

Ames Assoc. v Knapp

2023 NY Slip Op 33316(U)

September 25, 2023

Supreme Court, New York County

Docket Number: Index No. 653719/2021

Judge: Nancy M. Bannon

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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. NANCY M. BANNON PART 42

Justice

-----X

AMES ASSOCIATES,

Plaintiff,

- v -

HELAINÉ KNAPP, JENNIFER SWARTLEY, STEPHEN SWARTLEY

Defendant.

-----X

INDEX NO. 653719/2021
MOTION DATE 08/02/2023
MOTION SEQ. NO. 005 007

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 198, 199, 200, 201, 202, 203, 208, 209, 244

were read on this motion to/for AMEND CAPTION/PLEADINGS.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 245

were read on this motion to/for SUMMARY JUDGMENT.

The plaintiff, owner of commercial property at 80 Fifth Avenue in Manhattan, claims that the tenant, non-party Row NYC LLC, which operated a hotel on the premises, defaulted on the lease commencing in March 2020. In a separate action (*Ames Associates v Row NYC LLC*, 653719/2021), the plaintiff obtained a judgment against the tenant in the principal sum of \$275,844.15, entered October 27, 2021. In the meantime, after the tenant filed a bankruptcy petition, the plaintiff commenced the instant action seeking to recover that amount plus contractual attorney’s fees and expenses from the three defendants, guarantors on the lease.

The plaintiff and defendant Helaine Knapp settled the matter as between them, a judgment in the sum of \$84,874.67 was entered in favor of the plaintiff and against that defendant on December 27, 2022, “encompassing plaintiff’s damages to and including December 20, 2022” and the plaintiff filed a Satisfaction of Judgment on January 5, 2023. The action continued as against defendants Jennifer Swartley and Stephen Swartley. The plaintiff inexplicably moved for summary judgment against defendant Knapp (MOT SEQ 003) but then

withdrew the motion. Indeed, the motion was procedurally improper since the settlement with that defendant and the Satisfaction of Judgment filed by the plaintiff concluded the matter as against her. Nonetheless, believing that the plaintiff intended to proceed against her in regard to attorney's fees, new federal caselaw or for some other reason, defendant Knapp moved for an order dismissing the complaint as against her, essentially pursuant to CPLR 3211(a)(5), and for the imposition of sanctions as against the plaintiff for frivolous conduct pursuant to 22 NYCRR 130-1.1(a) (MOT SEQ 004). The Swartley defendants cross-moved to dismiss the complaint as against them, arguing that their co-defendant's settlement with the plaintiff settled and concluded the matter as to all defendants. The plaintiff opposed both motions. The Swartley defendants withdrew their cross-claims against Knapp.

By an order dated April 27, 2023, the court granted defendant Knapp's motion to the extent of dismissing the complaint with prejudice as against her and denied the cross-motion. The court declined to impose sanctions against the plaintiff since sanctions were not sought for MOT SEQ 003 and it was defendant Knapp, not the plaintiff, who brought MOT SEQ 004. As to the cross-motion, the court stated that the Swartley defendants were not parties to the settlement and did not otherwise establish on the papers submitted that the matter should be considered concluded as to them.

By MOT SEQ 005, the plaintiff seeks to file a third amended complaint for the purpose of increasing the amount of damages against the remaining defendants in light of a recent federal court decision holding that New York City Administrative Code §22-1005 (L.L. 2020/55, 5/26/2020) (the Guaranty Law), which bars enforcement of personal guaranties on commercial leases under certain conditions and if the alleged liability arose between March 7, 2020, and September 30, 2020, to be unconstitutional. Melendez v City of New York, -- F. Supp. 3d --, 2023 WL2746183 (S.D.N.Y. 2023). However, as correctly argued by the defendants in opposition, the holding in that case is not binding on this court and the plaintiff, who has not submitted a memorandum of law with its motion, does not establish otherwise. Thus, the plaintiff has not met its burden of demonstrating that the proposed amendment is palpably insufficient or patently devoid of merit. See CPLR 3025(b); JPMorgan Chase Bank, N.A. v Low Cost Bearings NY, Inc., 107 AD3d 643 (1st Dept. 2013).

The Swartley defendants also cross-move on MOT SEQ 005 for summary judgment dismissing the complaint as against them. That motion is denied upon the movants failure to

show entitlement to relief pursuant to CPLR 3212. As the court stated in the order dated April 27, 2023, in denying their motion to dismiss, the Swartley defendants were not parties to the settlement agreed to by Knapp and have not shown that they were released from liability as a result of that settlement agreement. Indeed, the fact that the plaintiff initially sought approximately \$220,000 plus late fees and attorney's fees, from all three defendants, and defendant Knapp's settlement approximated less than one-third of that, further supports the conclusion that the Swartley defendants were not released by Knapp's settlement. The Swartley defendants proffer no argument, facts or law warranting a different conclusion.

It is well settled that the movant on a summary judgment motion "must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case." See Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 (1985). The motion must be supported by evidence in admissible form (see Zuckerman v City of New York, 49 NY2d 557 [1980]), and the pleadings and other proof such as affidavits, depositions, and written admissions. See CPLR 3212. The "facts must be viewed in the light most favorable to the non-moving party." Vega v Restani Constr. Corp., 18 NY3d 499, 503 (2012) (internal quotation marks and citation omitted). Once the movant meets its burden, it is incumbent upon the non-moving party to establish the existence of material issues of fact. See id., citing Alvarez v Prospect Hosp., 68 NY2d 320 (1986). As stated, the Swartley defendants failed to meet their burden in the first instance. Moreover, as discussed below, the plaintiff's on MOT SEQ 007 have established, with much the same proof as submitted on this motion, entitlement to summary judgment on liability as against the Swartley defendants.

By MOT SEQ 007, the plaintiff moves, in effect, for partial summary judgment on the second amended complaint as against the Swartley defendants on the issue of liability and for an inquest on damages. The Swartley defendants oppose the motion and cross-move pursuant to 22 NYCRR 130-1.1(a) for sanctions against the plaintiff for frivolous conduct. The plaintiff's motion is granted and the matter is referred to a Special Referee to determine damages. The cross-motion is denied.

The plaintiff's proof with respect to the lease and guaranty agreements demonstrates (1) the existence of a contract, (2) the plaintiff's performance under the contract, (3) the defendants' breach of that contract, and (4) resulting damages. See Second Source Funding, LLC v Yellowstone Capital, LLC, 144 AD3d 445 (1st Dept. 2016); Harris v Seward Park Housing Corp.,

79 AD3d 425 (1st Dept. 2010); Flomenbaum v New York Univ., 71 AD3d 80 (1st Dept. 2009). It is well-settled that a lease is a contract which is subject to the same rules of construction as any other agreement. See George Backer Mgt. Corp. v Acme Quilting Co., Inc., 46 NY2d 211 (1978); New York Overnight Partners, L.P. v Gordon, 217 AD2d 20 (1st Dept. 1995), aff'd 88 NY2d 716 (1996). Further, the plaintiff's proof with respect to the guaranty demonstrates that the guaranty is enforceable as it "is clear and unambiguous on its face and, by its language, absolute and unconditional, [and thus that] the signer is conclusively bound by its terms absent a showing of fraud, duress or other wrongful act in its inducement." Citibank, N.A. v Uri Schwartz & Sons Diamonds Ltd., 97 AD3d 444, 446–47 (1st Dept. 2012) (quoting National Westminster Bank USA v Sardi's Inc., 174 AD2d 470, 471 [1st Dept. 1991]). For the same reasons, the plaintiff is entitled to recover contractual attorney's fees from the defendants. Attorney's fees are recoverable, where, as here, there is a specific contractual provision for that relief. See Flemming v Barnwell Nursing Home and Health Facilities, Inc., 15 NY3d 375 (2010); Coopers & Lybrand v Levitt, 52 AD2d 493 (1st Dept. 1976).

In opposition to the plaintiff's motion, the Swartley defendants fail to raise any triable issue of fact. Indeed, the only argument raised in their opposition is one that has already been rejected by this court, *i.e.* that the settlement entered between the plaintiff and Knapp concluded the matter and released the Swartley defendants from liability. In this regard, the court notes only that the plaintiff would not be entitled to recover any amount exceeding the amount of the judgment against the tenant (\$275,844.15), less the amount recovered from defendant Knapp (\$84,874.67).

As to the Swartley defendants cross-motion for sanctions, 22 NYCRR 130-1.1(a) provides, in relevant part, that the court, "in its discretion, may award to any party or attorney in any civil action ... costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees, resulting from frivolous conduct ... In addition to or in lieu of awarding costs, the court, in its discretion may impose financial sanctions upon any party or attorney in a civil action or proceeding who engages in frivolous conduct." Frivolous conduct includes conduct that is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification, or reversal of existing law, is undertaken primarily to harass or maliciously injure another, or asserts material factual statements that are false. See 22 NYCRR 130-1.1(c). A movant seeking sanctions is not limited to seeking sanctions only for having to make the current motion. Rather, the court may take into account

conduct over the course of the litigation. See Board of Managers of Legacy Condominium v Core Management NY, LLC, 182 AD3d 420 (1st Dept. 2020); Couri v Seibert, 147 AD3d 692 (1st Dept. 2017). Applying these guidelines here, the court declines to impose sanctions against the plaintiff. The only motions that could be considered frivolous is one made against Knapp (MOT SEQ 003), which was withdrawn, and one made by Knapp (MOT SEQ 004), which was denied. Nor do the motions made by plaintiff against the Swartley defendants constitute frivolous conduct within the meaning of 22 NYCRR 130-1.1(c). As stated above, the plaintiff has established entitlement to summary judgment against the Swartley defendants on the issue of liability based, *inter alia*, on their guaranty agreement and those defendants have failed to raise any triable issue of fact.

Any relief not expressly granted herein is denied.

Accordingly, upon the foregoing papers, it is

ORDERED that the plaintiff's motion pursuant to CPLR 3025(b) to file a third amended complaint (MOT SEQ 005) is denied, and it is further

ORDERED that the cross-motion of defendants Jennifer Swartley and Stephen Swartley pursuant to CPLR 3212 for summary judgment dismissing the second amended complaint as against them (MOT SEQ 005) is denied, and it is further

ORDERED that the plaintiff's motion for partial summary judgment on the second amended complaint as against defendants Jennifer Swartley and Stephen Swartley (MOT SEQ 007) is granted on the issue of liability, damages to be determined by a Judicial Hearing Officer ("JHO") or Special Referee, and it is further

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to hear and report to this Court on the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose:

- (1) the amount of damages the plaintiff is entitled to recover from defendants Jennifer Swartley and Stephen Swartley as guarantors on the subject lease, for unpaid rent, additional rent, attorney's fees and expenses, not to exceed the amount of the

judgment entered against the non-party tenant, Row NYC LLC (\$275,844.15), less the amount recovered from defendant Helaine Knapp (\$84,874.67),

and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/suptctmanh at the "References" link), shall assign this matter at the initial appearance to an available JHO/Special Referee to hear and report as specified above; and it is further

ORDERED that counsel shall immediately consult one another and counsel for plaintiff shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (accessible at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that plaintiff shall serve a proposed accounting within 24 days from the date of this order and the defendant shall serve objections to the proposed within 20 days from service of plaintiff's papers and the foregoing papers shall be filed with the Special Referee Clerk prior to the original appearance date in Part SRP fixed by the Clerk as set forth above; and it is further

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed with the hearing, on the date fixed by the Special Referee Clerk for the initial appearance in the Special Referees Part, subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further

ORDERED that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR 4320[a]) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issues specified above shall proceed from day to day until completion; and it is further

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts (22 NYCRR 202.44); and it is further

ORDERED that the plaintiff shall serve a copy of this order on the defendants within 20 days, and it is further

ORDERED that the cross-motion of defendants Jennifer Swartley and Stephen Swartley for sanctions (MOT SEQ 007) is denied, and it is further

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision and Order of the court.



NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

9/25/2023
DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	<input checked="" type="checkbox"/> REFERENCE
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT