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### 609 W. Assoc., L.P. v Estrella

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**609 W. Assoc., L.P. v Estrella**

2023 NY Slip Op 33045(U)

August 25, 2023

Civil Court of the City of New York, New York County

Docket Number: L&T 061549/18

Judge: Travis J. Arrindell

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This opinion is uncorrected and not selected for official publication.

NEW YORK CITY CIVIL COURT  
COUNTY OF NEW YORK: PART C

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609 WEST ASSOCIATES, L.P.,  
Petitioner - Landlords,

DECISION AND ORDER

v.

JUAN ESTRELLA  
MARIA PAULINO

L&T 061549/18

Respondent – Tenants  
“JOHN DOE” AND “JANE DOE”  
Respondents – Undertenants.

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TRAVIS J. ARRINDELL, J.:

Recitation, as required by CPLR §2219(A), of the papers considered in the review of Respondent’s Motion to Dismiss:

<u>Papers</u>	<u>Numbered</u>
Petitioner’s Motion (Numbered 3 - 8 on NYSCEF) .....	<u>1</u>
Respondent’s Cross-Motion (Numbered 11 - 19 on NYSCEF) .....	<u>2</u>
Petitioner’s Opposition (Numbered 20-21 on NYSCEF).....	<u>3</u>
Respondent’s Reply (Numbered 22 on NYSCEF).....	<u>4</u>
Petitioner’s Supplemental (Numbered 24 on NYSCEF).....	<u>5</u>
Respondent’s Supplemental (Numbered 25 on NYSCEF).....	<u>6</u>

TRAVIS J. ARRINDELL, J.:

To dispense with Petitioner’s single motion rule argument against Respondent’s cross-motion to dismiss, the Court noticed the parties that Respondent’s cross-motion to dismiss would be treated as a motion for summary judgment pursuant to CPLR § 3211. Both parties filed supplemental papers in response and oral arguments were held.

After review of the papers, the Court grants summary judgment in favor of Respondent. It is undisputed that subsequent the commencement of this instant holdover proceeding, Petitioner filed a summons and complaint in Supreme Court seeking unpaid rents. In the instant holdover Petitioner claims that Respondent’s tenancy ended March 18, 2018. However, Petitioner commenced an action seeking unpaid rents to July 31, 2019, more than a year after the alleged termination. “The commencement of a nonpayment proceeding during the pendency of the holdover is inconsistent with the premise that the tenancy has been terminated because the necessary element of a nonpayment proceeding is that the respondent has defaulted on an obligation to pay rent”<sup>1</sup> Though Petitioner’s Supreme Court action is not a summary nonpayment proceeding, it is a proceeding inconsistent with the premise that the tenancy has been terminated. Petitioner pled the following in their complaint:

<sup>1</sup> See Scherer, Residential Landlord-Tenant Law in New York § 11:15 (2021); See also McCoack v Geidel (NYLJ, Nov. 22, 1978, p 15, col 1 [App Term, 2d Dept]).

1. Defendant Juan Estrella and Maria Paulino, **pursuant to a lease** and subsequent renewals (“Lease”) the initial lease commencing...August 1, 1993, **agreed to pay rent** ...for a term that expired on **July 31, 2019;**” (Emphasis added).
2. “The defendants remained in possession of Premises beyond the Lease term;”
3. “Defendants defaulted on the payment obligations under the Lease.

Here, Petitioner’s verified pleading in the later Supreme Court action alleges Respondent’s default of an obligation to pay rent which is inconsistent to the present holdover. Petitioner specifically seeks unpaid rent pursuant to a lease which ended July 31, 2019, a year after the alleged date of termination in the instant holdover proceeding. In opposition, Respondent refers to paragraph 7 of the summons and complaint which states that “the commencement of this plenary action is without prejudice to the pending nuisance holdover proceeding in Housing Court.” They argue that the Supreme Court action seeks only money damages for Respondent’s continuing occupancy. Petitioner’s artful pleading to conceal the nature of the monies due is unconvincing. To claim that Petitioner failed to pay rent during August 1, 1993, to July 31, 2019, pursuant to a lease, as alleged in their Supreme Court complaint, completely contradicts, Petitioner’s later claim within the same complaint, that they only seek money damages for Respondent’s continued occupancy.<sup>2</sup> Petitioner’s attempt to disguise what monies are sought does not change what in fact Petitioner is seeking as unpaid rent for a lease which expired July 31, 2019. Additionally, Petitioner’s reservation in Paragraph 7, claiming that they commenced the Supreme Court action without prejudice to the Housing Court proceeding is of no legal effect considering Petitioner intends to collect rent based on a lease that ended one year after the termination notice sent in the instant proceeding.

Furthermore, Petitioner’s reliance on Matter of Georgetown Unsold Shares, LLC v. Ledet, 130 AD3d 99 [2<sup>nd</sup> Dept. 2015] is misplaced. In Ledet, 130 AD3d 99 [2<sup>nd</sup> Dept. 2015], the Court held that the acceptance of rent by the landlord during the “window period” between the notice to terminate and commencement of the holdover proceeding does not amount to a waiver of the landlord’s right to pursue its holdover claim. Ledet, 130 AD3d 99 [2<sup>nd</sup> Dept. 2015], further held that the record was void of any evidence that “petitioner ... affirmatively acted in order to solicit Ledet’s rent checks.” Unlike Ledet, 130 AD3d 99 [2<sup>nd</sup> Dept. 2015], Petitioner here has taken a series of affirmative steps to collect rent beyond the alleged termination date. These affirmative steps included, the initiation of a Supreme Court action seeking rent to July 31, 2019, a year after the tenancy’s termination date, verifying the petition, affirmatively admitting a landlord-tenant relationship existed until July 31, 2019, service of the summons and complaint, filing of the summons and complaint and proof of service with the court clerk’s office.<sup>3</sup> Additionally, the summons and complaint is documentary proof of Respondent’s tenancy beyond the alleged termination date in this proceeding. The complaint is verified by Petitioner and contains an allegation that the tenancy did not end until July 31, 2019.<sup>4</sup>

Based on the foregoing, the Court grants summary judgment in favor of Respondent. Petitioner has failed to demonstrate a triable issue of material fact. All other relief sought by

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<sup>2</sup> See Petitioner’s Verified Complaint, at ¶ 7.

<sup>3</sup> See Ansonia Associates v. Pearlstein, 122 Misc. 2d 566, 568.

<sup>4</sup> Id., at 569.

The parties' papers are deemed moot.

This constitutes the decision and order of the court.

Dated: August 25, 2023  
New York, New York

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TRAVIS J. ARRINDELL  
JHC