

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

373-381 PAS Associates, LLC v. Ideko Productions, LLC, et al.

2023 NY Slip Op 01132 (Supreme Court of the State of New York Appellate Division First Department 2023) ·
No. Index No. 654755/20; Appeal No. 17433; Case No. 2022-02507 · Decided March 2, 2023

SUMMARY

The Appellate Division, First Department reversed an order granting summary judgment to the tenant and guarantor in an action for commercial lease rental arrears. The court held that pandemic-related restrictions did not affect the tenant's office premises or excuse its lease obligations, and that the guarantor was not protected by the guaranty's notice carve-out or pandemic-related statutory relief. The matter was remanded to determine damages.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Renwick, J.P.; Friedman, J.; Gesmer, J.; Singh, J.; Higgitt, J.
JURISDICTION	New York
DECIDED	March 2, 2023
DOCKET	Index No. 654755/20; Appeal No. 17433; Case No. 2022-02507
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff appealed an order denying its motion to dismiss defendants' affirmative defenses and for summary judgment, while granting defendants summary judgment dismissing the complaint upon a search of the record.
STANDARD OF REVIEW	Summary judgment is reviewed as a matter of law; the Appellate Division searched the record and determined the parties' entitlement to judgment based on the undisputed lease and guaranty provisions.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion; precedential within the First Department subject to later modification or reversal.
PARTIES	373-381 PAS Associates, LLC v. Ideko Productions, LLC, et al.

TOPICS

landlord tenant

breach of contract

commercial

damages

appellate procedure

PRACTICE AREAS

commercial leasing

commercial litigation

contract law

appellate procedure

remedies

QUESTIONS PRESENTED

1. Whether pandemic-related government restrictions excused the commercial tenant from its lease obligations when the leased premises were office space not affected by the restrictions.
2. Whether the lease's force-majeure-related provision released the tenant from liability for rent.
3. Whether the guarantor was protected by the 90-day notice carve-out in the guaranty or relieved of liability under Administrative Code of the City of New York § 22-1005.
4. Whether summary judgment could be granted on liability when the amount of damages remained disputed.

HOLDINGS

1. The tenant was not released from its lease obligations because the leased office space was not affected by pandemic-related government restrictions and was not required to cease operations.
2. The lease provision stating that the tenant's obligations would not be affected if the landlord was prevented or delayed by government restrictions did not release the tenant from liability for its lease obligations.
3. The guarantor was not protected by the 90-day notice carve-out because the tenant did not provide 90 days' notice of intent to vacate and did not pay arrears through the vacate date.
4. The guarantor was not relieved of its obligations under Administrative Code of the City of New York § 22-1005 because the tenant was not required to cease operation under Executive Order 202.3.
5. Summary judgment was proper as to liability, but an issue of fact remained concerning the amount of damages.

KEY QUOTATIONS

“Thus, tenant was not released from liability regarding its lease obligations. However, there is an issue of fact as to the amount of damages.” ([*1])

“Therefore, defendant guarantor is not relieved of its obligations under the guaranty.” ([*1])

FACTUAL BACKGROUND

The action concerned rental arrears under a commercial lease for premises used solely as general, executive, and administrative offices. Although the tenant coordinated large-scale live events and allegedly lost all or nearly all of its business during the early months of the COVID-19 pandemic, no such events occurred on the leased premises, which were never open to the public. The tenant did not provide 90 days' notice of intent to vacate and did not pay arrears through the vacate date.

PROCEDURAL HISTORY

Plaintiff brought an action for rental arrears under a commercial lease against the tenant and guarantor. Supreme Court, New York County, denied plaintiff's motion and granted defendants summary judgment dismissing the complaint. The Appellate Division unanimously reversed, granted plaintiff summary judgment as to liability, and remanded for further proceedings concerning damages.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Deny defendants' motion for summary judgment, grant plaintiff's motion to dismiss the affirmative defenses and for summary judgment against defendants as to liability, and conduct further proceedings to determine plaintiff's damages.

CASES CITED

- Gap, Inc. v. 170 Broadway Retail Owner, LLC, 195 A.D.3d 575, 577 (1st Dep't 2021)
- Center for Specialty Care, Inc. v. CSC Acquisition I, LLC, 185 A.D.3d 34, 42-43 (1st Dep't 2020)
- Mozzy, Inc. v. SK Ironstate LLC, 2022 NY Slip Op. 32865(U), *4 (Sup. Ct., N.Y. County 2022)
- 40 X Owner LLC v. Masi, 2021 NY Slip Op. 30041(U), *3-4 (Sup. Ct., N.Y. County 2021)

OPINION

373-381 PAS Assoc., LLC v. Ideko Prods., LLC 2023 NY Slip Op 01132

PER CURIAM.

<div> 373-381 PAS Assoc., LLC v Ideko Prods., LLC (2023 NY Slip Op 01132) <table width="80%" border="1" cellspacing="2" cellpadding="5" align="center"> <tr> <td align="center">373-381 PAS Assoc., LLC v Ideko Prods., LLC</td> </tr> <tr> <td align="center">2023 NY Slip Op 01132</td></tr> <tr> <td align="center">Decided on March 02, 2023</td> </tr> <tr> <td align="center">Appellate Division, First Department</td> </tr> <tr> <td align="center">Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.</td> </tr> <tr> <td align="center">This opinion is uncorrected and subject to revision before publication in the Official Reports.</td> </tr> </table>

 Decided and Entered: March 02, 2023
Before: Renwick, J.P., Friedman, Gesmer, Singh, Higgitt, JJ. <div align="center"></div>
Index No. 654755/20 Appeal No. 17433 Case No. 2022-02507

<div

[*1]373-381 PAS Associates, LLC, Plaintiff-Appellant,
Ideko Productions, LLC, et al., Defendants-Respondents.
Fox Rothschild LLP, New York (Joshua Kopelowitz of counsel), for appellant.
The Law Office of Judah Z. Cohen, PLLC, Woodmere (Judah Z. Cohen of counsel), for respondents.
Order, Supreme Court, New York County, entered June 30, 2022, which denied plaintiff's motion to dismiss the affirmative defenses and for summary judgment, and, upon a search of the record, granted defendants summary judgment dismissing the complaint, unanimously reversed, on the law, with costs, to deny defendants summary judgment, and to grant plaintiff's motion to dismiss the affirmative defenses and for summary judgment against defendants as to liability, and the matter remanded for further proceedings to determine plaintiff's damages.
In this action for rental arrears in connection with a commercial lease, the court erred in granting summary judgment to defendants tenant and guarantor. Defendant tenant's leased space was not affected by the pandemic-related restrictions set by the government (*see Gap, Inc. v 170 Broadway Retail Owner, LLC*, [Citation for case: Matter of Booth v. Warden of Vernon C. Bain Ctr. \(VCBC\)](/opinion/4896272/matter-of-booth-v-warden-of-vernon-c-bain-ctr-vcbc/#577) 195 AD3d 575, 577 [1st Dept 2021]; *Center for Specialty Care, Inc. v CSC Acquisition I, LLC*, [Citation for case: Center for Specialty Care, Inc. v. CSC Acquisition I, LLC](/opinion/4763733/center-for-specialty-care-inc-v-csc-acquisition-i-llc/#42) 185 AD3d 34, 42-43 [1st Dept 2020]). While defendant's business was as a large-scale live events coordinator, no such events occurred in the leased commercial space, and, in fact, was prohibited by article 46 of the lease, stating that defendant could use the leased premises "solely for general, executive and administrative offices and for no other purpose." In addition, article 27 of the lease provides that tenant's obligations under the lease "shall in no way be affected, impaired or excused because [plaintiff] is unable to fulfill any of its obligations under this lease . . . if [plaintiff] is prevented or delayed from doing so by reason of . . . government preemption or restrictions." Thus, tenant was not released from liability regarding its lease obligations. However, there is an issue of fact as to the amount of damages.
As to defendant guarantor, tenant did not provide 90-days' notice of intent to vacate, nor did tenant pay arrears through the vacate date. Thus, guarantor is not protected by the 90-day notice carve-out provision of the guaranty. Furthermore, although tenant may have lost all or nearly all of its business during the early months of the pandemic, it was not required to "cease operation under executive order number 202.3," such that guarantor is entitled to relief pursuant to Administrative Code of City of NY § 22-1005 (*see e.g. Mozzy, Inc. v SK Ironstate LLC*, [2022 NY Slip Op 32865\[U\]](#), *4 [Sup Ct, NY County 2022]; *40 X Owner LLC v Masi*, [2021 NY Slip Op 30041\[U\]](#), *3-4 [Sup Ct, NY County 2021]). Tenant was not forced to shut down the subject premises to the public, as the subject premises was

never open to the public for any services but merely served as office space for tenant. Therefore, defendant guarantor is not relieved of its obligations under the guaranty.</p> <p>THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.</p> <p>ENTERED: March 2, 2023</p>

<div align="center"> </div> </div>

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/new-york-supreme-court-of-the-state-of-new-york-appellate-division-first-department/2023/373-381-pas-associates-llc-v-ideko-productions-llc-et-al-3l4yfwg0>