

Appellate Division, First Judicial Department

Renwick, A.P.J., Webber, Singh, Rodriguez, Higgitt, JJ.

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MAYORE ESTATES LLC, et al.,

Index No. 656373/20

Plaintiffs-Appellants-Respondents,

Case No. 2022-02097

-against-

CENTURY 21 INC.,

Defendant-Respondent-Appellant.

Holwell Shuster & Goldberg LLP, New York (James M. McGuire of counsel), for appellants-respondents.

Rivkin Radler LLP, Uniondale (Evan Krinick of counsel), for respondent-appellant.

Order, Supreme Court, New York County (Andrew S. Borrok, J.), entered on or about April 18, 2022, which, to the extent appealed from as limited by the briefs, denied plaintiffs' motion for summary judgment and granted defendant's motion to dismiss insofar as, in effect, declaring that the retail lease terminated according to its terms and the springing lease came into effect immediately according to its terms, unanimously affirmed, with costs.

The motion court properly construed the parties' unambiguous agreements to give effect to all of their terms and made several material findings in defendant's favor (*see Maurizzio v Lumbermens Mut. Cas. Co.*, 73 NY2d 951, 954 [1989]). Contrary to plaintiffs' contention, nothing in the parties' "4-5-6" lease for the fourth through sixth floors of the building disturbed the operation of the earlier-executed springing lease, which came into effect upon the termination of the retail lease for the ground floor and

certain other levels of the building (*Muzak Corp. v Hotel Taft Corp.*, 1 NY2d 42, 46 [1956] [“no provision of a contract should be left without force and effect”]).

To be sure, article 89(f) of the 4-5-6 lease required the retail lease to be renewed simultaneously with the 4-5-6 lease, and, under article 89(j), the failure to do so resulted in the termination of the retail lease. However, sections 1 and 2.1 of the springing lease stated, among other things, that if the retail lease was terminated “for any reason,” the springing lease came into effect “on the calendar day immediately following the expiration of the Existing Lease.” Thus, the motion court gave effect to the terms of each of the three agreements by finding that when defendant failed to renew the retail lease and 4-5-6 lease simultaneously, the retail lease terminated and the springing lease came into effect immediately (*Vermont Teddy Bear Co. v 538 Madison Realty Co.*, 1 NY3d 470, 475 [2004] [“when parties set down their agreement in a clear, complete document, their writing should . . . be enforced according to its terms”] [internal quotation marks omitted]). Had the parties intended to displace the significant rights and obligations contained in the springing lease by entering into the 4-5-6 lease, they could have stated so expressly but did not, and plaintiffs provide no basis for reading such an additional term into any of the agreements (*id.*).

Any challenge to defendant’s right to become a direct tenant under the retail lease as required by the springing lease was expressly resolved in a settlement dated May 11, 2007 and therefore does not affect our interpretation of the springing lease. Plaintiffs’ contention that the motion court improperly determined that the retail lease “sprang back to life,” resulting in two different leases governing the premises, misapprehends section 2.1 of the springing lease, which states “the term of *this Lease* shall commence on the calendar day immediately following the expiration of the Existing Lease”

(emphasis added). As indicated above, by operation of article 89 of the 4-5-6 lease, the retail lease terminated, and, by operation of sections 1 and 2 of the springing lease, a new tenancy arose governed by the springing lease. Plaintiffs' dissatisfaction with that result derived from the unambiguous terms of the agreements does not render it absurd.

We have considered plaintiffs' remaining contentions and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: May 30, 2023

A handwritten signature in black ink, appearing to read "Susanna Molina Rojas". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Susanna Molina Rojas
Clerk of the Court