Big City Outdoor, LLC v JTRE 23 WS LLC

2026 NY Slip Op 50579(U)

April 23, 2026

Supreme Court, Kings County

Reginald A. Boddie, J.

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Digest-Index Classification: Contracts—Reformation—Plain Drafting Error

Big City Outdoor, LLC, Plaintiff,

v

JTRE 23 WS LLC, et al., Defendants.

Supreme Court, Kings County
Decided on April 23, 2026
Index No. 530713/2023

Plaintiff's attorney: Adam Kalish of The Law Offices of Adam Kalish PC, 182a 26th St # 2r, Brooklyn, NY 11232, Phone: (718) 857-3664

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Reginald A. Boddie, J.

[*1]

The following e-filed papers read herein: NYSCEF Doc Nos.

MS 4 110-133, 154-155

MS 5 136-153, 156-160

Plaintiff's motion for summary judgment and defendants' cross-motion for summary judgment are decided as follows:

Background

This action arises out of an alleged dispute over plaintiff's contractual rights to use and advertise on certain window space pursuant to a lease, entitled "Re: Advertising Window wrap at 35 Wall Street" (NYSCEF Doc No. 121), dated November 9, 2017 (the "Agreement" or the "2017 Agreement"), with defendant CS Wall Street LLC ("CS Wall"). Plaintiff contends that the Agreement granted it a six-year term with a unilateral option to renew, that performance under the Agreement was temporarily paused due to scaffolding that obstructed the premises, and that after the obstruction was removed, defendants wrongfully denied plaintiff access, refused to recognize the Agreement, and permitted third parties to use the same advertising space, effectively resulting in an unlawful exclusion or eviction despite plaintiff's continued contractual rights.

By Decision and Order dated February 8, 2024, the Court held:

> "Given the factual averment put forth by CS Wall's managing agent, Sal Ariganello of Cushman & Wakefield, Inc., that CS Wall terminated the [2017] Agreement in November 2020 when it informed plaintiff that the premises was being leased to co-defendants, which plaintiff fails to dispute, plaintiff cannot demonstrate a likelihood of success on the merits. In addition, the terms of the [2017] Agreement and the parties' previous agreement dated July 10, 2014, which was proffered by CS Wall, indicate that it was plaintiff and CS Wall's understanding that their agreement would terminate in the event the premises was leased to a third party" (NYSCEF Doc No. 58).

Plaintiff now moves for summary judgment pursuant to CPLR 3212, seeking, inter alia, declaratory relief confirming the validity and renewal of the Agreement, dismissal of defendants' counterclaims, and a declaration of its right to re-enter and use the premises. Plaintiff argues that no triable issues of fact exist because the documentary evidence and defendants' own witness testimony establish a valid and enforceable lease, no proper termination or default notice, and plaintiff's valid exercise of its renewal option in December 2023. Plaintiff further contends that defendants' contrary positions, including as to nonpayment and termination, are contradicted by their own agents' admissions and inconsistent testimony.

In opposition, defendants argue that plaintiff has not established that the Agreement remained valid, was properly renewed, or gave plaintiff any present right to re-enter and use the windows. CS Wall contends that the Agreement either terminated in January 2020 when the premises, including the windows, were leased to co-defendant JTRE 23 WS (DEL) LLC ("JTRE"), or, at the latest, expired on December 31, 2023, and that the purported renewal option is unenforceable for lack of essential terms. CS Wall also disputes any oral "pause" of rent obligations and asserts that plaintiff failed to pay rent from February 2018 through December 2023. The JTRE defendants separately argue that plaintiff is not entitled to declaratory or injunctive relief against them because JTRE leased the entire premises, including the windows, in reliance on CS Wall's representation that no other occupancy agreement existed, and because granting plaintiff access would impair JTRE's leasehold rights.

CS Wall also cross-moves for summary judgment, seeking reformation of the Agreement based on mutual mistake or scrivener's error, arguing that the Agreement mistakenly gave the "Lessee," rather than the "Lessor," the right to terminate if the premises were leased or sold. In the alternative, CS Wall seeks a declaration that the Agreement terminated no later than December 31, 2023, dismissal of the amended complaint, and summary judgment on its unpaid-rent counterclaim. In support, CS Wall relies on the prior agreements, drafting history, post-execution conduct, and asserted rent arrears.

In opposition to the cross-motion and in further support of its own motion, plaintiff argues that the Agreement was deliberately prepared and reviewed by sophisticated parties and cannot now be rewritten as a supposed scrivener's error. Plaintiff further argues that reformation requires clear proof of mutual mistake, which CS Wall has not shown, especially given the alleged lack of personal knowledge and inconsistencies in defendants' witness testimony. Plaintiff also maintains that no formal termination, default, or rent-demand notice was issued before December 2023, that the Agreement remained valid, and that its December 22, 2023 renewal was effective.

In reply, CS Wall argues that plaintiff has failed to raise any triable issue of fact and has not meaningfully rebutted CS Wall's core arguments. CS Wall contends that plaintiff effectively **[*2]**concedes the invalidity of the alleged renewal option by failing to refute that it lacks essential terms. CS Wall also reasserts that the Agreement should be reformed, or alternatively deemed terminated no later than December 31, 2023 due to nonpayment, and that it is entitled to unpaid rent.

Discussion

It is well established that summary judgment is warranted when "the proponent makes 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, and the opponent fails to rebut that showing" (*Brandy B. v Eden Cent. School Dist.*, 15 NY3d 297, 302 [2010] [citation omitted]). Once the proponent has made a prima facie showing, the burden then shifts to the motion's opponent to present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]). Upon a motion for summary judgment, the court's function is one of issue finding rather than issue determination (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). "It is not the function of a court . . . to make credibility determinations or findings of fact, but rather to identify material triable issues of fact (or point to the lack thereof)" (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505 [2012] [citation omitted]).

The 2017 Agreement & Reformation

The Agreement provides, in relevant part, "[i]n the event the commercial space in the property is rented or sold with the condition of the termination of this lease, Lessee shall have the right to terminate this lease, with 60 days advance notice." This provision lies at the center of the parties' dispute. Under the plain language of the 2017 Agreement, plaintiff contends that it, as lessee, retained the right to terminate in the event defendants rented or sold the commercial space associated with the subject windows.

That language, however, is directly at odds with the parties' two prior agreements concerning the same window advertising arrangements. In the November 22, 2013 agreement, the parties agreed that "

[l]andlord can terminate at any time if the interior space behind the subject windows is leased to a tenant, with a thirty day written notice" (NYSCEF Doc No. 147). Likewise, the July 10, 2014 agreement provides that "[l]andlord can terminate at any time if the interior space behind the subject windows is leased to a tenant, with a thirty day written notice" (NYSCEF Doc No. 148). As this Court previously noted in its February 8, 2024 Decision and Order, those earlier agreements indicate that it was the parties' prior understanding that the defendant landlord, not the plaintiff tenant, would have the right to terminate upon a lease or sale of the underlying premises.

Defendants argue that the use of "Lessee" in the 2017 Agreement is merely a scrivener's or typographical error and that, consistent with the 2013 and 2014 agreements and the nature of typical window advertising arrangements, the provision was intended to refer to the "Lessor." Plaintiff, by contrast, insists that the 2017 language was deliberate and must be enforced according to its plain terms.

"[T]he general rule of contract interpretation [is] that ambiguities in an agreement should be interpreted most strongly against the draftsman" (*Reape v New York News, Inc.*, 122 AD2d 29, 30 [2d Dept 1986] [citations omitted]). "However, where a particular interpretation would lead to an absurd result, the courts can reject such a construction in favor of one which would **[*3]**better accord with the reasonable expectations of the parties" (*id.*). It is likewise well settled that "a contract should not be interpreted to produce a result that is absurd, commercially unreasonable or contrary to the reasonable expectations of the parties" (*Greenwich Capital Fin. Products, Inc. v Negrin*, 74 AD3d 413, 415 [1st Dept 2010] [citations and internal quotation marks omitted]).

Here, plaintiff's interpretation would produce an absurd and commercially unreasonable result. The parties' Agreement consists of plaintiff's limited right to place advertising on certain windows, while defendant retained ownership and control of the underlying commercial premises. It makes commercial sense that the landlord would retain the right to terminate a limited signage arrangement upon the lease or sale of the premises. It is commercially unreasonable that the tenant, whose interest was confined to use of the windows for advertising, would instead hold the operative right to terminate the lease in that circumstance. Such a reading would effectively deprive the owner of control over its own premises in the very event when that control matters most, i.e. the leasing or sale of the premises. That construction is not only inconsistent with ordinary commercial expectations, but is flatly inconsistent with the parties' 2013 and 2014 agreements, which expressly vested that right in the landlord.

"A claim for reformation of a written agreement must be grounded upon either mutual mistake or fraudulently induced unilateral mistake, and to succeed, the party seeking relief must establish by clear, positive and convincing evidence that the agreement does not accurately express the parties' intentions" (*Warberg Opportunistic Trading Fund L.P. v GeoResources, Inc.*, 151 AD3d 465, 470 [1st Dept 2017] [citations and internal quotation marks omitted]). "Reformation based upon a scrivener's error requires proof of a prior agreement between [the] parties, which when subsequently reduced to writing fails to accurately reflect the prior agreement" (*id.* at 470-471). "The parties' course of performance under the contract, or their practical interpretation of a contract for any considerable period of time, is the most persuasive evidence of the agreed intention of the parties" (*id.*).

Here, defendants have established by clear, positive, and convincing evidence their entitlement to reformation of the Agreement as a matter of law. The prior 2013 and 2014 agreements uniformly provided that the landlord had the right to terminate if the underlying space was leased or sold. The 2017 Agreement involves the exact same parties and the same general arrangement, yet contains the single

anomalous substitution of "Lessee" for "Lessor." Read in light of the prior agreements and the commercial context, that substitution is plainly a drafting error. The documentary record thus demonstrates that the 2017 Agreement, as written, does not accurately reflect the parties' actual intent.

Accordingly, the branch of defendants' motion seeking reformation of the 2017 Agreement is granted, and the Agreement is reformed to substitute "Lessor" for "Lessee" in the subject termination provision.

Renewal Option

"If an agreement is not reasonably certain in its material terms, there can be no legally enforceable contract" (*Teutul v Teutul*, 79 AD3d 851, 852 [2d Dept 2010] [citations omitted]). "Thus, a mere agreement to agree, in which a material term is left for future negotiations, is unenforceable" (*id.* [internal quotation marks omitted]).

Here, as to term and renewal, the Agreement provides only for a "6 year term with an option to renew for additional terms." It does not set forth the rent for a renewal term, its duration, or any objective formula or method by which such terms could be determined. Nor **[*4]**does it clearly specify the time or manner of exercise. Plaintiff argues that the renewal necessarily carried forward the same terms as the original 2017 Agreement. Defendants, however, contend that the clause is too indefinite and amounts only to an unenforceable agreement to agree.

On this record, the provision for an "option to renew for additional terms" is too indefinite to constitute an enforceable renewal option, as it fails to specify the rent to be paid during any renewal period, the duration of any renewal term, or the timing or manner by which such an option must be exercised. Accordingly, the branch of plaintiff's motion seeking summary judgment on its claim that it validly exercised a unilateral renewal option in December 2023 is denied, while defendants' summary judgment motion is granted to the extent that the Court finds that plaintiff did not validly renew the 2017 Agreement beyond December 31, 2023.

Unpaid Rent

Regarding defendants' counterclaim for unpaid rent, CS Wall is not entitled, on this record, to summary judgment on its counterclaim for unpaid rent. That claim turns on disputed factual issues, including whether the parties agreed, either expressly or by course of conduct, to suspend or pause rent obligations while scaffolding obstructed the windows, whether any waiver occurred, and when, if at all, the Agreement was terminated for nonpayment. Accordingly, the branch of defendants' motion seeking summary judgment on the unpaid rent counterclaim, and the branch of plaintiff's motion seeking dismissal of that counterclaim, are both denied.

Plaintiff's Affirmative Defenses

When a party moves to dismiss or strike an affirmative defense, it "bears the burden of demonstrating that the affirmative defense is without merit as a matter of law" (*Blachowicz v City of New York*, 241 AD3d 1513, 1516 [2d Dept 2025] [citations and internal quotation marks omitted]). "In reviewing a motion to dismiss an affirmative defense, the court must liberally construe the pleadings in favor of the party asserting the defense and give that party the benefit of every reasonable inference" (*id.*). "If there is any doubt as to the availability of a defense, it should not be dismissed" (*id.*).

Here, plaintiff's affirmative defenses are either conclusory and boilerplate, or are foreclosed by the Court's determinations herein. In response to defendants' prima facie showing, plaintiff has failed to proffer evidentiary facts or legal arguments sufficient to sustain those defenses. Accordingly, the branch of defendants' motion seeking dismissal of plaintiff's affirmative defenses is granted, and plaintiff's affirmative defenses are hereby dismissed.

Conclusion

Based on the foregoing, plaintiff's motion for summary judgment is denied in its entirety. Defendants' cross-motion for summary judgment is granted to the extent that the 2017 Agreement is reformed to substitute "Lessor" for "Lessee" in the subject termination provision, plaintiff's affirmative defenses are dismissed, the Verified Amended Complaint is dismissed, and the Court declares that plaintiff did not validly renew the 2017 Agreement beyond December 31, 2023. The remainder of defendants' cross-motion is denied. This action shall remain on the trial calendar as to defendants' counterclaims.

Any argument not explicitly addressed herein was considered and deemed to be without merit or unnecessary to address given the court's determination.

E N T E R:

Honorable Reginald A. Boddie

Justice, Supreme Court