

**P&J Braun LLC v JHRV LLC**

2024 NY Slip Op 32228(U)

June 28, 2024

Supreme Court, New York County

Docket Number: Index No. 652926/2020

Judge: Arlene P. Bluth

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

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

*Justice*

-----X

P&J BRAUN LLC,

Plaintiff,

- v -

JHRV LLC, JULIE ALKIRE

Defendant.

-----X

INDEX NO. 652926/2020

MOTION DATE 06/27/2024

MOTION SEQ. NO. 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112

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

Plaintiff's motion for summary judgment and to dismiss defendants' counterclaims is granted.

**Background**

Plaintiff brings this action against defendants, its former tenants. The lease lists both defendants as the tenants of the subject apartment and the lease term ran from February 1, 2017 through January 31, 2018 (NYSCEF Doc. No. 81). Plaintiff acknowledges that during the term of this lease, it sold the building on July 13, 2017 but contends that it preserved its right to pursue any unpaid rents that accrued prior to the sale.

It alleges that at the time of the sale, defendants owed plaintiff outstanding rent in the amount of \$39,250, which was reduced to \$31,000 following the application of the security deposit. Plaintiff maintains that the amount it seeks was further reduced due to the fact that it was

only entitled to recover a portion of the rent in July as it sold the building in the middle of that month. Plaintiff claims the amount owed, \$25,024.12, has not been paid. It also claims it is owed attorneys' fees pursuant to the lease and insists that \$16,801.72 is due although it seeks \$15,000 for legal fees (NYSCEF Doc. No. 85, ¶ 5).

In opposition, defendant Alkire uploaded numerous documents. She claims that in the months leading up to the sale of the building there were "warranty of habitability issues which were not remedied by the owner. The building was sold and the leases were assigned to a new owner who entered into a settlement with the tenants in Housing Court which waived all monies, fees, and costs due under the lease" (NYSCEF Doc. No. 101). Alkire contends that the tenants in the building were forced to vacate for a period of time and other areas of the apartment had toxic fumes as well as black mold. In Alkire's second memo of law (NYSCEF Doc. No. 100), she contends that plaintiff has not established its prima facie burden and that her counterclaims should not be dismissed.

In reply, plaintiff emphasizes that it is entitled to summary judgment against the corporate defendant as it must be represented by an attorney and so defendant Alkire cannot raise arguments on this defendant's behalf. Plaintiff maintains that there is no dispute that defendants failed to pay the rent. It emphasizes that it was not a party to the litigation involving the successor owner and the tenants at the building. Plaintiff stresses that the contract of sale for the building specifically permitted plaintiff to bring this case. It argues that defendant did not raise any issues of fact concerning any of her counterclaims.

## Discussion

As a preliminary matter, the motion is granted in full as against the corporate defendant, JHRV, LLC. “[A] corporation must be represented by an attorney and cannot proceed pro se” (*Boente v Peter C. Kurth Off. of Architecture and Planning, P.C.*, 113 AD3d 803, 804, 978 NYS2d 900 (Mem) [2d Dept 2014]).

The Court also grants the motion as against the individual defendant, Ms. Alkire. Plaintiff established its prima facie burden on its breach of lease claim through the affidavit of Mr. Lesser and the tenant statement of account. It also demonstrated that it is entitled to legal fees as the lease permits plaintiff to recover such fees in this type of case (NYSCEF Doc. No. 81, ¶ 19).

With respect to plaintiff’s right to sue for rent, the contract of sale for the building provides that “Notwithstanding the foregoing Seller [plaintiff] shall have the right to collect rents, if any, which are unpaid or delinquent as of Closing” (NYSCEF Doc. No. 83, ¶ 4.4[b][9]). These documents (the lease and the contract of sale) demonstrate that plaintiff is entitled to recover unpaid rent from defendants.

Alkire failed to raise an issue of fact in opposition. She does not contend that she paid the rent or dispute plaintiff’s calculations. Instead, she complains about a warranty of habitability issue. But unfortunately, she did not meet her burden in the opposition papers to raise an issue of fact about this issue. She did not include any details and accompanying evidence to describe the exact nature of the purported conditions and how it could justify not paying the rent. Alkire cannot raise a sufficient issue of fact based solely on conclusory allegations.

The Court also dismisses the rest of Alkire’s counterclaims, which include counterclaims based on breach of lease, constructive eviction and for legal fees. The Court observes that the

answer was not verified by Alkire and instead was verified by her former attorneys in this case and so the Court cannot point to that pleading as an issue of fact. Simply put, Alkire's opposition did not adequately rebut plaintiff's motion to dismiss these claims. In fact, her opposition papers do not substantively address many of her counterclaims.

Another issue in this record is an estoppel certificate dated March 21, 2017 uploaded by Alkire as NYSCEF Doc. No. 103. This document does not create an issue of fact as it does not contain an agreement under which plaintiff agreed to a rent abatement. Plaintiff's manager submits an email in which he explicitly states that this document "has nothing to do with the arrears issue" (NYSCEF Doc. No. 104). Of course, by signing this agreement, Alkire agreed that "No breach by Landlord or Tenant currently exists under the Lease" and that "Tenant has no claim, charge, or counterclaim against Landlord under the Lease and no offset or defense to the enforcement of the terms of the Lease" (*id.* ¶ 3). This, of course, undercuts her unsubstantiated and conclusory claims against the plaintiff.

The Court also grants plaintiff the legal fees it seeks as Alkire did not contest the reasonableness of the amount of fees.

### Summary


The Court recognizes that this is not the most straightforward breach of lease case. Plaintiff sold the building in the middle of the lease term and, evidently, there was a subsequent litigation between the successor owner and the tenants at the building. But this Court must follow the documents presented on this motion. Plaintiff submitted a valid lease with defendants and a contract of sale for the building that specifically permitted it to bring this case for unpaid rent.

And Alkire did not dispute that she failed to pay the rent. Nor did she submit any evidence or documentation to justify her failure to pay the rent. Her claims about a breach of the warranty of habitability and her remaining counterclaims were wholly unsupported.

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment is granted and the Clerk is directed to enter judgment in favor of plaintiff and against defendants jointly and severally in the amount of \$25,024.12 plus statutory interest from July 13, 2017 along with reasonable legal fees in the amount of \$15,000 in legal fees with statutory interest to accrue from the date of this decision along with costs and disbursements upon presentation of proper papers therefor.

6/28/2024  
**DATE**

  
**ARLENE P. BLUTH, J.S.C.**

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