

**PCPI Landmark Props., L.L.C. v Blossom Mgt. Intl.
Inc.**

2014 NY Slip Op 31644(U)

June 25, 2014

Supreme Court, New York County

Docket Number: 158638/2013

Judge: Manuel J. Mendez

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ
Justice

PART 13

RCPI LANDMARK PROPERTIES, L.L.C.,

INDEX NO. 158638/2013

MOTION DATE 05-28-2014

Plaintiff,

MOTION SEQ. NO. 002

-against-

MOTION CAL. NO. _____

BLOSSOM MANAGEMENT INTERNATIONAL INC.,
HENGJIANG MU, and HUMING XIE,

Defendants.

The following papers, numbered 1 to 4 were read on this motion to Reargue motion.

	<u>PAPERS NUMBERED</u>
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1-2</u>
Answering Affidavits — Exhibits _____	<u>3-4</u>
Replying Affidavits _____	

Cross-Motion: Yes No

Upon a reading of the foregoing cited papers, it is Ordered that this motion pursuant to CPLR § 2221(d) for leave to Reargue this court's decision dated January 15, 2014 which granted plaintiff's motion for default judgment and summary judgment, is denied.

Plaintiff, as landlord, leased the commercial premises (herein "Premises") to defendant Blossom Management International Inc. (herein "Blossom"), and the defendants Hengjiang Mu and Huming Xie (herein "Individuals") signed a good guy guarantee (herein "Guaranty"), guarantying the payment of rent. The lease agreement (herein "Lease") was effective from June 29, 2011 until July 31, 2013. Blossom defaulted on the payment of rent from May 2012 through August 2012. On August 17, 2012, the parties executed an agreement (herein "Agreement") in which Blossom gave possession of the Premises to plaintiff and admitted being in default from May 2012 through August 2012.

Plaintiff was unable to rent the Premises from August 17, 2012 through the termination date under the Lease and commenced the instant action in September of 2013 seeking back rent, additional rent, and attorneys fees.

Under Motion Sequence 001, plaintiff moved for a default judgment against Blossom and summary judgment against the Individuals. Plaintiff's moving papers expressly stated that Blossom's \$196,875 security deposit was applied to the future rent that would have been due under the Lease from August 18, 2012 to July 31, 2013 which totaled \$198,417.89, thereby reducing Blossom's deficiency obligation to \$1,542.89.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Plaintiff sought \$105,317.53 in back rent from May of 2012 to August 17, 2012 against Blossom and the Individuals as guarantors. Blossom and the Individuals, jointly and severally, were liable for the back rent owed from May 2012 to August 17, 2012, totaling \$105,317.53. In an Order dated January 15, 2014, this court granted the default motion against Blossom and the summary judgment motion against the Individuals for the \$105,317.53 due in back rent.

The Individuals now move pursuant to CPLR § 2221(d) for leave to reargue this court's decision, arguing that (1) rather than applying Blossom's security deposit towards Blossom's deficiency obligation, plaintiff should have credited it towards the Individuals' obligation; (2) plaintiff re-leased the commercial premises and that any rent collected should be applied to the Individuals' obligation; and (3) Plaintiff withheld consent to proposed subleases of the commercial premises.

CPLR § 2221(d) states that a motion for leave to reargue (1) shall be identified specifically as such, (2) shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion, and (3) shall be made within 30 days after service of a copy of the order determining the prior motion and written notice of its entry.

A motion for leave to reargue is not designed to provide an unsuccessful party with successive opportunities to reargues issues previously decided (V.Veerewamy Realty v. Yenom Corp., 71 A.D. 3d 874, 895 N.Y.S. 2d 860 [2nd. Dept. 2010]), but to point out controlling principles of law or fact that the court may have overlooked (Simon v. Mehryahi, 16 A.D. 3d 664, 792 N.Y.S. 2d 543 [2nd. Dept. 2005]). A motion for leave to reargue is based on no new proof; it seeks to convince the court that it was wrong and ought to change its mind (Siegel, New York Practice 5th Edition, §254). A motion for leave to Reargue "is not available where the movant seeks only to argue 'a new theory of law not previously advanced'" (DeSoignies v. Cornasesk House Tenants' Corp., 21 A.D.3d 715, 718, 800 N.Y.S.2d 679, 862 [1st Dept., 2005]).

The Individuals assert that this court misinterpreted the terms of the Guaranty, Lease, and Agreement by holding defendants liable for unpaid rent pass the termination date of the lease pursuant to the Agreement. As such, the individuals argue that Blossom's security deposit should have been applied to monies owed pursuant to the Guaranty.

The only opposition to plaintiff's motion under Motion Sequence 001 was an affirmation from Huming Xie. The Individuals did not present any evidence or make any legal arguments. The Individuals now improperly raise new arguments on this motion for leave to reargue and this motion should be denied on this point.

However, addressing the arguments made by the Individuals, the Lease, Guaranty, and Agreement resolve all issues raised in the instant motion.

The Lease entitles plaintiffs to rent that would have been due under the terminated lease from the termination date through the expiration date of the lease. Section 15.3(a)(i) of the Lease provides that "Tenant shall pay Landlord all items of Rent payable under this Lease by Tenant to Landlord prior to the date of termination," which is July 31, 2013.

Section 8 of the Guaranty provides in part that "This Guaranty may be enforced by Landlord without the necessity at any time of resorting to or exhausting any other security or collateral."

Section 10 of the Guaranty provides in part that "Until the Obligations shall have been indefeasibly paid in full, each Guarantor shall withhold exercise of ... any benefit of, and any right to participate in, any security now or hereafter held by Landlord or the Lease."

Section 9 of the Guaranty allows plaintiff to apply any amounts paid by Blossom, which includes amounts paid as a security deposit, "to any due and unpaid Rent or other charges or to such other obligations owed by Tenant to Landlord pursuant to the Lease in such amounts and in such order as Landlord, in its sole and absolute discretion, determines, provided that any amount so paid and applied reduces the aggregate outstanding liabilities of Tenant under the Lease by such amount."

Paragraph 1(a)(iii) of the Agreement states in part that "Blossom and Guarantors ... agree that the term of the Lease and all of the right, title and interest in and to the Premises terminated and expired pursuant to the Termination Notice on the Termination Date."

Paragraph 2 of the Agreement states "except as to matters expressly addressed by paragraph 1 of this Agreement, this Agreement shall be without prejudice to, and nothing contained herein shall be deemed to constitute a modification, waiver, release, relinquishment, surrender or termination of, any of the parties' claims, defenses, rights or remedies pursuant to the terminated Lease, the Guaranty or applicable law, all of which are expressly reserved."

The Lease entitles plaintiff to rent that would have been due under the Lease. In its moving papers, plaintiff expressly stated that pursuant to the Lease, the \$196,750 deposit was applied to the \$198,417.89 deficiency for rent that would have been due under the terminated Lease. None of the defendants objected or opposed.

The Guaranty allows plaintiff to enforce the Guaranty against the Individuals without "exhausting any other security or collateral." The Individuals waived their right to the security deposit under the Guaranty, and gave plaintiff the discretion to apply the deposit to "any due and unpaid Rent." The Agreement resolved the Notice to Cure and Notice of Cancellation served by plaintiff on defendants by agreeing that plaintiff would take possession of the Premises. However, the Agreement reserved the right of plaintiff to seek enforcement of the Guaranty against the Individuals for any rights or remedies pursuant to the terminated Lease and Guaranty.


This court finds that it did not overlook or misapprehend the law or the facts in granting plaintiff's motion for summary judgment.

Accordingly, it is ORDERED, that this motion by HENGJIANG MU and HUMING XIE for leave to reargue this court's decision dated January 15, 2014, which granted plaintiff's motion for a default judgment and summary judgment, is denied.

MANUEL J. MENDEZ
J.S.C.

ENTER:

Dated: June 25, 2014


MANUEL J. MENDEZ
J.S.C.

Check one: FINAL DISPOSITION X NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE