

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

Matter of Aryeh Realty Corp. v. 18 E. 69th St Tenant, LLC

2025 N.Y. Slip Op. 06783 (Supreme Court of the State of New York Appellate Division First Department 2025) ·
No. Index No. 570353/24; Appeal No. 5229; Case No. 2025-01286 · Decided December 4, 2025

SUMMARY

The Appellate Division, First Department, modified and remanded an order concerning an alleged oral modification of a commercial lease. The court upheld findings that the parties agreed to a \$15,000 monthly rent reduction and that performance unequivocally referable to the modification satisfied the applicable requirements. It also upheld the denial of attorneys' fees to the petitioner but remanded for a determination of how the tenant's admitted breach affected the amounts owed.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Webber, J.P.; Kennedy, J.; González, J.; Higgitt, J.; Michael, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, First Department
DECIDED	December 4, 2025
DOCKET	Index No. 570353/24; Appeal No. 5229; Case No. 2025-01286
DISPOSITION	remanded
PROCEDURAL POSTURE	Petitioner-landlord appealed from an Appellate Term order affirming a Civil Court judgment concerning an alleged oral rent modification, attorneys' fees, and amounts allegedly owed under the lease.
STANDARD OF REVIEW	The appellate court deferred to the Civil Court's credibility-based factual findings and reviewed the legal issues presented on appeal. Arguments not raised in Civil Court were not considered.
PRECEDENTIAL VALUE	published
PARTIES	Aryeh Realty Corp. v. 18 E. 69th St Tenant, LLC, also known as 18 East 69th Street Tenant, LLC, "XYZ Corporation"

TOPICS

landlord tenant

breach of contract

contract interpretation

attorney fees

appellate procedure

PRACTICE AREAS

landlord-tenant law

contract law

appellate procedure

attorneys' fees

QUESTIONS PRESENTED

1. Whether the parties orally modified the lease to reduce the tenant's monthly rent by \$15,000.
2. Whether performance unequivocally referable to the oral modification confirmed the modification despite its inconsistency with the written lease.
3. Whether the landlord's arguments concerning consideration and detrimental reliance could be considered when they were not raised in Civil Court.
4. Whether the landlord was entitled to recover attorneys' fees based on the result of the proceeding.
5. Whether remand was required to determine the effect of the tenant's admitted breach of Article 45 on monies owed to the landlord.

HOLDINGS

1. The record supported the finding that the parties orally agreed to reduce the tenant's monthly rent by \$15,000.
2. The oral rent modification was valid because the parties' performance unequivocally referred to and confirmed the oral modification, despite the modification's incompatibility with the lease as written.
3. The court declined to consider the landlord's arguments concerning consideration for the rent reduction and the tenant's lack of detrimental reliance because those arguments were not presented to Civil Court.
4. The landlord did not prevail on the central issue litigated and therefore was not entitled to recover attorneys' fees.
5. Remand was required for a determination of the extent to which the admitted breach of Article 45 of the lease affected the monies owed to the landlord.

KEY QUOTATIONS

"Determining whether a party has "prevailed" for purposes of recovering its attorneys' fees "requires an initial consideration of the true scope of the dispute litigated, followed by a comparison of what was achieved within that scope"

"While we agree that the record supports the finding that there was a valid oral modification of the lease agreement, we agree with petitioner that Civil Court failed to make a determination as to the extent to which the admitted breach of Article 45 of the lease agreement affects any monies owed petitioner."

FACTUAL BACKGROUND

The parties' lease was orally modified so that the tenant's monthly rent would be reduced by \$15,000. Although the reduction was inconsistent with the written lease, the parties' performance was unequivocally referable to the

oral modification and confirmed its existence. The record also reflected an admitted breach of Article 45 of the lease, but Civil Court had not determined how that breach affected the amount of money owed to the landlord.

PROCEDURAL HISTORY

Civil Court, New York County, entered a judgment on November 13, 2023. The Appellate Term, First Department, entered an order on or about October 25, 2024, affirming that judgment. The Appellate Division unanimously modified the Appellate Term order by remanding for a determination of the extent to which the admitted breach of Article 45 of the lease affected monies owed to the petitioner, and otherwise affirmed.

DISPOSITION

remanded

REMAND INSTRUCTIONS

Remand for further proceedings and a determination of the extent to which the admitted breach of Article 45 of the lease affects any monies owed to petitioner; otherwise affirm the Appellate Term order.

CASES CITED

- Thoreson v Penthouse Intl., 80 NY2d 490, 495 (1992)
- Paramount Leasehold, L.P. v 43rd St. Deli, Inc., 136 AD3d 563, 568 (1st Dept 2016), lv denied and dismissed 28 NY3d 1024 (2016)
- National Interstate Ins. Co. v Interstate Indem. Co., 215 AD3d 593, 595 (1st Dept 2023)
- Twitchell Tech. Prods. v Mechoshade Sys., LLC, 227 AD3d 45, 55-56 (2d Dept 2024)
- Excelsior 57th Corp. v Winters, 227 AD2d 146, 147 (1st Dept 1996)
- Matter of Wiederhorn v Merkin, 98 AD3d 859, 863 (1st Dept 2012), lv denied 20 NY3d 855 (2012)

OPINION

PER CURIAM.

Matter of Aryeh Realty Corp. v 18 E. 69th St Tenant, LLC (2025 NY Slip Op 06783) Matter of Aryeh Realty Corp. v 18 E. 69th St Tenant, LLC 2025 NY Slip Op 06783 Decided on December 04, 2025 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided and Entered: December 04, 2024 Before: Webber, J.P., Kennedy, González, Higgitt, Michael, JJ. Index No. 570353/24|Appeal No. 5229|Case No. 2025-01286| [*1]|In the Matter of Aryeh Realty Corp., Petitioner-Appellant, v 18 E. 69th St Tenant, LLC Also Known as 18 East 69th Street Tenant, LLC et al., Respondents-Respondents, "XYZ Corporation," Respondent.

Kucker Marino Winiarsky & Bittens, LLP, New York (James E. Schwartz of counsel) for appellant. Dentons US LLP, New York (Ned H. Bassen of counsel) for respondents. Order of the Appellate Term, Supreme Court, First Department, entered on or about October 25, 2024, which affirmed a judgment of the Civil Court, New York County (Aija Tingling, J.), entered November 13, 2023, unanimously modified, on the law, to remand for further proceedings in accordance with this decision, and otherwise affirmed, without costs.

The Appellate Term correctly found that Civil Court's finding that the parties orally agreed to a modification of the monthly rent was supported by the record. That finding "rest[ed] in large measure on considerations relating to the credibility of witnesses" (*Thoreson v Penthouse Intl.*, 80 NY2d 490, 495 [1992] [internal quotation marks omitted]).

We agree with the Appellate Term that Civil Court properly found that the parties orally agreed that petitioner landlord would reduce the rent by \$15,000 per month, and that, although such a reduction was not compatible with the lease as written, there was performance confirming the modification that was unequivocally referable to the oral modification (see *Paramount Leasehold, L.P. v 43rd St. Deli, Inc.*, 136 AD3d 563, 568 [1st Dept 2016], lv denied and dismissed 28 NY3d 1024 [2016]).

We decline to consider landlord's argument related to consideration for the rent reduction, since it was not presented to Civil Court (see *National Interstate Ins. Co. v Interstate Indem. Co.*, 215 AD3d 593, 595 [1st Dept 2023]; *Twitchell Tech. Prods. v Mechoshade Sys., LLC*, 227 AD3d 45, 55-56 [2d Dept 2024]).

For similar reasons, we decline to consider landlord's argument that tenant did not detrimentally rely on the oral modification. Determining whether a party has "prevailed" for purposes of recovering its attorneys' fees "requires an initial consideration of the true scope of the dispute litigated, followed by a comparison of what was achieved within that scope" (*Excelsior 57th Corp. v Winters*, 227 AD2d 146, 147 [1st Dept 1996]).

The Appellate Term properly found that Civil Court correctly concluded that the central issue in this proceeding, was whether the lease was orally modified to afford tenant a rent reduction. Petitioner did not prevail and is therefore not entitled to recover attorneys' fees (see *Matter of Wiederhorn v Merkin*, 98 AD3d 859, 863 [1st Dept 2012], lv denied 20 NY3d 855 [2012]).

While we agree that the record supports the finding that there was a valid oral modification of the lease agreement, we agree with petitioner that Civil Court failed to make a determination as to the extent to which the admitted breach of Article 45 of the lease agreement affects any monies owed petitioner.

Therefore, we remand for further determination of this issue. We have considered petitioner's remaining arguments and find them to be unavailing. THIS CONSTITUTES THE DECISION

AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.
ENTERED: December 4, 2024

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