

172 Van Duzer Realty Corp. v Globe Alumni Student Assistance Assn., Inc.
2013 NY Slip Op 00280 [102 AD3d 543]
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Appellate Division, First Department
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172 Van Duzer Realty Corp., Respondent, v Globe Alumni Student Assistance Association, Inc., et al., Appellants.
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—[*1] Herzfeld & Rubin, P.C., New York (David B. Hamm of counsel), for appellants.

Cox Padmore Skolnik & Shakarchy, LLP, New York (Noah Potter of counsel), for respondent.

Judgment, Supreme Court, New York County (Carol Edmead, J.), entered June 20, 2011, awarding plaintiff landlord a total amount of \$1,488,604.66, and bringing up for review an order, same court and Justice, entered December 6, 2010, which granted plaintiff summary judgment on the issue of liability, unanimously affirmed, with costs.

In this action for breach of a commercial lease and enforcement of a guarantee, plaintiff seeks damages in connection with a lease entered into in September 2006, for real property located in Staten Island, for a term, as extended, of 10 years. On January 30, 2008, plaintiff issued defendant-tenant Globe Alumni Student Assistance Association, Inc. a notice to cure violations of the lease. Rather than curing the violations, in February 2008, the tenant vacated the premises. Plaintiff then terminated the lease effective as of March 24, 2008.

After obtaining a judgment of possession in the Civil Court, plaintiff brought the

instant action seeking, among other things, the balance of rent due for the remainder of the term, which was recoverable as liquidated damages under an acceleration provision in the lease.

Plaintiff made a prima facie showing of its entitlement to accelerated rent, pursuant to the express terms of the lease, which also provided that the obligation to pay rent was to continue in the event of termination of the lease ([*see Ring v Printmaking Workshop, Inc.*, 70 AD3d 480](#), 481 [1st Dept 2010]).

In opposition, defendants failed to raise a triable issue of fact as to whether the liquidated damages provision was an unenforceable penalty (*see Truck Rent-A-Ctr. v Puritan Farms 2nd*, 41 NY2d 420, 423-425 [1977]). The doctrine of res judicata does not bar plaintiff's recovery under the acceleration provision, as such damages were not recoverable in the summary [*2] proceeding brought in the Civil Court (*see NY City Civ Ct Act § 204; Ross Realty v V & A Fabricators, Inc.*, [42 AD3d 246](#), 249-250 [2d Dept 2007]). Concur—Friedman, J.P., Renwick, Manzanet-Daniels, Román and Clark, JJ.