Supreme Court of the State of New York
Appellate Division: Second Judicial Department
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_____AD3d_____ Argued - February 21, 2023

MARK C. DILLON, J.P.
COLLEEN D. DUFFY
LINDA CHRISTOPHER
BARRY E. WARHIT, JJ.

2020-08079 DECISION & ORDER

Browne & Appel, LLC, etc., et al., respondents, v
Teddy Lichtschein, etc., et al., defendants,
Eliezer Scheiner, etc., appellant.

(Index No. 50941/15)

Cuddy & Feder LLP, White Plains, NY (Jordan M. Brooks and Kempshall C. McAndrew of counsel), for appellant.

Lachtman Cohen P.C., White Plains, NY (Gregory A. Blue of counsel), for respondents.

In a consolidated action, inter alia, to recover on a personal guaranty, the defendant Eliezer Scheiner appeals from a judgment of the Supreme Court, Westchester County (Linda S. Jamieson, J.), dated October 6, 2020. The judgment, insofar as appealed from, after a nonjury trial, is in favor of the plaintiff Sir Paul Realty, LLC, and against the defendant Eliezer Scheiner in the principal sum of $1,500,000, with interest through the date of judgment, for the total sum of $2,473,479.45.

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

The plaintiffs commenced this consolidated action against, among others, the defendant Eliezer Scheiner (hereinafter the defendant), inter alia, to recover on a personal guaranty they alleged that the defendant executed in connection with loans and other transactions regarding a hotel in Tarrytown owned by the defendant 455 Hospitality, LLC (hereinafter 455 Hospitality). As is relevant to the appeal, the plaintiffs alleged that, in July 2007, the plaintiff Sir Paul Realty, LLC (hereinafter Sir Paul Realty), entered into a purchase and sale agreement with 455 Hospitality to purchase the ground lease of the hotel from 455 Hospitality in the amount of $3,000,000

(hereinafter the agreement). The agreement included, inter alia, a provision entitled "Repurchase Obligation" pursuant to which Sir Paul Realty could compel 455 Hospitality to repurchase the ground lease upon certain conditions for a "Repurchase Amount" of $3,000,000. The plaintiffs alleged that the defendant executed a personal guaranty (hereinafter the guaranty) to repay Sir Paul Realty one-half of the repurchase amount. The guaranty provides that it was a guaranty of payment, not of collection, and that the liability under the guaranty was primary and not conditioned upon demand of payment from 455 Hospitality. Pursuant to the guaranty, among other things, the defendant waived all defenses and "remain[ed] liable" until the guaranteed obligations were repaid, and the guaranty could not be modified, waived, or canceled except in writing signed by 455 Hospitality and by the defendant. By demand letter dated July 19, 2013, Sir Paul Realty exercised the Repurchase Obligation provision of the agreement and demanded payment of $3,000,000 plus interest. The plaintiffs alleged that the defendant failed to comply with his obligation as guarantor to pay $1,500,000 of that payment pursuant to the guaranty.

After a nonjury trial, as is relevant to the appeal, a judgment was entered, inter alia, in favor of Sir Paul Realty and against the defendant in the principal sum of $1,500,000, with interest from July 22, 2013, through the date of judgment, for the total sum of $2,473,479.45. The defendant appeals.

In reviewing a determination made after a nonjury trial, the power of this Court is as broad as that of the trial court, and this Court may render the judgment it finds warranted by the facts, bearing in mind in a close case that the trial judge had the advantage of seeing and hearing the witnesses (*see Northern Westchester Professional Park Assoc. v Town of Bedford*, 60 NY2d 492, 499; *Morrone v Costagliola*, 151 AD3d 1055, 1055). Here, the record supports the Supreme Court's determination.

A guaranty is a promise to fulfill the obligations of another party, and is subject to the ordinary principles of contract construction (*see Cooperatieve Centrale Raiffeissen-Boerenleenbank, B.A., "Rabobank Intl.," N.Y. Branch v Navarro*, 25 NY3d 485, 492). "Under those principles, 'a written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms'" (*id.* at 493, quoting *Greenfield v Philles Records*, 98 NY2d 562, 569). "Guaranties that contain language obligating the guarantor to payment without recourse to any defenses or counterclaims, i.e., guaranties that are 'absolute and unconditional,' have been consistently upheld by New York courts" (*Cooperatieve Centrale Raiffeissen-Boerenleenbank, B.A., "Rabobank Intl.," N.Y. Branch v Navarro*, 25 NY3d at 493).

Here, the language of the guaranty expressly provides that the defendant is obligated to repay Sir Paul Realty one-half of the repurchase amount and that it is a guaranty of payment, not of collection, and that the liability under the guaranty is primary and not conditioned upon demand of payment from 455 Hospitality. Contrary to the defendant's contention, there is no evidence that Sir Paul Realty and 455 Hospitality intended to extinguish the $3,000,000 debt. Notably, any provision in a subsequent agreement between Sir Paul Realty and 455 Hospitality did not serve to terminate the defendant's obligations as guarantor under the guaranty (*see 2402 E. 69th St., LLC v Corbel Installations, Inc.*, 183 AD3d 859, 861-862; *White Rose Food v Saleh*, 292 AD2d 377, 378, *affd* 99 NY2d 589). Moreover, pursuant to the terms of the guaranty, the defendant waived all

defenses (*see Cooperatieve Centrale Raiffeissen-Boerenleenbank, B.A., "Rabobank Intl.," N.Y. Branch v Navarro*, 25 NY3d at 493; *United Orient Bank v Bao Lee*, 223 AD2d 500, 500).

The defendant's remaining contentions are without merit..

DILLON, J.P., DUFFY, CHRISTOPHER and WARHIT, JJ., concur.

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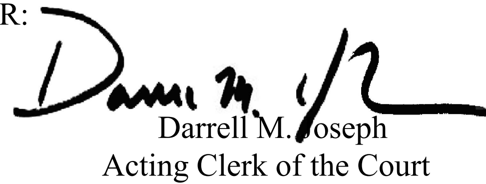

Darrell M. Joseph
Acting Clerk of the Court