Rachel Mgt. Corp. v Scotts Flowers N.Y., Inc.
2026 NY Slip Op 31074(U)
March 19, 2026
Supreme Court, New York County
Docket Number: Index No. 156553/2020
Judge: Paul A. Goetz
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. PAUL A. GOETZ** **PART** 47

Justice

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RACHEL MANAGEMENT CORP.,

Plaintiff,

- v -

SCOTTS FLOWERS NEW YORK, INC.,ROBERT PALLISER

Defendant.

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INDEX NO. 156553/2020

In this commercial landlord/tenant, breach of lease and guaranty action, in lieu of a bench trial, the parties submitted a stipulation of undisputed facts (NYSCEF Doc No 36), and proposed conclusions of law (NYSCEF Doc Nos 41 & 42). Plaintiff landlord's causes of action are for: 1) breach of lease by tenant, Scotts Flowers New York, Inc. ("Scotts Flowers"); 2) breach of guaranty by defendant, Robert Palliser; and 3) attorney's fees as against guarantor. Defendant tenant Scotts Flowers New York, Inc. counterclaims seeking the return of its security deposit in the amount of $28,756.00 (NYSCEF Doc No 36 ¶ 24).

CONCLUSIONS OF LAW

Plaintiff argues that defendants owe the full rent agreed to in the November 22, 2016 First Amendment to the Sublease because while defendants argue that the parties orally agreed to modify the lease to a lower rate, NY General Obligations Law § 15-301(1) provides that:

> A written agreement or other written instrument which contains a provision to the effect that it cannot be changed orally, cannot be changed by an executory agreement unless such executory agreement is in writing and signed by the party against whom enforcement of the change is sought or by his agent.

OTHER ORDER – NON-MOTION

The Sublease contains a clause at Paragraph 33(c), stating, "[t]his agreement shall not be modified or canceled except by writing subscribed by all parties."

"The purpose of subdivision 1 of section 15-301 of the General Obligations Law … [is] to assure the authenticity of an amendatory agreement; thus, the statute requires the dignity of a formal writing to insure the validity and genuineness of a contractual modification" (*DFI Communications, Inc. v Greenberg*, 41 NY2d 602, 606 [1977]).

Defendants argue, that "an exception to this rule may occur and an oral agreement can become binding if it is supported by partial performance 'unequivocally referable' to a modification" (*Brook Shopping Centers, Inc. v F.W. Woolworth Co.*, 215 AD2d 620, 621 [2d Dept 1995]). Here, following a meeting between Palliser and Shahram Golpanian, where Palliser requested reduced rent because Scotts Flowers could no longer afford the agreed upon rent of $11,500, plaintiff sent an invoice to Scotts Flowers with the amount $10,500 handwritten as the total amount in a line titled "Rent Due January 1, 2012" (NYSCEF Doc No 38). Each subsequent invoice for 2012 and 2013 also states a "Rent Due" and "Total" of $10,500, then increasing to $11,000 monthly in 2014, and then increasing again to $11,500 in the invoice for January 2016 until the invoice for August 2017 (*id.*). There is no invoice included with invoices exhibit (*id.*) for September 2017 notwithstanding that the first amendment of the sublease states the sublease expires on September 30, 2017. Defendants argue that plaintiff's issuance of the invoices with a reduced rent, and plaintiff's acceptance of the checks indicate performance that is unequivocally referable' to a modification. Indeed, plaintiff offers no alternate explanation as to why it began issuing invoices with a reduced rent if it did not agree to modify the parties' agreement.

Furthermore, plaintiff's issuance of invoices with lower amounts and subsequent acceptance of the reduced rent checks indicate that it waived its right under the sublease to

require that all modifications to the sublease be in writing (*see Hanford v Hanford*, 234 AD3d 965, 967 [2d Dept 2025] ["a contractual provision which sets forth requirements for a legally enforceable waiver may itself be waived"] [*quoting O'Connor v Curcio*, 281 AD2d 100, 103 [2nd Dept 2001]). Indeed, in *Hanford*, a case involving a separation agreement, where the ex-husband agreed to pay child support to his ex-wife, contained a clause "that neither the separation agreement nor any provisions thereof could be modified or waived except by a writing" (*id*. at 966). The parties later agreed to a modification of reduced child support payments but did not memorialize the modification in a writing (*id*.). The court held that the ex-wife waived her right to dispute the modification as "[a] waiver 'may arise by either an express agreement or by such conduct or failure to act as to evince an intent not to claim the purported advantage" (*id*. [*quoting Matter of Murphy v Murphy*, 140 AD3d 1168, 1170 [2d Dept 2016]).

Similarly, here plaintiff's consistent issuance of rent invoices at reduced amounts indicates that it both agreed to a modification and waived its right to have only written modifications of the contract be enforceable. Plaintiff cites *Jefpaul Garage Corp. v Presbyt. Hosp. in City of New York*, 61 NY2d 442 [1984], for the proposition that a landlord's acceptance of rent does not constitute a waiver of any rights owed to a landlord, however the facts in *Jefpaul* are distinguishable. There, the tenant-plaintiff sought to exercise an option to renew its lease, a prerequisite of which was that the tenant must not have been in violation on any of its obligations under the lease (*Jefpaul*, 61 NY2d at 442-43). It was undisputed that the plaintiff had sublet the premises in violation of the lease, but landlord continued to accept plaintiff's rent payments, the landlord, however, refused to renew the lease (*id*). The Court of Appeals held that there, "defendant's acceptance of rent … was not necessarily inconsistent with its rejection of the renewal and did not waive plaintiff's default … [because] the rent was due whether plaintiff met

the conditions precedent to renewal or not" (*id*. at 449). The decision distinguishes the facts of the case from the instances where "knowing acceptance of rent without any effort to terminate justifies an inference that the landlord" has decided not to evict the tenant (*id*. at 448).

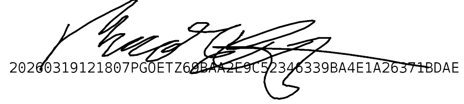
Here plaintiff's issuance of invoices for lower rent amounts, and subsequent acceptance of those lower payments, supports an inference that plaintiff agreed to waive the non-oral modification clause, and agreed to a reduced rent schedule. As stated above, plaintiff fails to provide an explanation why the invoices with lower amounts were issued, nor has it offered any evidence that it raised any objections to Scott Flowers' reduced payments over the five years in dispute. Consequently, defendants are not liable for any unpaid rent, and plaintiff's causes of action will be dismissed. Furthermore, plaintiff was not entitled to apply Scott Flowers' security deposit to the difference between the rent reserved in the sublease and the lower amounts invoiced to the months where it invoiced Scott Flowers at lower amounts. However, plaintiff is entitled to apply Scott Flowers' security deposit to the unpaid rent due for August and September 2017 and Scott Flowers is entitled to recover from plaintiff the remaining amount of the security deposit less the amounts due for August and September 2017 rent ($11,500 [sublease monthly rent] x 2 = $23,000; $28,756 [security deposit] - $23,000 = $5,756).

Based on the foregoing it is,

ORDERED and ADJUDGED that the plaintiff's complaint is dismissed, and the Clerk is directed to enter judgement in favor of defendants and against plaintiff on plaintiff's causes of action, with costs and disbursements to defendants; and it is further

ORDERED and ADJUDGED that on defendants' first counterclaim, defendants are awarded $5,756.00, with statutory interest from August 19, 2020 as calculated by the clerk; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.



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DATE: 3/19/2026

PAUL A. GOETZ, JSC

Check One: [X] Case Disposed [ ] Non-Final Disposition

Check if Appropriate: [ ] Other (Specify ______________________________)