

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 14**

*Justice*

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CIT FINANCE LLC

Plaintiff,

- v -

KEY MATERIAL HANDLING EQUIPMENT CO., INC.,

Defendant.

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INDEX NO. 653209/2017

MOTION DATE 09/15/2020

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 18, 19, 21, 22, 24 were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

The motion by plaintiff for summary judgment is denied.

**Background**

Plaintiff brings this case for breach of a lease agreement related to two copiers and accessories. As part of this agreement, defendant was required to make sixty monthly payments of \$599. Plaintiff insists that defendant only made 14 of the 60 payments and defaulted on March 30, 2016.

In opposition, defendant argues that the amount sought by plaintiff is unconscionable. It argues that plaintiff refused to take back the equipment and did not seek to mitigate its damages. Defendant claims it tried to arrange for payment through an assignee and concludes that the liquidated damages provision of the equipment lease is an unenforceable penalty because it is grossly disproportionate to the actual damages incurred.

In reply, plaintiff asserts that the opposition is essentially unsupported allegations that plaintiff did not mitigate its damages by agreeing to have an unnamed third party make payments.

**Discussion**

The Court denies the motion. As an initial matter, plaintiff’s moving papers do not offer any substantive arguments for why defendant’s affirmative defenses should be dismissed. And it wholly failed to address defendant’s arguments in opposition that it had offered conflicting accounts of the amounts due and that there was an unenforceable liquidated damages provision. There is no doubt that the memo of law in support claims that there is \$84,392.41 due but later states that \$29,458.54 is due. And plaintiff did not bother to make any substantial arguments in reply regarding the liquidated damages issue.

The Court cannot simply ignore these oversights and make arguments for plaintiff. The Court can only evaluate the claims made by both sides; it cannot grant a summary judgment motion where the movant does not bother to address the affirmative defenses in any detail.

Accordingly, it is hereby

ORDERED that the motion for summary judgment is denied.

Remote Conference: January 6, 2021.

9/16/2020  
DATE

  
ARLENE P. BLUTH, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE