

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D31203
O/kmb

_____AD3d_____

Argued - April 25, 2011

MARK C. DILLON, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
L. PRISCILLA HALL, JJ.

2010-01804

DECISION & ORDER

31 Victory Corp., plaintiff, v Victory Properties, LLC,
defendant third-party plaintiff-appellant, et al.,
defendants; Linda Cahill, third-party defendant-respondent.

(Index No. 100457/05)

Howard M. File, P.C., Staten Island, N.Y. (Robert A. Farrell, Jr., of counsel), for
defendant third-party plaintiff-appellant.

Norman Delman (David Horowitz, P.C., New York, N.Y. [Steven J. Horowitz], of
counsel), for plaintiff and third-party defendant-respondent.

In an action, inter alia, for injunctive relief, the defendant third-party plaintiff appeals,
as limited by its brief, from so much of a judgment of the Supreme Court, Richmond County (Ajello,
J.H.O.), entered March 31, 2010, as, after a nonjury trial, dismissed its third-party complaint to
recover upon a personal guaranty.

ORDERED that the judgment is affirmed insofar as appealed from, with costs.

The defendant third-party plaintiff, Victory Properties, LLC (hereinafter Victory
Properties), alleged that the third-party defendant, Linda Cahill, should be held liable pursuant to a
personal guaranty she executed to secure the obligations owed by the plaintiff, 31 Victory Corp.
(hereinafter 31 Victory), under the terms of 31 Victory's lease of a commercial space from Victory
Properties. Following a nonjury trial, the Supreme Court determined, inter alia, that Cahill could not
be held liable under the personal guaranty at issue and, in the judgment appealed from, dismissed
Victory properties' third-party complaint against her. We affirm the judgment insofar as appealed
from.

May 10, 2011

31 VICTORY CORP. v VICTORY PROPERTIES, LLC

Page 1.

“The fundamental, neutral precept of contract interpretation is that agreements are construed in accord with the parties’ intent” (*Greenfield v Philles Records*, 98 NY2d 562, 569). “[A] written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms” (*id.*). Here, however, the terms of the guaranty, including the effect and date of commencement of the 18-month limitation contained therein, cannot be enforced, as they did not have “a definite and precise meaning, unattended by danger of misconception in the purport of the [agreement] itself, and concerning which there is no reasonable basis for a difference of opinion” (*Breed v Insurance Co. of N. Am.*, 46 NY2d 351, 355). Moreover, the intentions of the parties cannot be ascertained from any of the extrinsic evidence presented (*see Weiss v Weinreb & Weinreb*, 17 AD3d 353, 354). As such, the Supreme Court properly construed the ambiguous terms of the guarantee against the party that drafted it, which in this instance was Victory Properties (*see Jacobson v Sassower*, 66 NY2d 991; *151 W. Assoc. v Printsiples Fabric Corp.*, 61 NY2d 732, 734).

In light of our determination, we need not address the parties’ remaining contentions.

DILLON, J.P., BALKIN, LEVENTHAL and HALL, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court