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Board of Mgrs. of Manhasset Med. Arts Condominium v Integrated Med. Professionals, PLLC
2020 NY Slip Op 50195(U)
Decided on February 4, 2020
Supreme Court, Suffolk County
Emerson, J.
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Decided on February 4, 2020

Supreme Court, Suffolk County

**Board of Managers of Manhasset Medical Arts Condominium AND
42-78/86 REALTY LLC, Plaintiffs,**

against

**Integrated Medical Professionals, PLLC, PRECISION-AIRE INC.,
CHUBB CUSTOM INSURANCE COMPANY, Defendants.**

612243-18

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Elizabeth H. Emerson, J.

Upon the following papers read on this motion *for reargument* ; Notice of Motion and supporting papers 70-72 ; Notice of Cross Motion and supporting papers; Answering Affidavits and supporting papers 74-75 ; Replying Affidavits and supporting papers 76 ; it is,

ORDERED that this motion by the plaintiff for leave to reargue its motion for partial summary judgment on the first and third causes of action, which was denied by an order of this court dated October 8, 2019, is granted; and it is further

ORDERED that, upon reargument, the plaintiff's motion for partial summary judgment is granted to the extent indicated; it is further

ORDERED that the motion is otherwise denied.

It is well settled that a commercial tenant may be relieved of its obligation to pay the full amount of rent due when it has been actually or constructively evicted from either the whole or a part of the leasehold (**Johnson v Cabrera**, 246 AD2d 578, 579). An actual eviction occurs when the landlord ousts the tenant from physical possession of the leased premises by physical expulsion or exclusion (**New York City Economic Dev. Corp v Harborside Mini Storage, Inc.**, 12 Misc 3d 1160[A] at *5 [and cases cited therein], *aff'd* 20 Misc 3d 127). When there has been no physical expulsion or exclusion of the tenant, but the landlord's wrongful acts substantially and materially deprive the tenant of the beneficial use and enjoyment of the premises, there may be a constructive eviction (**Id.**). The tenant must abandon possession in order to claim that there was a constructive eviction (**Id.**). A constructive eviction may be partial, rather than total, in which case the tenant need only abandon, or not use, a portion of the premises affected (**Id.**; **Winner Communications, Inc. v Bell**, 2013 NY Slip Op 30210[U] at 6 [and cases cited therein]). A landlord's breach of its duty to repair may give rise to a claim for a constructive eviction if the breach results in a substantial and material deprivation of the plaintiff's use of the premises (**N.N. Intl. (USA)**

Corp. v Gladden Prop. , LLC, 52 Misc 3d 1206[A] at *3; *see also*, **Goldman v MJJ Music, Inc.**, 17 Misc 3d 1127[A] at *5). This does not automatically trigger a 100% rent abatement, however, because a tenant in possession still remains obligated to pay rent (**West Broadway Glass Co. v I.T.M. Bar Inc.**, 245 AD2d 232). In such circumstances, the landlord may not recover the full amount of the rent. Rather, the rent will be proportionately abated, even for commercial premises (**174 Mott Group, LLC v Lucky 168 Rest. Corp.**, 18 Misc 3d 1121[A] at *6 [and cases cited therein]; **Winner Communications, Inc. v Bell**, *supra*).

In opposition to the prior motion, the defendant Integrated Medical Professionals, PLLC ("IMP") claimed that it was constructively evicted from approximately 25% of the leased premises due to the failure or refusal by the plaintiff 42-78/86 Realty LLC ("Realty") to make necessary repairs thereto. The court found that there was a triable issue of fact as to whether Realty's failure to make necessary repairs substantially and materially deprived IMP of the beneficial use and enjoyment of 25% of the demised premises. The record reflects that, for the period from March 2018 through June 2018, IMP withheld from Realty 100% of the rent and additional rent due under the lease, which amounted to \$103,910.04. Since IMP claimed that it was constructively evicted from only 25% of the leased premises, it was not entitled to a rent abatement of 100%. Twenty-five percent of \$103,910.04 equals \$25,977.51. Accordingly, Realty is awarded partial summary judgment on the first cause of action in the amount of \$77,932.53 (\$103,910.04 minus \$25,977.51), with interest from June 1, 2018.

Dated: February 4, 2020

J.S.C.

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