

4126 Realty Corp. v Clean Act, Inc.

2026 NY Slip Op 31093(U)

March 19, 2026

Supreme Court, New York County

Docket Number: Index No. 650217/2024

Judge: Phaedra F. Perry-Bond

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PHAEDRA F. PERRY-BOND PART 35

Justice

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4126 REALTY CORP.,

Plaintiff,

- v -

CLEAN ACT, INC., and ANGEL RAMOS

Defendants.

INDEX NO. 650217/2024

MOTION DATE 04/14/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, Plaintiff's motion seeking summary judgment is granted in part and is otherwise denied without prejudice and with leave to renew upon further discovery.

Plaintiff owns the building located at 4126 Broadway, New York, New York 10033 (the "Premises"). Plaintiff leased the unit known as the "Middle Store" at the Premises (the "Unit") to Defendant Clean Act, Inc. ("Clean") for a lease term from September 1, 2008 through August 31, 2023 (NYSCEF Doc. 150). The lease was guaranteed by Defendant Angel Ramos ("Ramos"). Clean defaulted under the lease which led Plaintiff to commence an action against Defendants in the Civil Court of New York County captioned 4126 Realty Corp. v Clean Act Inc., et al., Index No. LT-317199-23 (the "Civil Court Action"). The Civil Court action settled with Defendants surrendering any right to the Unit effective November 6, 2023 with outstanding arrears reserved for a plenary action.

According to Plaintiff, Defendants failed to surrender the Unit in good condition and instead vandalized the Unit, leaving behind garbage, broken fixtures, and smashed glass windows and doors. Plaintiff then commenced this action to recover unpaid rent and property damage.

Defendants filed their Answer with a counterclaim alleging that Defendants are entitled to a set off because they were charged utility services used by other tenants and should be credited for such charges accordingly.

Plaintiff now moves for summary judgment for breach of lease and guaranty seeking \$152,652.00 in unpaid rent. Plaintiff also seeks summary judgment on the issue of liability with respect to its cause of action seeking damages for destruction of the Unit and also seeks attorneys' fees. Finally, Plaintiff seeks dismissal of Defendants' counterclaim for a set off. There has not yet been a preliminary conference and the request for judicial intervention was filed with the instant motion.

In opposition, Defendants attack the admissibility of the ledger relied on by Plaintiff, and argue the motion is premature because Defendants have not responded to any written discovery demands despite those demands having been served over one year ago. Ramos also offers an affidavit in opposition claiming neither he nor anyone employed by Clean ever vandalized the Unit and claiming Defendants paid tens of thousands of dollars in water/waste bills on behalf of other tenants despite asking Plaintiff numerous times for an offset for those charges. Finally, he claims Defendants were never returned their security deposit and the security deposit was never credited to the arrears.

"Summary judgment is a drastic remedy, to be granted only where the moving party has 'tender[ed] sufficient evidence to demonstrate the absence of any material issues of fact' and then only if, upon the moving party's meeting of this burden, the non-moving party fails 'to establish the existence of material issues of fact which require a trial of the action'" (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012] quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

Plaintiff has demonstrated entitlement to summary judgment on the issue of liability with respect to its breach of contract and breach of the guaranty claims. To make out a breach of contract claim, a plaintiff must show the existence of a contract, plaintiff's performance, defendant's breach, and resulting damages (*see Markov v Katt*, 176 AD3d 401 [1st Dept 2019]).¹ Here, there is no dispute that there exist a valid and enforceable lease and guaranty, and that Plaintiff performed under those contracts by furnishing Defendants with the Unit for eight years. Moreover, the undisputed facts show that Defendants breached their obligations under the lease and guaranty by repeatedly failing to pay base rent and late fees for many months throughout 2022 and 2023 (*see* NYSCEF Doc. 13 and 17). Finally, Plaintiff was damaged because it did not receive the rent owed by furnishing Defendants with the Unit (*see 691 Tenth, LLC v A7m Healthy Grill NYC Inc.*, 222 AD3d 469, 470 [1st Dept 2023]).

In opposition, Defendants do nothing to contest the undisputed fact that they failed to pay the rent and late fees.² Instead, they claim they are entitled to offsets, but they never claim those offsets reduce their entire liability for unpaid rent. Nor does any offset excuse the obligation to pay rent, for "the obligation to pay rent pursuant to a commercial lease is an independent covenant, and thus, cannot be relieved by allegations of a landlord's breach absent an express provision to the contrary" (*Universal Communications Network, Inc. v 229 West 28th Owner, LLC*, 85 AD3d 668, 669 [1st Dept 2011]). Here, there is no express provision in the parties' lease or guaranty relieving Defendants of the obligation to pay rent based on a perceived offset.

However, since Plaintiff has failed to demonstrate the absence of material issues of fact with respect to damages owed, summary judgment on the issue of damages is denied, without

¹ Any technical issues regarding authentication of the ledger were remedied on reply (*see Singh v New York City Hous. Auth.*, 177 AD3d 475 [1st Dept 2019] [authentication of photographs on reply was proper where defendant was not prejudiced by late submission]).

² Defendants papers also reference exhibits that are not annexed to the motion papers nor are they filed on NYSCEF.

prejudice and with leave to renew upon further discovery. At this time, considering there has not even been an exchange of paper discovery, the Court finds it premature to make any ruling with respect to the total amount owed for Defendants' breach, especially as it remains an issue of fact as to whether the security deposit was properly applied or if Defendants are entitled to any offset. For this reason, the motion to dismiss Defendants' counterclaim for an offset is likewise denied, without prejudice, and with leave to renew upon further discovery.

Finally, the motion for summary judgment on Plaintiff's cause of action seeking to recover for property damage is denied, without prejudice. At this juncture, there remains a triable issue of fact as to who caused the property damage. Defendants provide an affidavit stating they were not the cause of the vandalism, and Plaintiff has failed to show the affidavit is demonstrably false. Thus, a triable issue of fact as to responsibility for the property damage remains (*see Wood v 139 East 33rd Street Corp.*, 104 AD3d 620 [1st Dept 2013] [conflicting testimony raised issue of fact which precluded summary judgment]). The issue of attorneys' fees is held in abeyance pending further proceedings. It would be premature to make a piecemeal award of attorneys' fees when litigation must continue on the issue of damages for breach of lease, on Defendants' counterclaim for an offset, and on the issue of the cause of property damage.

Accordingly, it is hereby,

ORDERED that Plaintiff's motion for summary judgment is granted solely as to the issue of liability with respect to Plaintiff's claims for breach of lease and breach of guaranty asserted against Defendants, and the remainder of the motion is denied, without prejudice, with leave to renew upon further discovery; and it is further

ORDERED that the parties shall meet and confer immediately and submit a proposed preliminary conference order to the Court via e-mail, but in no event shall the proposed order be

submitted any later than April 21, 2026. If the parties have a serious discovery dispute requiring a conference, the parties shall notify the Court so an in-person conference can be scheduled accordingly; and it is further

ORDERED that should the parties elect to engage in Court sponsored mediation rather than discovery, the parties shall notify the Court via e-mail so an order of referral to the Court's sponsored ADR program can be issued; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all active parties via NYSCEF.

This constitutes the Decision and Order of the Court.

3/19/26
DATE


HON. PHAEDRA F. PERRY-BOND, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE