SUPREME COURT - STATE OF NEW YORK

Present:

HON. ARTHUR M. DIAMOND
Justice Supreme Court

MORTON VILLAGE REALTY CO., INC.,

Plaintiff,

-against-

SLEEPY'S LLC, MATTRESS FIRM HOLDING CORPORATION, and MATTRESS FIRM, INC.,

Defendants.

TRIAL PART: 5

NASSAU COUNTY

INDEX NO: 610652/2018

MOTION SEQ #: 1, 2

SUBMIT DATE: 12/9/19

The following papers having been read on this motion:

Notice of Motion 1
Notice of Cross-Motion and Opposition 2
Reply to Motion and Opposition to Cross-Motion 3
Reply to Cross-Motion 4

Defendants move for summary judgment, pursuant to CPLR §3212, to dismiss Plaintiff's first, second, third, fourth, and sixth causes of action. Plaintiff has opposed the motion and has cross-moved for summary judgment on all six of its causes of action. Both motions have been fully briefed. For the following reasons, Defendant's motion is hereby denied in its entirety and Plaintiff's cross-motion is hereby granted to the following extent.

On or about April 5, 2002, Plaintiff and Defendants' predecessor in interest, Rockaway Bedding Centers of New York, Inc., entered into a commercial lease agreement with a five-year term, whereby Plaintiff as landlord would lease a certain portion of its property to Rockaway Bedding to operate a retail store in the shopping center located at 1040 Old Country Road, Plainview, New York, which is within Nassau County. Amongst the many provisions, the subject lease permitted certain renewals and extensions, making the lease renewable for an additional five-year term at the end of the initial five-year period. The parties amended the lease on or about March 1, 2008, shortly after Rockaway Bedding was acquired by Defendant Sleepy's. The lease agreement was also amended on or about February 6, 2009, which reduced the monthly rental amount due for the remainder of the lease period, and again on December 19,

2012, at which time two additional renewal periods were added to the contract, moving the expiration date to February 28, 2018, or February 28, 2023, depending on the renewal options being exercised by Defendants. It appears undisputed between the parties that Defendants exercised the available renewal option in 2018, making the applicable lease expiration date to be February 28, 2023.

The undisputed facts between the parties giving rise to the instant action are that on or about February 5, 2016, Defendant Sleepy's was acquired by Defendants Mattress Firm. Thereafter, on July 24, 2017, the so-called "anchor tenant" in the shopping center, ShopRite Supermarket, vacated the premises, leaving its unit at the property vacant. Defendants waited for a new tenant to begin operations in the vacant unit of the anchor tenant; however, when no such tenant assumed that unit by July 24, 2018, Defendants wrote a letter to Plaintiff seeking to terminate its lease early. Plaintiff's rejected that notice, responding to inform Defendants that it had entered into a lease with a third-party to assume the unit and become the new anchor tenant of the shopping center, with said lease being executed on or about May 10, 2018. Nevertheless, despite this information, Defendants vacated their unit in the shopping center on or about July 31, 2018.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. Alvarez v. Prospect Hospital, 68 NY2d 320, 508 NYS2d 923 (1968). To make a prima facie showing, the motion must be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admissions. Id. Once a prima facie showing has been made, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action. Id., *See also* Zuckerman v. City of New York, 49 NY2d 557, 427 NYS2d 595 (1980).

Interpretation of an unambiguous contract is a matter for the court. Las Palmeras De Ossining Restaurant, Inc. v. Midway Center Corporation, 107 AD3d 854, 968 NYS2d 529 (2nd Dept., 2013). When the terms of a written contract are clear and unambiguous, the intent of the parties must be found within the four corners of the contract, giving practical interpretation to the language employed and the parties' reasonable expectations. Patsis v. Nicolia, 120 AD3d

1326, 992 NYS2d 349 (2nd Dept., 2014). Thus, a written agreement that is complete, clear, and unambiguous on its face must be enforced according to the plain meaning of its terms. Bri Jen Realty Corp. v. Altman, 146 AD3d 744, 48 NYS3d 670 (2nd Dept., 2017). A contract should not be interpreted in such a way as to leave one of its provisions substantially without force or effect. Las Palmeras at 856, 532.

The portions of the contract at issue can be found on Page 47, Article 35 of the original agreement from 2002. This section entitled "Co-Tenancy; Termination by Tenant" contains two operative subsections, 35.01(A) and (B), that read as follows:

> "A. In the event that at any time or from time to time following the Rent Commencement Date, the ShopRite supermarket, or any substitute, successor, assign, or replacement supermarket (the "Anchor Tenant") shall vacate or cease business operations at the Shopping Center, for a period in excess of three hundred sixty-five (365) consecutive days, except in the event of casualty, condemnation, repairs or alterations, Tenant shall have the option..., exercisable upon written notice from Tenant delivered to Landlord effective as of the date of such notice..., to terminate this Lease, provided that (i) no Event of Default shall have occurred and be continuing on the date of exercise of such Section 35.01 Termination Option or on the effective date of such termination, and (ii) all obligations of Tenant under this Lease accruing or applicable to the period ending on the Section 35.01 Termination Date shall have been performed or satisfied in full by Tenant.
>
> B. Notwithstanding any contrary provision of this Section 35.01, if within the 365-day period specified in Section 35.01A, Landlord shall execute a lease with or consent to an assignment to a substitute, successor, assign, or replacement tenant to or of the previous Anchor Tenant, then the Section 35.01 Termination Option shall apply only to such substitute, successor, or assign and shall commence on the date such successor, assignor, or replacement opens for business in the [shopping center]."

Defendants in their motion argue that these clauses, when read together, require not only that a lease for a replacement anchor tenant be signed by Plaintiff; rather, these sections require the new anchor tenant to begin business operations before the three hundred sixty-five day window from the previous anchor tenant closes, activating Defendants opt-out opportunity and their right to do so under the lease agreement. While this may be considered a reasonable interpretation of the clause, such interpretation is contrary to the plain language of the contract. The proper interpretation of this section, as asserted by Plaintiff, is that three hundred sixty-five day window commences once the anchor tenant ceases business operations and continues until

either the window to restart operations closes or Plaintiff enters into a new lease agreement; furthermore, should Plaintiff enter into a new lease agreement, a new three-hundred sixty-five day window cannot commence until that replacement anchor tenant has opened for business. In other words, the lease provides a very narrow opportunity for Defendants to opt-out of the agreement without penalty, whereas Plaintiff need only enter into a contract with a new potential anchor tenant to prevent such an opt-out. Even assuming, *arguendo*, the aforementioned portions of the lease agreement were indeed ambiguous, such ambiguity cannot be automatically construed against Plaintiff as the likely drafter of the agreement, since the rule that ambiguous language in a contract will be construed against the drafter is not applicable to a contract resulting from negotiations between two commercially sophisticated entities. Shadlich v. Rongrant Associates, LLC, 66 AD3d 759, 887 NYS2d 228 (2nd Dept., 2009).

Therefore, Defendants motion for summary judgment, seeking dismissal of Plaintiff's first, second, third, fourth, and sixth causes of action and premised entirely on interpreting the contract to have this opt-out clause be deemed properly activated, is denied. Coinciding with the foregoing, Plaintiff's cross-motion is granted on the issue of liability as to its first, fourth, fifth, and sixth causes of action. Plaintiff's third cause of action seeking declaratory relief that Defendants' breached the subject lease agreement is hereby granted as well. However, in light of the award herein on the issue of liability to Plaintiff on its breach of contract cause of action and the setting down of this matter for an inquest of damages, the Court hereby exercises its discretion as to Plaintiff's second cause of action seeking specific performance and said cause of action is hereby dismissed. *See* Victory State Bank v. EMBA Hylan, LLC, 169 AD3d 963, 95 NYS3d 97 (2nd Dept., 2019).

Plaintiff shall file and serve a copy of the within order with notice of entry upon Defendants within thirty (30) days from the date of this order. Plaintiff shall also file and serve a note of issue in this action within sixty (60) days from the date of this order. Thereafter, the parties shall appear as directed in the DCM Part of Supreme Court, Nassau County, so that they may schedule an inquest on damages consistent with the foregoing findings of this Court.

This hereby constitutes the decision and order of this Court.

ENTER

DATED: January 15, 2020

HON. ARTHUR M. DIAMOND
J.S.C.