, and subpoenas to enforce the judgment against Ron (Doc 28 [Order to Show Cause MS 02]).

On August 11, 2022, the motion was resolved on the record. Adler agreed to vacate Ron's default, and Ron agreed to accept service (Doc 49 [8/11/22 Decision]). The court issued an order that: vacated the decision for Motion 1 to the extent that the court granted a default judgment against Ron (but not to the extent it entered a default judgment against Jill Stuart); directed the Clerk to vacate the judgment against only Ron; and restored the case to the active calendar (*see* Doc 49 [8/11/22 decision and order, MS 02]). The court did not disturb the judgment against Jill Stuart.

In Motion Sequence No. 04, Adler moved: (a) pursuant to CPLR 3212, for summary judgment in the amount of $494,358.96 against Ron, representing the outstanding rent and additional rent due from Jill Stuart through September 2020; (b) pursuant to CPLR 3211(b), to dismiss Ron' affirmative defense; (c) for an award totaling $36,593.06, representing its attorneys' fees and disbursements; or, alternatively, (d) for an inquest to determine its reasonable attorneys' fees (Doc 54 [Notice of Motion MS 04]).

On February 24, 2023, the court denied the motion because there were credibility issues that required a trial. Those issues included whether Jill Stuart: (1) failed to vacate the Premises by leaving behind numerous items that varied in nature; (2) turned in the keys to the Premises; and (3) served a proper "surrender notice" (Doc 91 [2/24/23 Decision MS 04]).

The court held a one-day virtual bench trial over Microsoft Teams on April 13, 2023. The court thanks the lawyers for both sides for their efforts in litigating this case.

Witnesses

At trial, Ron, the Guarantor, testified first. The court also heard testimony from Morgan Curtis ("Morgan"), Ron' daughter. Morgan was an associate designer at Jill Stuart and the individual in charge of arranging the move from the Premises. Additionally, Joseph Erato ("Mr. Erato"), the Landlord's building manager and managing agent, testified about the premises' condition at the time of the eviction and the keys that were allegedly given to him on February 3, 2020. The court found all witnesses to be credible.

Findings of Fact

On January 13, 1999, Jill Stuart's predecessor entered a lease with Adler's predecessor for the Building's 24th and 25th floors (Doc 64 [Lease]). Section 19 of the lease, provided, in pertinent part, that:

> "[u]pon the expiration or other termination of the [lease's term], Tenant agrees to quit and surrender the demised premises **broom clean** and to leave the same and all alternations, additions and improvements thereto in good order, repair and condition, and **except as herein provided, tenant shall remove all of its property. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of the term of this lease..."**
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> (*id.* at 9) (emphasis added).

Around the same time that the lease was entered into, Ron executed a Guaranty of Lease (the "Guaranty"), in which he guaranteed full payment of all rent and additional rent coming due under the Lease, up to the date on which possession of the Premises was delivered to the owner free of any tenancies (Doc 65 [Guaranty]). Specifically, the Guaranty stated that Ron would be released on:

> "the date on which Vacant Possession is delivered to Owner", which was defined as the later to occur of the date of the delivery to Owner at Owner's address set forth in the Lease, or to Owner's Managing Agent at the building in which the demised premises is situated of: (a) the keys to the demised premises and (b) a standard Blumberg form of Surrender of Lease executed by Tenant, and acknowledged (the 'Surrender Date')"
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> (*id.*).

Adler later commenced a summary non-payment proceeding against Jill Stuart after it failed to pay rent on time and accumulated arrears. Jill Stuart was evicted from the premises on February 20, 2020 after defaulting in those proceedings (plaintiff's exhibit 3; Doc 66 [Eviction Paperwork]). At that time, Jill Stuart owed $203,183.71 in rent and additional rent, both of which continued accruing through September 2020, when the premises was relet (Doc 68 [Rent Ledger]).

Ron testified that, on November 7, 2019, he handed Mr. Erato a self-prepared surrender notice in an envelope, along with his set of keys to the Premises (Doc 92 [Trial Tr.] at 12-13). Ron testified that he could not find a copy of the standard Blumberg form, titled "Surrender of Lease," that the lease required (*id.* at 12).

Mr. Erato, however, testified that neither Ron nor Morgan ever gave him the keys or Ron's self-prepared surrender form (*id.* at 58-59). Additionally, Mr. Erato testified that he asked all employees at the Building if they received the keys on January 30, 2020, and claims that no keys were given to anyone. Thus, the keys do not seem to have been tendered or delivered to Adler when Jill Stuart allegedly vacated.

But the keys and the notice letters are irrelevant. This is because, as the pictures in evidence demonstrate, defendants failed to deliver a vacant premises. Defendants left behind numerous office desks, filled, possibly built-in filing cabinets, computer monitors and wires, and other office equipment. The presence of these items at the Premises indicate that Jill Stuart did not actually vacate the Premises on or about January 30, 2022 (plaintiff's exhibit 5A-E). On February 21, 2020, Adler emailed Ron and advised him that Jill Stuart had been formally evicted from the Premises and requested that he arrange to retrieve the remaining items there (Doc 73 [Emails] at 3). There was no evidence that defendants ever retrieved those remaining items from the Premises during or after February 2020.

After applying its security deposit, tenant Jill Stuart owes $494,358.96 for unpaid rent and additional rent from November 1, 2019 through September 2020, when Adler was able to re-let the premises, exclusive of legal and attorneys' fees.

Conclusions of Law

1. Surrender of Premises

a. *Vacant and Broom-Clean Condition (Section 19)*

At trial, Adler contended that there was no valid surrender of the Premises because Jill Stuart did not leave the demised premises vacant and in broom-clean condition in accordance with Section 19 of the lease (Doc 64 [Lease], § 19).

"The express obligation imposed by a lease to leave premises in good condition has long been interpreted to require the tenant not only to keep the premises in as good condition as when it enters, but to put, keep, and leave the premises in a state of good repair" (*Tobin v Gluck*, 137 F Supp 3d 278, 298 [EDNY 2015], *affd* 684 Fed Appx 61 [2d Cir 2017], citing *Akron Meats, Inc. v. 1418 Kitchens, Inc.*, 160 AD2d 242, [1st Dept 1990]). "The express obligation to deliver possession of leased premises 'broom clean' means, at the very least, that the premises be free of garbage, refuse, trash, and other debris" (*1710 Realty, LLC v Portabella 308 Utica, LLC*, 189 AD3d 944 [2d Dept 2020], citing *Tobin v. Gluck,* 137 F Supp 3d 278, 299 [EDNY 2015], *affd* 684 Fed Appx 61, 62 [2d Cir 2017]). This obligation has been interpreted to require the tenant not only to keep the premises in as good condition as when it enters, but to put, keep, and leave the premises in a state of good repair (*Akron Meats, Inc. v 1418 Kitchens, Inc.*, 160 AD2d 242, 244 [1st Dept 1990]).

The evidence at trial provided undisputed proof that many items were left in the Premises at the time Jill Stuart allegedly surrendered in February 2020, and therefore established that the Premises was not left vacant and in broom-clean condition as the lease required.

The quantity of items left behind was not minimal or de minimus. At trial, Adler submitted photos of the Premises that were taken after the eviction on February 20, 2020 (Doc 75 [Premises Photos]). These photos depicted a slew of items and other things that were unpacked and left behind throughout the Premises. The items included tables, chairs, storage bins, several desks that were nailed into the office floors, large shelves, and several filing cabinets that were still filled with papers (plaintiff's exhibit 5A-E; Doc 92 [Trial Tr.] at 42-50:20). There were also dozens of other items scattered throughout the office, such as several large open boxes on the floor filled with various materials and papers, several large computer monitors, screens, and keyboards,

dozens of hangers, clothing, cloth samples, mannequins, other garment-related items, and several pieces of office equipment and supplies, including telephones, folders, filled trash bags, and bins (plaintiff's exhibit 5A-E).

While Morgan testified that she took certain items of value and either sold or donated them (Doc 92 [Trial Tr.] at 41:15-45:3), she also testified that she left items behind, such as various pieces of furniture and large desks and tables that were nailed to the floor (*id.* at 42-50:20). Morgan also admitted that the photos, submitted as evidence (plaintiff's exhibit 5A-E; defendants exhibit D), accurately depicted how defendants left the Premises when they purportedly vacated (*id.* at 47-50). She also claimed Mr. Erato told her that she could leave items behind, because the landlord planned to renovate.

However, what Mr. Erato told Morgan she could or could not do does not matter because of the no-waiver provision and merger clause language that the lease includes. The no-waiver provision, contained in Section 8, provides that "no waiver by the landlord of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the landlord as herein provided" (plaintiff's exhibit 1). Section 8 further provides that:

> "[no] act…by Landlord's agents during the term hereby demised shall be deemed an acceptance of a surrender of said premises and no agreement to accept such surrender shall be valid unless in writing and signed by the landlord as herein provided. No employees of Landlord or of Landlord's agents shall have any power to accept the keys of said premises prior to the termination of the lease. The delivery of keys to any employee of Landlord or Landlord's agents shall not operate as a termination of this lease"
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> (plaintiff's exhibit 1, at 7).

Additionally, the merger clause contained in Section 7 of the Second Modification Agreement to the lease states the following with regard to prior oral understandings and arrangements:

> "It is specifically understood and agreed by the parties hereto that this Agreement constitutes their entire understanding regarding the subject matter hereof, and all prior oral or written understandings are superseded hereby. It may not be modified except by a written agreement signed by the parties."
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> (plaintiff's exhibit 1, at 43).

Thus, it would not matter that Mr. Erato told Morgan that she could leave items behind in the premises, as there was no writing signed by the landlord. Without a waiver in writing, Erato did not have the power to accept a surrender of the premises in this condition.

Mr. Erato also testified about the Premises' condition after the eviction in February 2020. He testified that he did a walkthrough of the Premises with Morgan at some point in January 2020, and that he did not tell her that she could leave items behind or that she could store them at the Building (*id.* at 57-58). He also testified about the photos that were taken on the day of the eviction and that were submitted as evidence at trial (plaintiff's exhibit 5A-E). Mr. Erato testified that he recognized and took those photos and confirmed that they accurately reflected the 24th floor's condition after the eviction (*id.* at 60-61).

The Marshal's Inventory list, submitted as evidence at trial, also lists items that were left at the premises as of February 20, 2020 (Doc 66 [Eviction Paperwork]; plaintiff's exhibits 3, 4). For instance, the list states that about 15 PC (computer) monitors, 10 bookcases, and 5 tables were left behind (*id.*).

Given that so many items were left behind, and that the premises was left in such a disorderly, cluttered condition, with items scattered throughout, it is clear that the Jill Stuart did not leave the Premises in vacant and broom-clean condition (*see Akron Meats v 1418 Kitchens*, 160 AD2d 242, 243 [1st Dept 1990], *lv denied* 16 NY2d 704 [1990] [concluding that tenant left demised premises in "a general state of disrepair" when it dismantled plumbing and left exposed electrical wiring and sizeable holes in the walls and ceiling]; *see also 1029 Sixth, LLC v Riniv*

Corp., 9 AD3d 142, 150 [1st Dept 2004] ["(B)y leaving the garbage behind, the tenants failed to effectively and completely vacate the premises."]).

b. *Writing Signed by Landlord (Section 8)*

Further, the evidence at trial established that Jill Stuart failed to surrender possession in accordance with Section 8 of the lease, that requires any valid surrender be expressed in writing and signed by the Landlord (Doc 64 [Lease] § 8). Specifically, Section 8 provides, in pertinent part, the following:

> "No act or thing done by Landlord or Landlord's agents during the term hereby demised shall be deemed an acceptance of a surrender of said premises and no agreement to accept such surrender shall be valid unless in writing and signed by the Landlord as herein provided. **No employees of Landlord or of Landlord's agents shall have any power to accept the keys of said premises prior to the termination of the lease**. The delivery of keys to any employee of Landlord or Landlord's agents shall not operate as a termination of this lease"
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> (plaintiff's exhibit 1 § 8; Doc 64 [Lease] § 8) (emphasis added).

The evidence at trial demonstrated that there was no valid acceptance of the surrender in accordance with Section 8 of the lease (Doc 64 [Lease], § 8). There was no writing signed by the landlord indicating that it accepted the surrender. There were no signatures from the landlord, or anyone else with authority, on any of the documents submitted at trial related to surrender. The only individuals who signed Ron's self-prepared surrender notice were Ron, first, and then Morgan, later.

2. Failure to Comply with the Guaranty's Surrender Condition

In addition to the failure to deliver a vacant premises, the evidence at trial established that Ron failed to comply with the Guaranty's requirements.

The Guaranty imposed certain requirements for the guarantor to avoid liability. It stated the following about surrenders, liability, and the condition of the premises:

> For purposes of this Guaranty, "the date on which Vacant Possession is delivered to Owner" shall mean the later to occur of the date of the delivery to Owner at Owner's address set forth in the Lease, or to Owner's Managing Agent at building in which the demised premises is situated, of (a) the keys to the demised premises and (b) a standard Blumberg form of Surrender of Lease executed by Tenant, and acknowledged (the 'Surrender Date'). Upon compliance by Tenant and/or the undersigned with the provisions of the immediately preceding sentence hereof, the undersigned shall have no further obligation under this Guaranty except for Liabilities which were incurred prior to the Surrender Date
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> (plaintiff's exhibit 2; Doc 65 [Guaranty]) (emphasis added).

Thus, even if there was a surrender of a vacant premises, for Ron to avoid liability under the Guaranty, the Premises' keys and a standard Blumberg form of Surrender of Lease needed to be delivered to Adler at its address set forth in the lease, or to its managing agent at the Building.

As discussed above, the evidence at trial demonstrated that there was no valid surrender in accordance with Section 8 of the lease, as the premises was not left vacant because of the various items and possessions that defendants left behind (Doc 64 [Lease] § 8). Further, Ron did not comply with the terms of the Guaranty when he or his daughter purportedly handed Mr. Erato the keys and a self-prepared surrender notice[1] that Adler did not countersign. Thus, Ron is liable for all rent and additional rent due from Defendant Jill Stuart up until the date that the Premises was relet in September 2020 (*see e.g. 300 Park Avenue Inc. v. Café 49, Inc.*, 89 AD3d 634 [1st Dept 2011] [extending Guarantor's liability given that the conditions in the Guaranty for the termination of liability had not been satisfied]).

As such, the court awards Adler $494,358.96, representing the rent and additional rent owed through September 2020, against Ron.

The court denies the request for attorneys' fees, without prejudice, as Adler failed to provide any proof of attorneys' fees it may have incurred.

[1] Not using a Blumberg form is not fatal, but the lack of the landlord's acknowledgement is.

Accordingly, it is

ORDERED that the court renders a verdict, in favor of plaintiff Adler Holdings II, LLC, and as against defendant Ronald Curtis A/K/A Ron Curtis, as Guarantor, for all rent and additional rent due and owing from Defendant Jill Stuart International, LLC under the lease through the date that the Premises was relet in September 2020; and it is further

ORDERED that the Clerk is directed to enter judgment, in favor of plaintiff Adler Holdings II, LLC, and against defendant Ronald Curtis A/K/A Ron Curtis, in the amount of $494,358.96, with interest thereon at the statutory rate from March 12, 2020 until the entry of judgment, and thereafter at the statutory rate, as calculated by the Clerk, together with the costs and disbursements of this action to be taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that there shall be no motion practice without prior notice to the court; and it is further

ORDERED that the plaintiff's request for attorneys' fees is denied without prejudice; and it is further

ORDERED that the Clerk is directed to record the verdict in plaintiff's favor, to enter the judgment accordingly, and to mark this case disposed.

5/12/23
DATE

MELISSA A. CRANE, J.S.C.

CHECK ONE: [X] CASE DISPOSED [ ] NON-FINAL DISPOSITION