

A

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK  
HOUSING PART A, RM. 522  
JANUARY 13, 2012

INDEX NO. 091010/2011  
MOTION SEQUENCE NO.: 302

ACTOR STREET PARTNERS LLC  
PETITIONER(S)  
AGAINST  
CHERRY FOREVER  
RECRODS, INC  
RESPONDENT(S)

DECISION/ORDER

PRESENT:

*Jean T Schneider*  
JUDGE

RECITATION, AS REQUIRED BY CPLR 2219(A), OF THE PAPERS CONSIDERED IN THE REVIEW OF THIS MOTION OF PETN REQ X-MTN GRANTING SUMMARY JUDGMENT.....

PAPERS

NUMBERED

NOTICE OF MOTION AND AFFIDAVITS ANNEXED.....	_____
ORDER TO SHOW CAUSE AND AFFIDAVITS ANNEXED.....	_____
ANSWERING AFFIDAVITS.....	_____
REPLYING AFFIDAVITS.....	_____
EXHIBITS.....	_____
STIPULATIONS.....	_____
OTHER.....	_____

UPON THE FOREGOING CITED PAPERS, THE DECISION/ORDER IN THIS MOTION IS AS FOLLOWS:

*Motion denied for the reasons stated in Decision/Order of this date on respondents motion, Sequence # 1.*

DATE

*1/17/12*

JEAN T. SCHNEIDER  
JUDGE, HOUSING COURT

Civil Court  
of the  
City of New York  
JAN 17 2012  
ENTERED  
NEW YORK COUNTY

ADJOURNMENTS

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK  
HOUSING PART A, RM 523  
JANUARY 13, 2012

INDEX NO. 091010/2011  
MOTION SEQUENCE NO. 001

ASTOR STREET PARTNERS LLC  
PETITIONER(S)  
AGAINST  
CHERRY FOREVER RECORDS, INC  
RESPONDENT(S)

DECISION/ORDER

PRESENT:

Jean T. Schneider  
JUDGE

RECITATION, AS REQUIRED BY CPLR 2219(A), OF THE PAPERS CONSIDERED IN THE REVIEW OF THIS MOTION OF RESP REQUEST DISMISSING THE PROCEEDING

PAPERS

NUMBERED

NOTICE OF MOTION AND AFFIDAVITS ANNEXED	_____
ORDER TO SHOW CAUSE AND AFFIDAVITS ANNEXED	_____
ANSWERING AFFIDAVITS	_____
REPLYING AFFIDAVITS	_____
EXHIBITS	_____
STIPULATIONS	_____
OTHER	_____

UPON THE FOREGOING CITED PAPERS, THE DECISION/ORDER IN THIS MOTION IS AS FOLLOWS:

Respondent's motion granted, proceeding dismissed. The exhibits attached to the moving papers as Exhibits B, C and D to the Pines affidavit and acknowledged by the petitioner, establish clearly that at the petitioner's request, the parties modified the payment terms of their written lease to require monthly payments during the second half of the lease term: "The monthly rent is \$27,000 and is due on the 15th of each month for the upcoming 30 day period." Ex. B. The oral modification became binding following partial performance.

Part A

Astor St. Partners

Claimant(s)/Plaintiff(s)/Petitioner(s)  
against

Cherry Forever

Defendant(s)/Respondent(s)

**DECISION/ORDER**

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion:

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>Civil Court of the City of New York</u>
Order to Show Cause and Affidavits Annexed.....	<u>Jan 17 2012</u>
Answering Affidavits .....	
Replying Affidavits.....	
Exhibits .....	
Other.....	

**ENTERED  
NEW YORK COUNTY**

Upon the foregoing cited papers, the Decision/Order on this Motion to \_\_\_\_\_

un equivocably referable to the modification, is as follows:  
namely respondent's payment and petitioner's acceptance of monthly rent payments in August 2011 and September 2011.

Brook Shopping Centers Inc v. Fw Woolworth Co., 215 AD 2d 620 (2nd Dept. 1995). Petitioner's unilateral demand to return to the parties' original arrangement did not "undo" the modification, no matter how vociferously repeated. I note in addition that all of the rent had been paid in full prior to petitioner's response to the motion.

Because the demand notice sought rent not yet due, the proceeding is dismissed.

Date

1/17/12

JUDGE [Signature] Judge, Civil Court

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