

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK Part 52

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PARK LLC D/B/A 1916 PARTNERS,

Petitioner,

against

Index # 090276/13

**DECISION/ORDER**  
Submitted 1/28/14

SG8 LLC d/b/a SCREME GELATO BARS  
1916-38 Park Avenue (Store #108)  
New York, New York 10037,

Respondent.

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Recitation, as required by CPLR §2219(a), of the papers submitted in the review of this motion  
for summary judgment

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Upon oral argument, a review of the instant papers and relevant case law, this Court finds petitioner established entitlement to dismissal and summary judgment as a matter of law on its prima facie case in this non-payment summary proceeding and dismissal of respondent’s affirmative defenses and counterclaims. Furthermore, petitioner’s request to amend the petition to include all arrears rent and additional rent, and the caption in the petition, to add “1916” to “Park LLC d/b/a 1916 Partners,” is granted in the absence of a showing of prejudice.

Respondent, which was operating a “gelato” business at the subject premises since 4/1/11, stopped paying rent in September 2013 and forwarded an email, dated 11/22/13, that it was going to be “closing the location for the winter as of today,” while complaining of heating problems (see, Exh B Opposition Papers). There has been no surrender of the premises nor release from the financial obligations under the lease. Thus petitioner established entitlement to summary judgment as a matter of law on its action. Next, respondent’s conclusory affirmative defenses of improper service of notice of termination of lease; failure to state a cause of action; improper service of motion of petition of non-payment; lack of personal jurisdiction due to non-

service of petition are dismissed because they are unsupported by any factual allegations (see, CPLR 3013; Sibersky v. N.Y.C., 270 AD2d 209 [1<sup>st</sup> Dept 2000]). Petitioner demonstrated through documentary evidence that it had commenced this action via a rent demand followed by a petition; affidavits of service constituted prima facie showing of proper service; setoffs and counterclaims by the tenant were precluded under the explicit leasehold terms; and respondent never alleged with any specificity that it had been actually or partially evicted. Respondent's assertion that it was going to close its gelato business for the "entire winter" is insufficient as a matter of law to preclude the granting of plaintiff's motion.

Consequently, plaintiff's request for a possessory judgment is granted along with money judgment in the amount of \$12,998.84 through January 31, 2014. The Clerk of the Court is directed to enter judgment accordingly and the matter is set down for an attorney fees hearing in Part 52, Room 353 on 2/6/14 at 9:30am. The Clerk of the Court is also directed to amend the caption to read:

**1916 PARK LLC d/b/a 1916 PARTNERS**

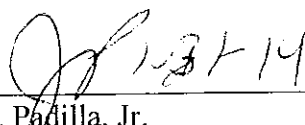
**vs.**

**SG8 LLC d/b/a SCREME GELATO BARS**

**1916-38 PARK AVENUE, STORE #108**

**NEW YORK < NEW YORK**

This constitutes the Decision and Order of this Court.

  
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José A. Padilla, Jr.  
Judge of the Civil Court