

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. MILTON A. TINGLING

PART 49

Index Number : 114080/2009 J.S.C.

MANHATTAN JEWISH EDUCATION

vs

CLINTON GREEN SOUTH, LLC

Sequence Number : 002

DISMISS

INDEX NO. \_\_\_\_\_

MOTION DATE 4/12/10

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that this motion

The defendant moves to dismiss the complaint based upon documentary evidence, dismissing the amended complaint for failure to state a cause of action, and dismissing the amended complaint for failure to give sufficient notice of the alleged occurrences. The plaintiff opposes.

This action arises out of a lease between the parties wherein plaintiff seeks rescision of the lease based upon mutual mistake, or unilateral mistake and unjust enrichment. The plaintiff asserts the parties entered into the lease with the understanding that the premises were going to be used for a particular use requiring a certain number of allowed occupants. After entering into the lease, approximately a year later, the plaintiff discovered the permissible occupancy rate was below what it needed.

In this pre-answer motion the defendant alleges the lease and the execution of an estoppel letter by the plaintiff effectively bars the plaintiff's complaint. However, those arguments fall short in light of the fact that there has been no discovery in this matter and the question of the intent and understanding of the parties is unresolved.

As to the remaining branches of the motion, the amended complaint states causes of action upon which relief can be granted and thus the motion to dismiss the amended complaint is denied. All other arguments in support of the motion are considered and rejected by the court at this time.

Accordingly the motion is denied without leave to renew after discovery. The defendant is to serve its Answer within forty five days.

Dated: 6/30/10 \_\_\_\_\_ mat  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

FILED  
JUL 09 2010  
NEW YORK  
COUNTY CLERK'S OFFICE