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[*1]

3505 BWAY Owners LLC v McNeely
2023 NY Slip Op 50955(U)
Decided on September 8, 2023
Civil Court Of The City Of New York, New York County
Stoller, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on September 8, 2023

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

<p>3505 BWAY Owners LLC, Petitioner,</p> <p>against</p> <p>Amy-Beth McNeely, Respondent.</p>

Index No. 51387/2019

For Petitioner: Rob Marino, Kevin Cullen

For Respondent: Ellery Ireland

Jack Stoller, J.

3505 Broadway Owner LLC, the petitioner in this proceeding ("Petitioner"), commenced this proceeding against Amy-Ruth McNeely, a respondent in this proceeding ("Respondent"), seeking possession of 3505 Broadway, Apt. 33, New York, New York ("the subject premises") by a petition verified on January 10, 2019 on the basis that the subject premises is unregulated and that Respondent's lease expired. Respondent interposed an answer raising, *inter alia*, defenses of waiver and that Respondent had a lease in effect. The Court held a trial of this matter on September 8, 2022, October 13, 2022, October 25, 2022,

March 29, 2023, and July 24, 2023 and adjourned the matter for post-trial submissions to August 14, 2023.

The trial record

Petitioner proved that it is a proper party to commence this proceeding; that the parties had at one point been in a landlord/tenant relationship with one another; and that the subject premises is not subject to rent regulation. [\[FN1\]](#)

Petitioner submitted into evidence a lease renewal signed by Respondent on May 31, 2018 and by a representative of Petitioner on June 6, 2018 ("the Lease") that states that Respondent would be renewing her lease for one year and that the lease will expire naturally on December 31, 2018. The Lease is undated.

Anderson Santos ("the Property Manager") testified that Respondent had a lease; that the [\[*2\]](#)lease expired; that he did not contact anyone when the lease expired; that usually when a lease expires a notice is sent to the tenant; and that Respondent has not vacated the subject premises.

The Property Manager testified on cross-examination that he started working for a management company in 2014; that he started working with the building in which the subject premises is located ("the Building") in May of 2018; that he spoke with Respondent two years before his testimony with regard to a collapsed ceiling; that his job does not include the drafting or negotiating of leases; that he saw the Lease in the tenant's file; that he looked at the Lease when he took over the Building; that someone in the main office drafted the Lease; that he does not know who negotiated the Lease; that he believes that a renewal was sent to Respondent; that he does not send renewals to Respondent; that he does not know the date that the Lease was sent to Respondent; that renewal leases are usually one or two year terms; and that leases are not made for five months.

Respondent submitted into evidence a letter dated May 25, 2018 from Petitioner stating, "enclosed is your renewal lease. In the event you wish to renew your lease please execute the enclosed renewal lease and return to the landlord within 30 days please be advised that in the event the lease is not signed and returned within 30 days, the lease offer shall be deemed rescinded and thus null and void". Respondent submitted into evidence another letter dated May 25, 2018 ("the Contemporaneous Letter") from Petitioner stating, "enclosed herewith

please find a renewal lease in connection with your apartment. As you are aware, your current lease agreement expires August 31, 2018. Kindly execute the enclosed renewal lease...."

The Property Manager testified on cross-examination that he has seen those documents before in Respondent's file; that they are Respondent's renewal agreements and notices; that sending a letter in May for a lease expiring in August is consistent with their policy of offering renewals 90 days in advance of the expiration of a tenancy; and that he does not remember the date of the notice.

The Property Manager testified on Respondent's case that there was a renovation going on in apartment 43 in the Building above the subject premises ("the Upstairs Apartment"); that the guys upstairs were working on the floor and replacing the floor and the vibration of them above the subject premises made the ceiling crack; that some of the debris fell down and Respondent called and he went to the Building to see what happened; that this was the first time that he communicated with Respondent; that he did not recall what month it was; that he had not communicated with Respondent to that point; that there might have been an email but he cannot recall; that after May of 2018, he believed that Respondent filed complaints with the New York City Department of Buildings ("DOB") and the Department of Housing Preservation and Development of the City of New York ("HPD"); that he went to the subject premises to see what broke and what to fix and what they said had to be fixed; that the repairs were done; that there probably were stop work orders ("SWO's") but he is not sure; that he did not know how many exactly; that there was not more than five; that there were HPD violations issued from May through December of 2018; that he did not know how many violations there were; that he had permits to perform that work; that Respondent's ceiling cracked; that some pieces fell; that there was a hole from the subject premises to the Upstairs Apartment; that the flooring and subflooring had been removed; that they were doing a complete gut renovation; that he had a permit for that; that the job entailed ripping off the floor, i.e., demolition; that floor joist work can be excluded; that they did not cut a floor joist in the apartment in the Building; that they were replacing tiles and walls; that there were violations for dust and noise complaints so they had to stop; that Petitioner [*3] received probably more than three but less than five violations for work without a permit; that the violations referred to the Upstairs Apartment; that they had to place Respondent in another apartment to deal with it to finish the work; that they had to fix the subject premises and fix all the ceilings; that there is currently not a gas supply to the Building; that DOB did not audit the Building; that in December of 2018 he engaged in construction; that there were SWO's in place; that they stopped once the SWO continued; that there was a tenant

protection plan ("TPP") posted by someone else posted before the work began; that he does not know the exact date that the work was supposed to start; that they were already doing the work at the time that he took over; that the TPP was posted in May, June, and July of 2018 for all the jobs; and that this was for the work being done in the lobby.

Respondent submitted into evidence a DOB violation dated May 7, 2018 for a failure to post safe construction bill of rights May 7, 2018. The Property Manager testified on Respondent's case that he believes that this violation is about work in the lobby and that he does not know if Petitioner fought this violation. Respondent submitted into evidence a DOB violation dated May 7, 2018 for electrical work without a permit hallways of floors 3 through 6. The Property Manager testified on Respondent's case that there was so much work being done that he does not remember everything; that there was other work in the Building in the lobby; that they were also changing light fixtures throughout the Building; that he was aware that Petitioner challenged the violation; that the work on the Upstairs Apartment had already been started as of the time that he started; that he discussed violations with someone who works for a crew that works for Petitioner to repair conditions; that he spoke with a colleague about the incident where her ceiling cracked; that they had to take care of the damage; that there was a work order that Respondent signed; that he does not remember the month; that no one else is responsible for day-to-day operations; and that he is involved with access to correct violations although there is another unit that deals with violations.

The Property Manager testified on cross-examination on Respondent's case that it is not his job to clear violations; that he helps clear the violations; that his job was to procure access and getting vendors to clear violations; that he receives complaints; that Respondent complained to him; that he set up access to address those violations; that he did that right after he got the complaint; that the work was completed; that he followed up to see that the violation was corrected; that he does not issue or prepare or negotiate leases and was not involved with that as regards Respondent; and that he is involved with construction to some extent.

Respondent testified that she has lived at the subject premises since October of 2009; that she has lived in New York City more than twenty years; that she is an independent contractor in projection management, including construction; that she has done several construction projects in New York City; that she is familiar with the permitting process; that she knows enough about electricity work to know that she needs a licensed electrician; that she got a lease in May of 2018; that she signed the Lease on May 31, 2018 and sent it right back; that the Lease came in a packet with the Contemporaneous Letter telling her that

another lease was going to expire on August 31, 2018; that she had to pay an additional security deposit; that she did not have a current lease as of May of 2018; and that Petitioner was not the landlord when she first moved in.

Respondent submitted into evidence a two-year lease commencing January 1, 2016 she entered into with a different landlord from Petitioner ("the Prior Lease"). Respondent testified that this was her first lease in two years; that she had a renewal lease every two years after she [*4] moved in; that she saw a notice in February of 2018 that Petitioner had taken over the Building; that she did not have a lease at that time; that she contacted Petitioner about a lease and told them that she did not have a lease and asked when they would be getting a lease to her; that the prior ownership would call her in October and ask when she could stop in to sign a new lease; that in October of 2017 she got a phone call about the Prior Lease expiring; that in December of 2015 she signed a two-year lease renewal with the landlord; that when the Prior Lease was expiring she went to the old landlord and the landlord said that the Building was going to be sold and that they would not be renewing any lease; that the old landlord told her to make an inquiry with the new landlord; that she called Petitioner's office and asked about a lease, and said that her lease had expired, and that the old landlord said to call them about a new lease; that she called Petitioner about four or five times; that one of the times she called was within a week of Petitioner taking over the Building; that she filed a lot of complaints with DOB; that in March they were drilling the lobby and they erected a shed that meant that was an obstruction to getting out of the Building; that there were no postings about the work; that there was no TPP; that the work was loud and dirty; that she made at least a dozen complaints in March and April of 2018; that she continued filing complaints throughout 2018; that her rent was \$2,150 under the Prior Lease; that the rent was increased to \$2,895; that she did not pay \$2,895 in January of 2018; that she started paying \$2,895 in August or September after she signed the Lease; that after she got the fully-executed Lease she got a rent bill that charged \$2,895 and \$4,470 and it said tenant renewed per someone named "Tisha"; that she called "Tisha"; that she said that the rent could not be \$2,895 because the Contemporaneous Letter said that an old lease expired in August; that she did not understand what the \$4,470 was; that she said that she needed to speak to her supervisor; that the issue was never resolved; that she got a demand for \$4,470; that the supervisor said that the Lease started in July; that she first met the Property Manager in May of 2018, a couple of days after the DOB came to the Building as a result of her complaint; that she called DOB because temporary lighting hung over the Building and she said that the condition was dangerous; that DOB came on May 7, 2018; that multiple violations and SWO's ensued; that the temporary wiring condition persisted for

months; that her ceiling collapsed at 1:00 p.m. on September 11, 2018; that there was intense construction on that day; that a piece of the ceiling fell down; that they came that evening and covered it with a four-by-eight piece of sheetrock; that she emailed DOB; that there were seven apartments being demolished in a building with 45 apartments; that DOB audited all the jobs after that; that she received an order to show cause seeking her vacatur from the subject premises so that Petitioner could finish demolishing the Upstairs Apartment; that there was at least one SWO in effect; that Petitioner has commenced two plenary actions against her; that Petitioner sued to her for access to fix the ceiling that had already been fixed; that Petitioner put up sheetrock and sealed it but did not paint it; that the ceiling has been restored to its original condition; that when she signed the Lease she thought she was signing a one-year renewal from the date in the Contemporaneous Letter; that she thought that the December 31 date was a typo because the Lease said one year; that the Prior Lease did not expire on August 31; that she discussed that with them and thought that the Lease started September 1; that she only knew that Petitioner wanted retroactive rent after she signed the Lease; that Petitioner started working again when the SWO was in effect and she complained again; that she did not complain to Petitioner; and that she emailed DOB directly rather than call 311.

Respondent submitted into evidence a voice mail of someone named "Tisha" from the [*5] management company who works for Petitioner. "Tisha" said in the voice mail recording that Petitioner went through the list of who they were going to renew; that they were definitely giving Respondent a renewal lease; that they were working on it; and that everything was taking longer than it normally would.

Respondent submitted into evidence a proof of delivery for an overnight delivery package that she had shipped to Petitioner on May 31, 2018. Respondent submitted into evidence a printout of an envelope from Petitioner postmarked on June 11, 2018. Respondent testified that the fully-executed Lease was in that envelope. Respondent submitted into evidence rent bills from Petitioner dated February 5, 2018, March 1, 2018, May 1, 2018, and June 1, 2018 billing her for \$2,150. Respondent submitted into evidence a bill from Petitioner dated July 1, 2018 billing her for \$7,365, with a notation saying, "as per Tisha-tenant renewed". Respondent submitted into evidence a rent bill from Petitioner for August of 2018 saying, "as per Tisha — tnt was back bil" and a credit of \$4,470. Respondent testified that she called "Tisha" about the July bill saying that Respondent owed arrears and that "Tisha" said that her rent increased as of January 2018. Respondent submitted into evidence a check dated May 30, 2018 made payable to Petitioner in the amount of \$2,150. Respondent testified that it was for rent for June of 2018. Respondent submitted into

evidence a check dated July 3, 2018 made payable to Petitioner in the amount of \$2,150 that says "July rent".

Respondent testified that she was complaining about construction, noise, dirt, an absence of a TPP, not posting permits, using a hammer drill in the lobby all day, every day to jack up the tiles in the floor; that the conduct started in the middle of March; that she started complaining to DOB in late April or early May, around Easter; that she spoke about the TPP on May 4, 2018; that she contacted the building manager in April of 2018; that she told him that the Building was filthy and that no one was cleaning; that she asked him for a TPP; that he did not know what it was; and that she complained about construction dust all over the Building. Respondent submitted into evidence video recording of her in the subject premises while demolition was going on and a photograph of the Upstairs Apartment, which had no floors or walls at the time of the photograph.

Respondent submitted into evidence a rent demand dated June 18, 2018 that Respondent testified that she received on July 6, 2018. The rent demand seeks payment of \$2895 in June of 2018 and \$1575 in May of 2018. Respondent testified that she spoke to "Tisha" on July 2, 2018 or July 3, 2018.

Respondent testified on cross-examination that the Prior Lease expired on December 31, 2017; that she renewed her lease with the previous landlord; that she did not receive another lease from the previous landlord before the old lease expired; that the Building was for sale; that the closing date was January 31, 2018; that she asked the previous landlord for a renewal lease; that she does not have documentation of that; that she got the Lease from Petitioner on May 29, 2018; that she paid rent after August of 2017, in September and October and November of 2017 to the old landlord at the same rate as before September of 2017; that she paid rent to Petitioner for January of 2018 at the same rate as before in February of 2018; that she continued paying rent to Petitioner; that Petitioner continued accepting her payments; that she had a zero balance when they sent her a renewal; that the Lease with the rent of \$2,895 was received at the same time as the Contemporaneous Letter; that she did not understand that the Lease expired on December 31, 2018, because it was a one-year lease; that she called in various violations to DOB; that she believes that she called DOB before May 31, 2018 but does not have any record [*6] of that now; that she did not complain to Petitioner about the renovation work in the Upstairs Apartment; that the ceiling collapsed in the dining room; that it was drywall and dirt that came down; that she did not contact Petitioner after the ceiling collapse; that DOB came instead; that she contacted Petitioner about the lobby and the hallways; that she complained to Petitioner in March before

complaining to DOB; that July was when she gained access to the Upstairs Apartment because there was a lot of noise and shaking; that there were no signs that there was construction taking place; that she has not been in the Upstairs Apartment since 2018; that she has not heard banging; that some of the violations and SWO's resulted from her complaints, some of them she did not know, and some of them were from another source; and that the first violation she is aware of was in June of 2023.

Respondent testified on redirect examination that that her leases always expired at the end of October except for the one in December of 2017 and that she sent in a difference in the security deposit.

Petitioner submitted a rent breakdown into evidence, showing that Respondent paid \$2,000 in February of 2018, \$4,300 in March and April of 2018, \$2,150 July of 2018, \$895 on July 23, 2018, \$3,640 in August of 2018, and \$2,895 in September, November, and December of 2018.

Petitioner submitted into evidence proof that a number of DOB violations had been corrected. The Property Manager testified that the violations had nothing to do with Respondent; that they were working on the lobby; that they were doing a renovation in the Upstairs Apartment; that it is still demolished; that it is ready; that there is a SWO that remains in effect for that apartment; that on September 11, 2018, Respondent called him and said that parts of her ceiling came down; that he came to the subject premises the same day around noon or early afternoon; that Respondent's ceiling was cracked in two areas in the kitchen and the living room and you could see where the ceiling collapsed; that Respondent had called DOB and the general contractor was there; that the DOB inspector wanted to see what happened; that he went to the Upstairs Apartment; that Respondent came up as well; that there were notes and permits on the door of the Upstairs Apartment; that the SWO was posted on the front door of the Upstairs Apartment; that he hired a contractor to come and repair the subject premises; that they came right away; that the contractor took three days to change the sheetrock and replace the light fixture; that there has been no more repairs or complaints about conditions in the subject premises; that Respondent called him a few times about violations in June, July and August of 2018; that Respondent was upset about her ceiling and the guys working; that Respondent did not call him about construction in the common area; that Petitioner has been working on lifting the SWO; that Respondent had called DOB about the elevator not working; that the same day he called to get a repair and it was repaired; that no other tenants complained about the elevator or the renovation in the Upstairs Apartment and the common area; that construction in the Upstairs Apartment started

before he started working for Petitioner on May 19 or May 20 of 2018; that he first met Respondent shortly after he started working when Respondent was complaining about noise and dust everywhere, including the lobby; that the door in the Upstairs Apartment was locked; that there were signs on the door; that they would not leave the door open; that they would put plastic bags around the door to prevent dust from seeping into the lobby; that Respondent did not notify him that Respondent went into the Upstairs Apartment, although he heard about that from the construction workers; that the SWO has not been removed; and that the work in the lobby has been corrected.

Scott Russell ("Petitioner's Former Employee") testified that he worked for Petitioner from 2017 through 2021; that they acquired the Building while he was there; that he is familiar with the units at the Building; that the Building was acquired in 2018; and that he worked in acquisitions and asset management, underwriting, due diligence. Petitioner submitted into evidence a business plan. Petitioner's Former Employee testified that he prepared the business plan during Petitioner's due diligence period to explain it to Petitioner's operations team. With regard to the subject premises, the business plan says: "fair market. DNR in-place tenant ([Respondent] — LXP: 12/31/2018). Renovate unit with 'Broadway' renovation scope."

Petitioner's Former Employee testified that Petitioner creates business plans on a unit by unit basis immediately prior to acquisition when they purchase the asset; that business plans would be prepared for his boss; that he would prepare an analysis to communicate the business plan thesis with him; that he would have visited some apartments in the Building, but he does not remember if he specifically visited the subject premises; that "DNR" means do not renew; and that they planned a renovation that was typical of market rate apartments at the time. Petitioner submitted into evidence an email dated April 16, 2018 from Petitioner's Former Employee asking if Petitioner can "please DNR the following fm [free market units] unit 33: [Respondent] LXP: month to month biz plan: renovate. Will send plans once drafted." Petitioner's Former Employee testified that he thought that Respondent was a month-to-month tenant; that he thinks that he created plans; that he did not remember if he did or not; and that the basic plan was mark-to-market, meaning renovate it to raise the rent to market levels.

Petitioner submitted into evidence an email dated February 22, 2018 from Petitioner's Former Employee stating that there were mark-to-market apartments that he wants to renew, saying, "we'll fight DNR / renovation battle next year", that Petitioner was missing the current lease that should have commenced on January 1; that they advised ownership to not

renew any fair market tenants during the contract period; and that Petitioner would likely not renew Respondent's lease; and that sometimes they would start a renovation at a different time based on market conditions and that they sometimes want to have some rental income in the meantime. Petitioner submitted into evidence a rent roll saying that the plan for the subject premises was to renew, and "We will plan to DNR next year. Tenant is MTM since lease with prior owner expired." Petitioner's Former Employee testified that "month to month" is an acronym for MTM.

Petitioner's Former Employee testified on cross-examination that he has not reviewed these documents in quite a while; that components of the plan for the subject premises changed from January through April of 2018; that "underwriting" means that you look at cash flow and confirm assumptions; that he verified the information in the business plan to the best of his ability; that he described Respondent as a month-to-month tenant; that they were probably unable to locate a lease in their lease audit; that on April 2, 2018, Petitioner's plan was to renew; that on April 16, 2018, the subject premises would be not renewed; that the timing of not renewing most likely accounted for the change, but he does not recall facts and circumstances; that with all the fair market units there was a component of renovating, not renewing, and marking to market; that he did not know if Respondent was offered a renewal lease; that he was involved with the Building in the second half of 2018 in the sense of answering questions from the operations, but not as much as in the acquisitions phase; that he was not involved with any renovations in the second half of 2018; that he was involved in a broad decision-making process of offering a renewal to Respondent; that the decision to renew would have been a temporary [*7] decision; that he did not recall what exactly happened; that their operations team would have made those decisions; that he may or may not have been informed about the decision about whether to renew; that on February 22, 2018 Respondent was month to month and should have been renewed; that he remembers that there was a SWO; and that he does not remember Respondent's involvement with the SWO.

Petitioner's Former Employee testified on redirect examination that Petitioner had not done renovations at the time of the business plan.

Discussion

In order to prevail in this proceeding, Petitioner must prove that the Lease expired before January of 2019, when Petitioner commenced the proceeding. The most obvious argument in Petitioner's favor is that the Lease states that it would expire on December 31,

2018. The Lease states that it is for a term of one year. Therefore, only way that the Lease would expire on December 31, 2018 would be if the Lease commenced on January 1, 2018. The Lease, however, does not state a commencement date. The Lease is undated. Respondent executed the Lease on May 31, 2018 and Petitioner executed the Lease on June 6, 2018.

A lease is a contract. [*Vt. Teddy Bear Co. v. 538 Madison Realty Co.*, 1 NY3d 470](#), 475 (2004), [*D'Alto v. 22-24 129th St., LLC*, 76 AD3d 503](#), 506 (2nd Dept. 2010). To form a binding contract there must be a meeting of the minds. [*Stonehill Capital Mgt. LLC v. Bank of the W.*, 28 NY3d 439](#), 448 (2016), [*Kamel v. Ahgelian*, 210 AD3d 973](#) (2nd Dept. 2022). A lease that would be effective before it is executed would give rise to a tenant's retroactive liability for rent. Therefore, a lease that straightforwardly stated that it commenced before it was executed presents a different bargain than a lease that blurs such a proposition by leaving out a commencement date. The difference between a lease that stated a retroactive commencement date and a lease that did not state a retroactive commencement date could therefore foreseeably lead to a different calculation on the part of a tenant as to whether a tenant wished to enter into such a bargain. The consequences of the effective date of a lease as such illustrate the point that a commencement date is a material term of a lease. [*K.A.M.M. Grp., LLC v. 161 Lafayette Realty, Inc.*, 153 AD3d 799](#), 800 (2nd Dept. 2017). The Property Manager testified that Petitioner drafted the Lease. Petitioner's omission of a commencement date, a material term, not only therefore implicates the enforceability of the Lease, *Brause v. Goldman*, 10 AD2d 328, 334 (1st Dept. 1960), *aff'd*, 9 NY2d 620 (1961), [*Diaz v. De Martino*, 30 Misc 3d 135\(A\)](#)(App. Term 2nd Dept. 2011), but raises uncertainty about when the Lease really commenced. The Lease may have commenced on January 1, 2018 and the Lease expired on December 31, 2018. However, the Lease may have commenced around the time that it was executed and still expired on December 31, 2018. Additionally, the Lease may have commenced around the time that it was executed and expired a year thereafter, as the Lease stated that the term was for a year.

A contract is ambiguous when it lends itself to more than one reasonable interpretation. [*Universal Am. Corp. v. National Union Fire Ins. Co. of Pittsburgh, PA.*, 25 NY3d 675](#), 680 (2015), [*Herskowitz v. Wesley Hills Ctr., LLC*, 203 AD3d 1031](#), 1032 (2nd Dept.), *leave to appeal denied*, 38 NY3d 913 (2022), [*HTRF Ventures LLC v. Permasteelisa N. Am. Corp.*, 190 AD3d 603](#), 607 (1st Dept. 2021). Accordingly, the date of a contracted-to expiration of a lease is ambiguous when the stated date differs from the date of the full term of the lease following the commencement of the lease. *Hunt v. Carlson*, 136 AD2d 853, 854-55 (3rd Dept. 1988). *Compare Bank of New York v. Ulster Heights Properties, Inc.*, 114 AD2d 431, 433-34 (2nd Dept. 1985)(a commencement date in a sublease is ambiguous when its trigger

differs from a stated [*8] commencement date in an overlease), *Wayside Homes, Inc. v. Purcelli*, 104 AD2d 650 (2nd Dept.), *appeal denied*, 64 NY2d 602 (1984)(a lease that gave a tenant a renewal option conditioned on six months' notice created an ambiguity as to the commencement dates of the renewal leases). The uncertainty as to the commencement date of the Lease gives rise to different potential interpretations of the Lease and therefore renders the Lease ambiguous.

When a contract is ambiguous, the Court may consider extrinsic evidence to assist in the construction of the contract. *Amusement Business Underwriters v. American International Group, Inc.*, 66 NY3d 878, 880 (1985), [Skrok v. Grand Lft Corp., 218 AD3d 702](#) (2nd Dept. 2023), [Chen v. Yan, 109 AD3d 727](#), 729 (1st Dept. 2013). The emails in evidence from Petitioner's Former Employee showed that Petitioner wavered between renewing and not renewing Respondent's lease throughout the first half of 2018. The rent bills in evidence showed that Petitioner continued to bill Respondent at a rate of \$2,150, her rent from the Prior Lease, throughout the first half of 2018. The Contemporaneous Letter stated (incorrectly) that the Prior Lease was going to expire in August of 2018. This evidence is not consistent with an intent to have the Lease commence on January 1, 2018. Most significantly, Respondent's contemporaneous protests to Petitioner's attempt to bill her for a retroactive rent increase coupled with Petitioner's acquiescence to Respondent on this point illustrate the lack of proof that the parties really intended to retroactively increase Respondent's rent liability. The preponderance of the evidence therefore does not prove that the parties intended for the Lease to commence on January 1, 2018.

Further militating against a construction of the Lease to render it effective on January 1, 2018 is that Petitioner drafted the lease. The Court construes ambiguities in contracts against the drafter, [Taddeo v. Medallic Art Co. Ltd., 40 AD3d 444](#) (1st Dept. 2007), *leave to appeal denied*, 9 NY3d 817 (2008), a proposition that manifests with regard to leases such that the Court resolves potential ambiguities in leases in favor of the tenant, *455 Seventh Ave., Inc. v. Frederick Hussey Realty Corp.*, 295 NY 166, 172 (1946), *Sanford v. Jonathan Woodner Co.*, 304 AD2d 813, 814 (2nd Dept. 2003), particularly renewal clauses in leases. *Farone v. Mintzer*, 133 AD2d 1009, 1010 (3rd Dept. 1987), *De Santis v. Kessler*, 83 AD2d 766 (4th Dept. 1981).

As the Lease did not commence on January 1, 2018, other interpretations of the Lease come into play. A lease that commenced on May 31, 2018 and expired on December 31, 2018 would be for a term less than that stated of one year. A lease for one year commencing at the time it was executed would not have expired on December 31, 2018, the date stated. A

lease with as many internal contradictions and omissions as the Lease is not an enforceable agreement. *Compare Brause, supra*, 10 AD2d at 334, *Diaz, supra*, 30 Misc 3d 135(A). In the absence of an enforceable agreement, Respondent's continued occupancy of the subject premises and continued payment of rent after the expiration of her prior lease gave rise to a month-to-month tenancy. RPL §232-a. A termination of a month-to-month tenancy required the service of a thirty-day notice of termination. RPL §232-c. [\[FN2\]](#) As Petitioner did not terminate Respondent's tenancy as such, the petition is defective.

Accordingly, it is ordered that the Court dismisses this proceeding after trial. The Court [\[*9\]](#) does not reach other issues.

This constitutes the decision and order of this Court.

Dated: September 8, 2023
New York, New York
HON. JACK STOLLER
J.H.C.

Footnotes

[Footnote 1:](#) The Appellate Term in fact held us much in a prior appeal of this matter. 3505 Bway Owner Llc v. McNeely, 72 Misc 3d 1, 2-4 (App. Term 1st Dept. 2021).

[Footnote 2:](#) The commencement of this proceeding pre-dated the enactment of RPL §226-c, which added greater requirements to the termination of a month-to-month tenancy than RPL §232-a does. Petitioner's failure to serve any termination notice at all would be defective on either standard.

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