CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

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110 GREENWICH STREET ASSOCIATES, L.L.C., DECISION AND ORDER

Petitioner (Landlord),

-against- Index No. L&T 076887/10

WATERFRONT ATHLETIC CLUB, INC., Papers considered
(1) OSC and Affs and
(2) Opp Aff

Respondent (Tenant),

TRINITY BOXING AND ATHLETIC CLUB, INC.,
"John and Jane Doe" 1,

Respondents (Undertenants).

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JENNIFER G. SCHECTER, J.:

Respondent Waterfront Athletic Club, Inc. (Athletic Club or Respondent) moves to either vacate the final judgment and warrant that was issued pursuant to a stipulation dated February 1, 2011 or to permanently stay execution of the warrant "on the basis that Respondent exercised its renewal option pursuant to paragraph 11 of said stipulation and/or on the basis that equity should intervene to deem said renewal option timely exercised" (Order to Show Cause at ¶¶ 1-2). Its motion is denied.

Background

Petitioner 110 Greenwich Street Associates, L.L.C. (110 Greenwich, Landlord or Petitioner) commenced this commercial nonpayment proceeding in August 2010. Several months later, on February 1, 2011, the parties settled the proceeding pursuant to a two-attorney stipulation (Stipulation).

The Stipulation provided, among other things, that:

- the proceeding was converted "to a summary holdover proceeding" (Affirmation in Support [Supp], Ex D, Stipulation at ¶ 1);

- Athletic Club consented to "the forthwith entry of a final judgment of possession only in favor of [110 Greenwich and against it] granting legal possession of the Demised Premises to Petitioner. The final judgment of possession shall provide for a warrant of eviction to issue forthwith, execution stayed" subject to the Stipulation. The final judgment of possession and warrant could be issued and entered without further notice (*id.* at ¶ 3);

- "strictly conditioned" on Athletic Club's timely performance of and full compliance with all of the Stipulation's terms, 110 Greenwich agreed to allow Athletic Club to remain in possession through and including February 28, 2014 (the Vacate Date) (*id.* at ¶ 4);

- "Without creating a landlord/tenant relationship, or a leasehold interest on behalf of the [Athletic Club], and for reference purposes only, during Respondent's occupancy of the Demised Premises from the date of execution of this Stipulation through the Vacate Date, Respondent [was required to] perform all material terms and conditions of the Expired Lease for the Demised Premises required as tenant thereunder." The Stipulation, time and again, reiterated "that the Expired Lease expired by operation of law and pursuant to its terms" (*id.* at ¶ 12 [emphasis added]);

- The Athletic Club warranted and represented that, as of the date of the Stipulation's execution "(i) any right of or claim by Respondent to possession and/or occupancy of the Demised Premises, other than pursuant to [the] Stipulation, [had] terminated and expired, and Respondent [had] forever abandoned and surrendered any claim of possession and/or

> occupancy and/or tenancy of the Demised Premises other than pursuant to [the] Stipulation; (ii) by entering into [the] Stipulation, Respondent [did] not become a tenant and/or licensee of Petitioner under a written or oral lease, license, sublicense or otherwise by reason of its occupancy of the Demised Premises during the pendency of the stay of the warrant of eviction pursuant to [the] Stipulation, [and] (iii) Respondent [was] holding over and [was] granted occupancy" pursuant to the Stipulation (Supp, Ex D, Stipulation at ¶ 19); and
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> - In the event of bankruptcy the Athletic Club acknowledged that "its tenancy and/or license, including any and all legal and equitable rights thereunder, have expired and terminated, and have been surrendered to Petitioner; [that] Respondent [was] holding over with no rights of possession, whether legal or equitable, in the Demised Premises . . . [and that] Respondent [had] no legal or equitable interests in the Demised Premises" (*id.* at ¶ 20 [emphasis added]).

The Stipulation also provided that if the Athletic Club fully complied with the stipulated terms, it would "have the option to renew the Lease" (*id.* at ¶ 11). The Stipulation set forth that "Respondent must exercise said option nine (9) months prior to the Vacate Date by sending a written notice thereof (the 'Renewal Notice') to Landlord by certified mail return receipt requested [and if] Respondent shall send the Renewal Notice within the time and in the manner hereinbefore provided, the Lease shall be deemed reinstated and renewed" (*id.* [emphasis added]).

It is undisputed that the Athletic Club did not timely exercise its option. According to Martin Snow, the Athletic Club's founder and owner, it "was not until the landlord emailed me on August 14, 2013 [months after the option deadline] to inform me that we had to vacate on February 28, 2014 that I became aware of the deadline to renew" (Affidavit of Martin Snow [Snow Aff] at ¶ 10). Immediately thereafter, Mr. Snow informed the Landlord via email that he planned to renew the lease for an additional five years. He followed up a few days later with a certified letter in an attempt to officially exercise the option (Supp, Ex G).

The Landlord responded that because the option was not timely exercised, it would not be honored (Supp, Ex H).

In February 2014, the Athletic Club moved to have the Stipulation vacated on the ground that Mr. Snow "was mentally incompetent and disabled" at the time of its execution (Opp, Ex D at 2). The motion was denied because the "alleged incompetent [was] not a party to the proceeding and the Stipulation was signed by corporate counsel years ago" (Mar. 21, 2014 Decision and Order). Execution of the warrant was stayed until March 31, 2014.*

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* A notice of eviction dated March 25, 2014 was served on the Athletic Club (Supp, Ex T).

After its motion to vacate the Stipulation was denied, the Athletic Club commenced an action in Supreme Court, New York County seeking a declaratory judgment that it extended the lease through February 28, 2019 and a permanent injunction preventing 110 Greenwich from evicting it from the premises (Affirmation in Opposition [Opp], Ex H). Supreme Court dismissed that case without prejudice to restoration of this proceeding to address the issue (Opp, Ex I)

The Athletic Club now moves for vacatur of the judgment and warrant or a permanent stay of execution of the warrant, urging that equity should intervene to prevent a forfeiture and that it should be deemed to have timely exercised its option to renew. Mr. Snow swears that the failure to timely exercise the option was inadvertent. He explains that boxing-related ailments have left him suffering from memory problems and because he did not have to notify the landlord when he exercised the first renewal option, "he did not know or realize [that he] had to send a notice within a certain period of time in order to extend the lease" (Snow Aff at ¶¶ 7 and 9). Mr. Snow maintains that the landlord always knew that he intended to exercise the renewal option and that there was even a "light hearted email exchange about [their] 'next lease' in May 2011" (*id.* at ¶ 13).

Mr. Snow further recounts that in reliance on the lease running through February 28, 2019, the Athletic Club spent over $40,000 on improvements and renovations (*id.* at ¶ 14).

110 Greenwich opposes the motion. It argues that the Renewal Notice is a strict condition precedent to reinstatement of the parties' lease and that the Stipulation must be enforced as written (Opp at ¶ 2). It also contends that it would suffer severe prejudice if the option were to be deemed timely exercised because it has been marketing the building as vacant and has received two written offers that are contingent on the building's vacancy (Opp, Ex G, Schechtman Aff at ¶ 6).

Analysis

The Athletic Club principally relies on *J.N.A. Realty Corp. v Cross Bay Chelsea* (42 NY2d 392 [1977]) (*JNA*). There, the Court of Appeals held that equity could relieve a tenant from forfeiture after it inadvertently failed to timely exercise an option to renew its lease. Reliance on *JNA* and its progeny, however, is misplaced.

In *JNA*, in the context of options, the Court distinguished a failure to comply with a condition precedent, in which case "equity can give no relief" from the failure to satisfy a condition subsequent, in which case "equity will

interpose and relieve against forfeiture" (*id.* at 397). The Court explained that "when a tenant in possession under an existing lease has neglected to exercise an option to renew, he might suffer a forfeiture if he has made valuable improvements on the property" and "it has been noted that 'although the tenant has no legal interest in the renewal period until the required notice is given . . . an equitable interest is recognized and protected against forfeiture' (*id.* at 397-398 [emphasis added]).

In contrast, the Court made clear the general "settled principle of law that a notice exercising an option is ineffective if it is not given within the time specified" and equity is unavailable because "default on an option usually does not result in a forfeiture" (*id.*, at 396-397). According to the Court, the "reason is that the option itself does not create any interest in the property, and no rights accrue until the condition precedent has been met by giving notice within the time specified. Thus equity will not intervene because the loss of the option does not ordinarily result in the forfeiture of any vested rights" (*id.* at 397).

Based on the parties' enforceable Stipulation, any loss of possession here is not a forfeiture but merely the contracted-for consequence of the Athletic Club's failure to comply with the condition precedent. Unlike the tenant in

JNA, the Athletic Club had no legal or equitable interest or right to possession of the premises absent timely exercise of the option. Significantly, pursuant to the parties' agreement, 110 Greenwich was already awarded a final judgment of possession, there was no landlord/tenant relationship between the parties and the Athletic Club did not have a leasehold interest in the premises having "forever abandoned and surrendered any claim of possession" (Supp, Ex D, Stipulation, at ¶ 19). Thus, there is no basis for awarding equitable relief to prevent a forfeiture under these circumstances. Additionally, the Athletic Club's arguments come months after it was put on notice that the long-expired lease would not be renewed and after it unsuccessfully attempted to vacate the Stipulation.

In the end, the Athletic Club must be held to its Stipulation. Hopefully, if it so chooses, it will be able to secure an alternate space downtown so that it can continue to serve its members (*see* Supp, Ex S).

Accordingly, it is ORDERED that respondent's motion is denied. Execution of the warrant is stayed 10 days for respondent to vacate. It is further

ORDERED that an attorneys' fees hearing will be held at 10:15 a.m. on June 25, 2014 in Room 950.

This constitutes the Decision and Order of the court.

Dated: June 13, 2014

HON. JENNIFER G. SCHECTER