SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

----------X

PAT MOREA,

Plaintiff(s),

- against-

LEONARD TYLMAN a/k/a LEONID TYLMAN a/k/a LENNY TYLMAN a/k/a LEONID VOLOZIN and ALEX PREISMAN a/k/a ALEC PRESIMAN a/k/a ALEXANDER PREISMAN a/k/a OLEG PRESIMAN a/k/a ALEX PRESMAN a/k/a ALEC PRESMAN a/k/a ALEXANDER PRESMAN a/k/a OLEG PRESMAN a/k/a ALEX PRESIMON a/k/a ALEC PREISMON a/k/a ALEXANDER PREISMAN a/k/a ALEC PRESMON a/k/a ALEXANDER PRESMON a/k/a OLEG PRESMON,

Defendant(s).

----------X

DCM PART 5

Present:
HON. JUDITH N. McMAHON

DECISION AND ORDER

Index No. 101220/2009
Motion Nos. 002, 003

The following papers numbered 1 to 3 were used on this motion this 16th day of March, 2010:

[002]Notice of Motion [Plaintiff] (Affirmation in Support) ---------- 1
[003]Notice of Motion [Defendant Tylman] (Affirmation in Support) ---------- 2
Affirmation in Reply [Plaintiff] ---------- 3

On or about May 13, 2009, the plaintiff commenced this action against defendants Leonard Tylman and Alex Presiman[1] seeking to recover monies allegedly due and owing[2] under a guaranty agreement of a lease. Issue was joined by defendant Leonard Tylman on or about June

---

[1]The Court notes that both defendants have various aliases and will refer to them through this Decision and Order as indicated above. In addition, defendant Alex Presiman never appeared in this action, a default judgment was granted on October 28, 2009.

[2]Plaintiff seeks to recover $37,000 for violations/penalties caused by CEI; $55,085 incurred in remedying conditions on the leased premises; and $29,404 in additional unpaid rent since obtaining a money judgment for rent due and owing in the amount of $22,500.

15, 2009. Presently, plaintiff is seeking summary judgment against defendant Tylman based upon the guaranty. Defendant Tylman is moving for summary judgment in his favor as well.

On or about January 31, 2001, plaintiff, Pat Morea and nonparty corporation CEI Enterprises, entered into a 10-year lease for the premises located at 60 Gravesend Neck Road, Brooklyn, New York. The defendants were the Officers/Directors of the nonparty corporation. The defendants sought to use the space as a storage facility for certain products they wished to import and resell. In conjunction with the lease, the defendants Leonard Tylman and Alex Presiman signed a guaranty which purported to "unconditionally guaranty to the Landlord the due and punctual payment of Rent and Additional Rent due under the terms of the Lease up until and through the date four (4) months after Tenant surrenders possession of the subject Premises...". The guaranty also provided that the

> Landlord agrees that in the event LEONARD TYLMAN's entire interest in the Corporation is sold to ALEX PRESIMAN, and LEONARD TYLMAN resigns as an officer and director of the Corporation, and provided that the Tenant and Guarantors are not otherwise in default under the terms of the Lease, then ALEX PRESIMAN must provide written proof of same to Landlord's attorney and provided such documentation is acceptable to Landlord and Landlord's attorney, Landlord shall sign a release, releasing LEONARD TYLMAN from his obligation under this Guaranty. Notwithstanding the above, unless and until LEONARD TYLMAN is released by the Landlord as described herein, this Guaranty shall be binding against him in all respects (paragraph 9 of the Guaranty)

The defendant Tylman contends that while he was an Officer/Director of CEI Enterprises, he merely contributed $100,000 to the business without any profits being realized. In addition, Mr. Tylman admits to signing the lease/rider and guaranty, although he disputes the exact date of the signing. Defendant Tylman contends that upon receiving no communication from co-

defendant Presiman for "a year or two", realizing no monies from the investment, and after receiving notices from the IRS concerning CEI, he formally resigned as an Officer/Director and attempted to seek the requisite release from plaintiff and his attorney pursuant to paragraph 9 of the Guaranty, quoted above. The plaintiff denied the defendant's request for release under the guaranty because he contended that there was a default under the lease agreement[3]. Thereafter, this action was commenced and defendant now contends the guaranty is not enforceable and asserts the following affirmative defenses; unclean hands, statue of limitations, lack of consideration, failure to credit the security deposit, exercise of the release pursuant to paragraph 9, the guaranty does not cover the alleged damages in this action, and equitable estoppel. Presently, the plaintiff and defendant Tylman are both moving for summary judgment in their respective favors.

It is well settled that a "proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (Alvarez v. Prospect Hosp., 68 NY2d 320, 324 [1986]). Once the movant has satisfied this burden, "the burden shifts to the [opponent] to lay bare his or her proof and demonstrate the existence of a triable issue of fact" (Chance v. Felder, 33 AD3d 645, 645-646 [2d Dept 2006]; Zuckerman v. City of New York, 49 NY2d 557 [1980]). In this regard, the court is enjoined to accept the evidence tendered by the opposing party as true, and "must deny the motion if there is even arguably any doubt as to the existence of a

[3]Plaintiff's attorneys letter dated August 11, 2006, indicates a holdover proceeding was commenced by the plaintiff against CEI for various violations and failure to cure them at the premises. While this proceeding ending in a comprehensive settlement the plaintiff still refused to release defendant Tylman pursuant to paragraph 9 of the Guaranty under the guise that CEI had not complied with the release/settlement for nearly two years.

triable issue" (Fleming v. Graham, 34 AD3d 525 [2d Dept 2006] quoting Barker v. Briarcliff School Dist., 205 AD2d 652, 653 [2d Dept 1994] [internal quotation marks omitted]).

On a lease guaranty, when a moving-party makes a prima-facie showing of entitlement to judgment as a matter of law, based on an unconditional guaranty of payment, then it is incumbent on the opposing party to present a triable issue of fact. (Urstadt Biddle Props., Inc. v. Excelsior Realty Corp., 65 AD 3d 1135, 1136 [2d Dept. 2009]). Documentary evidence of an unconditional lease guaranty by a movant establishes that movant is entitled to judgment as a matter of law. (Id.; North Fork Bank v ABC Merchant Servs., Inc., 49 AD 3d 701, 701 [2d Dept. 2008]; Suffolk County Natl. Bank v Columbia Telecom. Group, Inc., 38 AD 3d 644, 645 [2d Dept. 2007]).

Here, the plaintiff has made a prima facie showing of entitlement to summary judgment by demonstrating that the defendant Leonard Tylman unconditionally guaranteed the payment of rent and additional obligations of the nonparty corporation CEI, arising out of a promissory note he signed in his capacity as Office/Director of CEI and that CEI defaulted on that its obligations (North Fork Bank v ABC Merchant Servs., Inc., 49 AD 3d 701, 701 [2d Dept. 2008]; Suffolk County Natl. Bank v Columbia Telecom. Group, Inc., 38 AD 3d 644, 645 [2d Dept. 2007]).

In opposition, the defendant has failed to raise a triable issue of fact (Alvarez v. Prospect Hosp., 68 NY2d 320, 324 [1986]; North Fork Bank v ABC Merchant Servs., Inc., 49 AD 3d 701, 701 [2d Dept. 2008]). Defendant's speculative and conclusory allegations of unclean hands, lack of consideration, alteration of the lease leading to subsequent release under the guaranty, and illegality of the lease are insufficient to defeat the plaintiff's prima facie showing and completely contradictory to the evidence presented (North Fork Bank v. ABC Merchant Servs., Inc., 49 AD3d at 701). Further, the defendant's contention that he was released pursuant to paragraph 9, is

clearly contradicted by the unrefuted evidence whereby the plaintiff and/or the plaintiff's attorney rejected the defendant Tylman's request to be released pursuant to paragraph 9. With respect to defendant's contention that plaintiff failed to credit the security deposit, this is an offset, to be taken into consideration on damages by the trial judge. As a result, summary judgment is appropriate in favor the plaintiff on the guaranty (Alvarez v. Prospect Hosp., 68 NY2d 320, 324 [1986]; North Fork Bank v ABC Merchant Servs., Inc., 49 AD 3d 701, 701 [2d Dept. 2008]).

Accordingly, it is,

ORDERED that the plaintiff's motion for summary judgment is hereby granted, and it is further

ORDERED that the defendant Leonard Tylman's motion for summary judgment is hereby denied, and it is further

ORDERED that the parties appear on April 27, 2010, for a compliance conference, and it is further

ORDERED that the Clerk enter Judgment accordingly.

THIS IS THE DECISION AND ORDER OF THE COURT.

Dated: April 27 2010 E N T E R,

_____

Hon. Judith N. McMahon

Justice of the Supreme Court