

1471 Second Corp. v NAT of NY Corp.

2015 NY Slip Op 32569(U)

June 20, 2015

Supreme Court, New York County

Docket Number: 652594/2013

Judge: Cynthia S. Kern

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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1471 SECOND CORP.,

Index No. 652594/2013

Plaintiff,
-against-

DECISION/ORDER

NAT OF NY CORP. and NANDO GHORCHIAN
a/k/a NASSER GHORCHIAN,

Defendants.
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HON. CYNTHIA KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for :

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	1
Answering Affidavits and Cross Motion.....	2
Replying Affidavits.....	3
Exhibits.....	4

Plaintiff commenced the instant action to recover unpaid rent from defendants pursuant to a lease agreement and a guaranty. Defendant Nando Ghorchian a/k/a Nasser Ghorchian (“Ghorchian”) now moves for an Order pursuant to CPLR § 3212 granting him summary judgment dismissing plaintiff’s complaint as against him. For the reasons set forth below, Ghorchian’s motion for summary judgment is granted.

The relevant facts are as follows. On or about October 12, 2005, plaintiff, as landlord, and defendant NAT of NY Corp. (“NAT”), as tenant, entered into a written lease agreement for premises located at 1471 Second Avenue, New York, New York (the “Original Lease”). By written agreement dated May 4, 2007, plaintiff and NAT modified the Original Lease to allow NAT to lease additional kitchen space in exchange for an increase in the rent (the “Lease

Modification"). On or about November 23, 2005, Ghorchian executed a written guaranty of a lease for the premises located at 1471 Second Avenue, New York, New York between plaintiff, as landlord, and Ghorchian, as tenant (the "Guaranty"). The Guaranty stated that Ghorchian guaranteed the tenant's performance under the lease that "Landlord and Nando Ghorchian ('Tenant') [were entering] concurrently with the execution and delivery of this Guaranty."

Plaintiff claims that, beginning in or around September 2010 and continuing thereafter, NAT failed to pay plaintiff base rent and additional rent when it became due and owing. Plaintiff commenced the instant action to recover the allegedly unpaid base rent and additional rent. Ghorchian now moves for summary judgment dismissing plaintiff's complaint as against him on the ground that the Guaranty did not obligate him to pay the base rent and additional rent owed by NAT under the Original Lease and Lease Modification.

On a motion for summary judgment, the movant bears the burden of presenting sufficient evidence to demonstrate the absence of any material issues of fact. *See Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986). Summary judgment should not be granted where there is any doubt as to the existence of a material issue of fact. *See Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). Once the movant establishes a *prima facie* right to judgment as a matter of law, the burden shifts to the party opposing the motion to "produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim." *Id.*

It is well settled that a "guarantor should not be bound beyond the express terms of his guarantee." *665-75 Eleventh Avenue Realty Corp. v. Schlanger*, 265 A.D.2d 270, 271 (1st Dep't 3 OF 6 1999). Moreover, a "guaranty is to be interpreted in the strictest manner, particularly in favor of

a private guarantor, and cannot be altered without the guarantor's consent." *Lo-Ho LLC v. Batista*, 62 A.D.3d 558, 559 (1st Dept 2009) (internal citations omitted).

In the present case, Ghorchian has made a *prima facie* showing of his entitlement to summary judgment on the ground that he is not bound by the Guaranty to pay the base rent and additional rent owed by NAT. Pursuant to the unambiguous language of the Guaranty, Ghorchian agreed to guarantee payment of rent under an admittedly non-existent lease between plaintiff and Ghorchian, not under the Original Lease or Lease Modification between plaintiff and NAT.

In opposition, plaintiff has failed to raise an issue of fact. Plaintiff's argument that Ghorchian's motion for summary judgment should be denied on the ground that it is his second motion for summary judgment is unavailing. Although successive summary judgment motions are generally not permitted, the court may consider a successive summary judgment motion "when it is substantively valid and the granting of the motion will further the ends of justice and eliminate an unnecessary burden on the resources of the courts." *Graham v. City of New York*, 136 A.D.3d 747, 748 (2nd Dept 2016). See also *Landmark Capital Investments, Inc. v. Li-Shan Wang*, 94 A.D.3d 418, 419 (1st Dept 2012) ("Nor did the court abuse its discretion in allowing plaintiff to make a second summary judgment motion correcting certain defects, where that motion clearly enhanced judicial efficiency").

Further, plaintiff's argument that Ghorchian's motion for summary judgment should be denied on the ground that the Guaranty is ambiguous is without merit. A court must enforce an unambiguous written contract according to its plain meaning "without looking to extrinsic evidence to create ambiguities not present on the face of the document." See *150 Broadway*

N.Y. Associates, L.P. v. Bodner, 14 A.D.3d 1, 3 (1st Dept 2004). In the present case, the Guaranty is not ambiguous on its face as it purports to obligate Ghorchian to pay rent under a lease between plaintiff and Ghorchian in the event of Ghorchian's default, not under the Original Lease or Lease Modification between plaintiff and NAT in the event of NAT's default.

Plaintiff's argument that Ghorchian's motion for summary judgment should be denied on the ground that the court should not construe the Guaranty in such a way as to render it meaningless is also without merit. Although plaintiff cites *150 Broadway N.Y. Associates, L.P.*, wherein the court avoided an interpretation of a lease and guaranty that would make the corporation the guarantor of its own debt on the ground that the guaranty would then be meaningless, that case is inapplicable here as the lease and guaranty in *150 Broadway N.Y. Associates, L.P.* were ambiguous. See *150 Broadway N.Y. Associates, L.P.*, 14 A.D.3d at 3-6 (interpreting a lease between the plaintiff and "Bodner & Waldinger" to refer to "Bodner & Waldinger, P.C.," a corporate entity, rather than the individual officers of the same surnames, particularly given the officers' personal guaranty in said lease).

To the extent plaintiff contends that summary judgment should be denied pursuant to CPLR § 3212(f) because discovery remains outstanding, such argument is unavailing. It is well settled that "a claimed need for discovery, without some evidentiary basis indicating that discovery may lead to relevant evidence, is insufficient to avoid an award of summary judgment." *Hariri v. Amper*, 51 A.D.3d 146, 152 (1st Dept 2008). In the present case, although plaintiff has detailed defendants' failure to comply with its discovery demands and the court's compliance conference orders, plaintiff has failed to provide any evidentiary basis indicating that discovery may lead to relevant evidence.

