

CIVIL COURT OF THE CITY OF NEW YORK  
NEW YORK COUNTY, PART 52

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Mollaney LLC,

Index No. 077983/2016

Plaintiff,

-against-

**DECISION/ORDER**  
Motion Seq #2 and #3

355 W. 41<sup>st</sup> Tavern, Inc.

Defendant.

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**HON. CAROL RUTH FEINMAN:**

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this Notice of Motion for leave to reargue is as follows:

<b>Papers</b>	<b>Numbered</b>
Notice of Motion and Affidavits Annexed.....	1 & 2 [A-L, Affidavits]
Notice of Cross-Motion and Affidavits Annexed .....	3 & 4 [A-M]
Order to Show Cause and Affidavits Annexed.....	
Answering Affidavits.....Opposition.....	5 [A-F, Affidavit]
Replying Affidavits.....	6 [A-B]
	7 [none]
Exhibits.....	
Other.....Petitioner Memos of Law .....	8, 9, 10

On January 10, 2017 petitioner filed a motion against respondent for non payment of rent. Respondent is a commercial tenant and petitioner is its landlord. Petitioner claimed that respondent owed rent arrears in the amount of \$122,197.02 at base monthly rent of \$13,092.74 plus real estate taxes and water/sewer charges. This amount does not include respondent's payment of \$75,000 to petitioner on December 2, 2016, which is presently in an escrow account. Petitioner also moved that the Court include all rent owed through the time of the hearing on the motion. Respondent filed a cross-motion against petitioner seeking the dismissal of petitioner's motion. Both these motions were heard on March 6, 2017.

In a demand letter dated August 22, 2016, petitioner demanded that respondent pay an accelerated amount of \$78, 556.44 for the period from September 2016 through

February 2017, on or before September 2016. At that time respondent owed petitioner rent arrears through August 2016 of approximately \$126,892.97. This amount was not paid by the respondent and petitioner followed up with a second demand letter dated September 15, 2016.

Pettitioner based its demand for accelerated rent on its reading of Clause 54 of the lease (Exhibit B in Petitioner's Notice of Motion) which states that "In the event Tenant is more than ten (10) days late in making rental payments for any two (2) months in any Lease Year, Tenant shall on demand by Landlord, issue certified checks to Landlord for all remaining rental payments during that Lease year."

Respondent acknowledges that it is in arrears of its rent payments. However, respondent contests the petitioner's ability to obtain accelerated rent in a summary nonpayment proceeding in Civil Court. Instead, respondent argues that the action should have been brought in the New York State Supreme Court.

Even if the respondent is correct as to the lack of jurisdiction by Civil Court to entertain a summary nonpayment judgment this would not apply to rents that are owed by the respondent outside of the accelerated period . This has been the holding of the New York Courts which have found that "consistent with the modern view that pleadings and threshold notices in summary proceedings are to be accorded the same liberal construction as papers in civil litigation generally so that cases may be disposed of on the merits, we discern no defect - and certainly no "jurisdictional defect"- which would preclude this garden variety nonpayment proceedings from going forward." *See, Brusco v. Miller*, 167 Misc.2d 54 [App. Term, 1<sup>st</sup> Dept. 1995].

Respondent's rent arrears cover a period of time from May 2016 through at least February 2017. On March 6, 2017, this Court granted Petitioner's motion to include rent owed through the time of the argument of the motion. Therefore it is moot whether or not this court has jurisdiction to consider the rent arrears covered by the accelerated period in time as this period occurred prior to the date of this motion (January 27, 2017) and the date of the hearing on the motion (March 6, 2017) and therefore this case became another "garden variety" non payment proceeding.

At the motion hearing petitioner's attorney stated that respondent owed rent arrears to that date of \$122,197.02. Respondent's attorney did not dispute that amount and did not offer any defense other than the previous claim of a lack of jurisdiction.

Therefore, petitioner's summary judgment motion for payment of rent arrears is hereby granted, and respondent's motion to dismiss this action is hereby denied. Petitioner is granted a judgment of \$122,197.02 to be paid by respondent within ten(10) days of the date of service of the judgment. The petitioner is also hereby entitled to the additional \$75,000.00 which respondent had paid and which petitioner placed into an escrow account on December 2, 2016. In the event that the respondent

does not pay the petitioner the amount set forth in the judgment within ten (10) days of the date of service of the judgment, petitioner will be entitled to a warrant of eviction against respondent.

This is the decision and order of this Court.

DATED: May 24, 2017  
New York, New York



**CAROL RUTH FEINMAN**  
**Judge, Civil Court/A.J.S.C.**  
**HON. CAROL RUTH FEINMAN**  
**J.S.C.**