

**Hudson 38 Holdings LLC v DRTLawrence LLC**

2024 NY Slip Op 34209(U)

November 25, 2024

Supreme Court, New York County

Docket Number: Index No. 654431/2023

Judge: Nicholas W. Moyne

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. NICHOLAS W. MOYNE PART 41M**

*Justice*

-----X

HUDSON 38 HOLDINGS LLC,

Plaintiff,

- v -

DRTLAWRENCE LLC, TAMEIKA LAWRENCE

Defendant.

-----X

INDEX NO. 654431/2023

MOTION DATE 05/15/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

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

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

Upon the foregoing documents, it is

Plaintiff, Hudson 38 Holdings LLC (“Hudson”), commenced this action to recover for damages allegedly sustained as a result of a breach of a commercial lease agreement by defendants, DRTLawrence LLC, as Tenant, and Tameika Lawrence, as Guarantor. Specifically, plaintiff seeks to recover amounts owed, pursuant to the terms of the lease and guaranty agreements, for rent, additional rent, and/or liquidated damages, from the date of the breach through the remainder of the lease term, plus first month’s rent concession and unamortized broker fees, minus the security deposit, for the aggregate amount of \$133,531.10 from defendant Lawrence, \$124,117.14 of which DRTLawrence is jointly and severally liable. Plaintiff now moves for an order, pursuant to CPLR § 3215, directing entry of a default judgment in favor of plaintiff and against DRTLawrence LLC in the amount of \$124,117.14, and Tameika Lawrence in the amount of \$133,531.10, jointly and severally, plus interest, costs, and attorney’s fees.

Plaintiff is the Owner of the subject premises located at 330 West 38th Street, Suite 208, New York, NY 10018. On or around October 28, 2022, DRTLawrence, as Tenant, entered into a

commercial lease agreement with Hudson, as landlord, and leasing the premises for a five (5) year term set to commence on December 1, 2022, and end on November 30, 2027 (NYSCEF Doc. No. 9). Subsequently, on or around November 7, 2022, Tameika Lawrence, as Guarantor, signed a Guaranty, personally guaranteeing the lease between DRTLawrence and Hudson (NYSCEF Doc. No. 10).

Plaintiff asserts that Tenant, in breach of the lease, fell behind in both rent and additional rent as early as March 1, 2023, and ultimately, in June 2023, Hudson commenced a non-payment landlord-tenant proceeding against Tenant in Civil Court, New York County, Index Number: LT-312950-23/NY (*see* NYSCEF Doc. No. 11). On or around August 11, 2023, plaintiff was granted a monetary judgment against DRTLawrence in the non-payment proceeding, in the total amount of \$9,413.96, and was awarded possession (NYSCEF Doc. No. 12). Hudson alleges that on or around September 7, 2023, a New York City Marshal executed the warrant of eviction, delivering possession of the premises to plaintiff.

Thereafter, plaintiff commenced this action. On November 20, 2023, pursuant to CPLR § 308, plaintiff served Lawrence with the summons and complaint in this action by leaving the papers with the Concierge of the building, who refused to allow access to the building, and mailing the same on November 21, 2023 (NYSCEF Doc. No. 2). On November 22, 2023, plaintiff, in accordance with Limited Liability Company Law § 303, served DRTLawrence with the summons and complaint (NYSCEF Doc. No. 3). The applicable time period in which defendants ought to have answered or otherwise appeared has passed, and the defendants have failed to do so. On May 15, 2024, within the statutory one-year period following the defendants' default in responding to the complaint, Hudson filed its application seeking entry of a default judgment (*see* CPLR § 3215 [a]). Hudson has also provided proof of additional notice, as

required under CPLR § 3215 (g), and has provided an affidavit of non-military service for Lawrence (NYSCEF Doc. No. 8; 14).

Additionally, CPLR § 3215 (f) requires that on any application for judgment by default, the applicant shall file proof of service of the summons and complaint, proof of the facts constituting the claim, the default, and the amount due. Through the affirmation of their managing member and supporting submissions, plaintiff has sufficiently demonstrated service of the summons and complaint, the defendants' default(s), and the facts constituting some, but not all, of the claims on this motion (*Rosenstein v Permanent Mission of the Republic of Sierra Leone to the United Nations*, 217 AD3d 553, 554 [1st Dept 2023] [Movant may demonstrate the facts constituting the claim "either by submission of an affidavit of merit or by verified complaint, if one has been properly served"]). Plaintiff has established proof of a lease agreement with Tenant, under which Tenant defaulted on its obligations due to non-payment of rent, and that there was a Guaranty agreement, under which the Guarantor defendant personally guaranteed the Tenant's performance/obligations. Plaintiff has also established that on or around August 11, 2023, Civil Court awarded plaintiff both a monetary judgment and a judgment which awarded possession of the premises and issuance of a warrant of eviction. The lease and/or tenancy was cancelled on September 7, 2023, when Tenant was evicted, and plaintiff was delivered possession of the premises.

However, Hudson has failed to adequately establish proof the amount due and/or entitlement to recover the totality of the damages claimed. Plaintiff seeks to recover monetary damages in the aggregate total of \$133,531.10, the amount of \$124,117.14 as against Tenant, and \$133,531.10, as against Guarantor, jointly and severally; consisting of multiple categories, including: (1) past-rent and additional rent owed through September 6, 2023 (\$10,505.14); (2)

future rent and/or liquidated damages beginning September 8, 2023, through the expiration date of the lease term on November 30, 2027, pursuant to the lease § 45 (\$114,580.53); (3) the first month's rent concession that was given to Tenant, pursuant to the lease § 45 (\$2,133.33); and (4) unamortized broker fees, pursuant to the lease § 45 (\$6,312.10) (NYSCEF Doc. No. 5).

Plaintiff has established its entitlement to recover the full amount for past rent and additional rent owed through September 7, 2023, from Guarantor but not Tenant. As the non-payment proceeding in Civil Court resulted in plaintiff being awarded a monetary judgment against Tenant in the amount of \$9,358.96, plus interest, for unpaid rent and additional rent from March 1, 2023, to June 13, 2023, plaintiff is not entitled to entry of judgment against Tenant in this proceeding for these same rents (NYSCEF Doc. No. 11; 12). Plaintiff may recover from Tenant the rent which became due after such judgment, through the date it regained possession, September 7, 2023. Pursuant to the terms of the Guaranty agreement, Guarantor personally guaranteed Tenant's performance and is therefore liable for the Tenant's default of payment obligations (NYSCEF Doc. No. 10). Therefore, plaintiff may recover from Guarantor the amount of the unpaid rent and additional rent from March to September, prior to the termination of the lease.

Plaintiff has also established its entitlement, pursuant to the terms of the lease and guaranty agreements, to recover the first month's rent concession and unamortized broker fees from both Tenant and Guarantor. Article 45 of the lease agreement provides, in relevant part, that if Tenant vacates the premises prior to the conclusion of the lease, both the Tenant and Guarantor, jointly and severally, will be liable for the rent concession period and unamortized broker's commissions (NYSCEF Doc. No. 9 § 45). The Guaranty agreement similarly provides that Guarantor's obligations include those under paragraph 45 of the lease (NYSCEF Doc. No.

10). Accordingly, plaintiff is entitled to recover from defendants, jointly and severally, damages in the amount of the first month's rent concession and the unamortized brokers fees.

However, plaintiff has not established their entitlement to liquidated damages in an amount equal to the total monthly rent for every month remaining in the lease term, up to and including November 30, 2027. The lease agreement provides that following termination of the lease, recovery of liquidated damages includes, “[i]n case of any such default, re-entry, expiration and/or dispossession by summary proceedings or otherwise, (a) the rent, and additional rent, shall become due thereupon and be paid up to the time of such re-entry, dispossession and/or expiration... (c) Tenant or the legal representatives of Tenant shall also pay Owner as liquidated damages for the failure of Tenant to observe and perform... any deficiency between the rent hereby reserved and or covenanted to be paid and the net amount, if any, of the rents collected on account of the subsequent lease or leases of the demised premises for each month of the period which would otherwise have constituted the balance of the term of this lease” (NYSCEF Doc. No. 9 § 18.b). Additionally, “[a]ny such liquidated damages shall be paid in monthly installments by Tenant on the rent day specified in this lease” (NYSCEF Doc. No. 9 § 18.b).<sup>1</sup> Based on this provision of the lease, the Tenant's obligation and consequentially, the Guarantor's obligation, to pay liquidated damages (*i.e.* deficiency payments) arises each month as that amount becomes due (*3rd and 60th Assoc. Sub LLC v Zavolunov*, 223 AD3d 488, 491 [1st Dept 2024]). Notably, this provision does not contain any express language permitting the plaintiff, upon termination of the lease, to collect the entire balance of the rent for the remainder of the term as liquidated

---

<sup>1</sup> The rider to the lease also provides that, without limiting Owner's other rights or remedies as provided in the lease, law or equity, if Tenant shall fail to pay by the due date any annual or additional rent/charges owed two or more times within any 12 months, Owner may: (i) terminate the lease and repossess the premises; (ii) require that rent not be paid in monthly installments but rather in advance on a quarterly basis; (iii) require Tenant to have its bank automatically transfer all rent due or to become due under the lease into a bank account chosen by Owner; (iv) increase the security deposit (NYSCEF Doc. No. 9 § 49). As relevant here, Owner elected to proceed under (i).

damages (*compare 172 Van Duzer Realty Corp. v Globe Alumni Student Assistance Ass'n, Inc.*, 24 NY3d 528, 533 [2014]). While the plaintiff would be within its rights under New York law to do nothing and collect the full rent due under the lease and is under no obligation to relet or attempt to relet to minimize the damages, the plaintiff cannot attempt to collect for not-yet-accrued damages, which may be contingent on future events and the amount of which is not yet ascertainable (*Holy Properties Ltd., L.P. v Kenneth Cole Productions, Inc.*, 87 NY2d 130, 134 [1995]; *Beaumont Offset Corp. v Zito*, 256 AD2d 372, 373 [2d Dept 1998]; *One NY Plaza Co. LLC v Vendorville, LLC*, 78 Misc 3d 1224(A) [Sup Ct, NY County 2023], *judgment entered*, [Sup Ct, NY County 2023]).

Therefore, plaintiff, at this point, may not accelerate all monthly rent payments remaining under the lease as liquidated damages. Plaintiff may only be entitled to recover for future rent payments if the lease contains an acceleration clause: “[u]pon a tenant's default under a lease, the tenant is liable for unpaid past due rent; absent an acceleration clause, the tenant is not liable for future rents” (*3rd and 60th Assoc. Sub LLC v Zavolunov*, 223 AD3d 488, 491 [1st Dept 2024]). Plaintiff has not shown that the lease contains an acceleration clause, nor that it did or sought to accelerate any prospective rent payments prior to recovering possession and/or the lease termination. Instead, plaintiff seeks to now recover the total amount remaining by relying on Article 45 of the lease agreement; which provides that:

“It is hereby agreed that notwithstanding anything herein contained to the contrary, that the total rent for the whole term hereby demised, is payable at the time of the making of this Lease and the provisions herein contained for payment of the rent in installments, provided for in this Lease are for the convenience of the Tenant only and in default of the payment of the rent in installments, as therein allowed, then the whole of the rent reserved for the whole of the period then remaining unpaid shall at the option of the Owner at once become due and payable without any notice or demand and collection of said entire balance for the whole of the period then remaining unpaid may be enforced by means of summary proceeding to recover possession, or any other action, and the owner

shall be entitled to a judgment for said entire balance in such summary proceeding or other law suit. In the event the Tenant is evicted from possession or voluntarily relinquishes possession of the Demised Premises before the end of this lease, the Tenant agrees that although the Tenant's relationship with the Owner may cease as a landlord-tenant relationship, the Tenant specifically agrees that the Tenant's financial obligations hereunder shall continue" (NYSCEF Doc. No. 9 §§ 42.A; 45).

However, this provision does not authorize the plaintiff, after regaining possession and terminating the lease, to now collect liquidate damages for the total amount equal to the total monthly rent for the balance of the lease term, rather it provides that prior to termination and/or upon Tenant's default, the Owner may immediately call due and payable the entire balance which was then unpaid or outstanding. Considering the last sentence of Article 45, and the liquidated damages clause expressly providing that after dispossess or termination the Tenant will remain liable for any deficiency between the rent reserved and or covenanted to be paid and the net amount, if any, of the rents collected for each month, to be paid in monthly installments the plaintiff may not now collect a lump sum for the entirety of the period. As such an award of rents that have not yet become due under the lease could impermissibly render the requested award disproportionate to plaintiffs' actual losses, plaintiff may only collect liquidated damages in the monthly rent amount for those months which have accrued (*Chelsea 8th Ave. LLC v Chelseamilk LLC*, 220 AD3d 565, 566 [1st Dept 2023]).

Accordingly, upon the submission of proper proof, plaintiff is entitled to recover liquidated damages in the amount of the rent and additional rent which has since accrued from the date of possession, through the date of this decision and order. Such recovery does not prejudice plaintiff's ability to recover for any subsequent liquidated damages in a similar proceeding (NYSCEF Doc. No. 9 § 18.b). Additionally, plaintiff is entitled to recover as



damages reasonable attorneys' fees incurred in bringing and/or litigating this action (NYSCEF Doc. No. 9 §§ 18.b; 19).

Accordingly, it is hereby

ORDERED that the motion by plaintiff Hudson 38 Holdings LLC is GRANTED IN PART to the extent as set forth below; and it is further

ORDERED that the plaintiff's motion is granted to the extent that plaintiff is entitled to recover from defendants DRTLAWRENCE LLC and TAMEIKA LAWRENCE the first month's rent concession in the amount of \$2,133.33, and that the defendants shall be jointly and severally liable for such amount; and it is further

ORDERED that the plaintiff's motion is granted to the extent that plaintiff is entitled to recover from defendants DRTLAWRENCE LLC and TAMEIKA LAWRENCE broker fees in the amount of \$6,312.10, and that the defendants shall be jointly and severally liable for such amount; and it is further

ORDERED that the plaintiff's motion is granted to the extent that plaintiff is entitled to recover from defendant DRTLAWRENCE LLC the rents which accrued from August 11, 2023, the date of the decision and judgment in the Civil Court proceeding index number LT-312950-23NY, until September 7 2023, the date the Tenant was evicted; and it is further

ORDERED that the plaintiff's motion is granted to the extent that plaintiff is entitled to recover from defendant TAMEIKA LAWRENCE the amount of \$10,505.14, as shown as representing the rent due from March 1, 2023, until the tenant's eviction on September 7, 2023; and it is further

ORDERED that the plaintiff's motion is granted to the extent that plaintiff is entitled to recover from defendants DRTLAWRENCE LLC and TAMEIKA LAWRENCE their reasonable

attorney's fees for bringing this action and that the defendants shall be jointly and severally liable for such amount; and it is further

ORDERED that the issue of attorney's fees is severed and continued; and it is further

ORDERED that the plaintiff's motion is granted to the extent that plaintiff is entitled to recover from defendants DRTLAWRENCE LLC and TAMEIKA LAWRENCE the lesser amount of any unpaid rent and additional rent which has or would have become due from the date that the tenant was evicted to the date of this order or, if the premises has been relet, the difference between the rent and additional rent due under the lease and the rent under any lease with a new tenant; and it is further

ORDERED that the issue of rent accrued since the tenant's eviction is severed and continued; and it is further

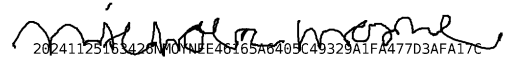
ORDERED that an inquest on the issues of attorney's fees and post-eviction rent shall be held via Microsoft Teams on Friday, February 28, 2025, at 11:00 AM; and it is further

ORDERED that affidavits and exhibits supporting plaintiff's requests for attorney's fees and post-eviction rent shall be submitted via NYSCEF at least seven (7) days prior to the inquest; and it is further

ORDERED that counsel for the plaintiff contact the court at [SFC-Part41-Clerk@nycourts.gov](mailto:SFC-Part41-Clerk@nycourts.gov) and [SFC-Part41@nycourts.gov](mailto:SFC-Part41@nycourts.gov) to obtain the Microsoft Teams link for the inquest; and it is further

ORDERED that this order is without prejudice to plaintiff's right to commence a new action, under a new index number, for rents which become due after the date of this order.

This constitutes the decision and order of the court.

  
202411251634201001NYSCEF46165A04093C49329A1FA477D3AFA17C

11/25/2024  
DATE

\_\_\_\_\_  
NICHOLAS W. MOYNE, 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