

345 E. 69th St. Owners Corp. v Platinum First Cleaners, Inc.
2016 NY Slip Op 31736(U)
September 19, 2016
Supreme Court, New York County
Docket Number: 651505/2015
Judge: Barry Ostrager
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 61

X

345 EAST 69TH STREET OWNERS CORP. and
69TH STREET REALTY CORP.,

Plaintiffs,

INDEX NO. 651505/2015

-against-

Motion Seq. No. 003

PLATINUM FIRST CLEANERS, INC. d/b/a
SPLENDID CLEANERS, DAISY HUANG and
KENNETH HUANG

Defendants.

X

OSTRAGER, J:

Before the Court is the defendant Kenneth Huang's ("Huang") motion for summary judgment and the plaintiffs' cross motion for summary judgment against Huang in the amount of damages sought in the complaint. Huang's motion for summary judgment is denied, and the plaintiffs' cross-motion for summary judgment is granted on liability for the following reasons.

The co-plaintiffs are 345 East 69th Street Owners Corp., the owner of a cooperative building located at 345 East 69th Street, New York, New York, and 69th Street Realty Corp., the sub-lessor of first floor commercial space at the building (hereinafter "Plaintiffs") (*see* verified complaint, annexed to moving papers as Exh. A, ¶ 11). The defendant Platinum First Cleaners, Inc. d/b/a Splendid Cleaners ("Platinum") is a dry cleaning business that operated at a portion of the of the first floor commercial space of the building (the "Premises") (¶ 12). The defendants Kenneth Huang and Daisy Huang, principals and shareholders of Platinum (¶ 2), had signed a sublease agreement dated July 13, 2000 on behalf of Platinum, as well as a guaranty agreement dated July 13, 2000 (opposition papers, Exhs. 3, 4). The sublease agreement commenced on July 13, 2000 and was scheduled to expire on June 30, 2014 ("the Sublease Expiration").

The Guaranty provides that:

The undersigned (“Guarantor”) hereby guarantees to Owner (as hereinafter defined), its successors and assigns, under that certain Sublease dated June 13, 2000 as same may be amended from time to time, (“Sublease”) by and between 69th STREET REALTY CORP., as owner (“Owner”), and PLATINUM FIRST CLEANERS, its successors and/or assigns, as tenant (“Tenant”), the timely payment of all Fixed Rent, Additional Charges and other obligations of Tenant of whatever nature under the Sublease, *which guaranty shall be primary, absolute, and unconditional*, and not subject to counterclaim, offset, deduction, credit or defense of any nature whatsoever, except to the extent of Owner’s default under the Non-Disturbance Agreement among Owner, Tenant and East 69th Street Dry Cleaners, Inc. dated June 13, 2000 (the “Non-Disturbance Agreement”), *that may arise during the period commencing on the date of the Sublease through and including the date Tenant vacates the premises and fulfills its obligations with respect thereto through the date of Tenant’s vacating in accordance with the provisions of the Sublease* (including, without limitation the payment of all Fixed Rent and Additional Charges due with respect to such period) *and leaves same in broom clean condition free and clear of all liens, encumbrances, tenancies, subtenancies and/or rights of occupancy, whether claiming by, through or under Tenant or Guarantor or otherwise and delivers the keys and unencumbered possession of the premises to Owner.* (emphasis added).

It is undisputed that Platinum vacated the premises on or before June 30, 2012 (the “Surrender Date”), prior to the Sublease Expiration (*see* moving papers, Exh. D).¹ The issue here is whether the defendant Kenneth Huang (“Huang”) is personally liable under the guaranty for alleged unpaid rent, additional rent, and other fees and expenses in the amount of \$609,517.51 allegedly owed to the Plaintiffs. The defendant Daisy Huang has filed for bankruptcy (*see* Krassner affirmation, ¶ 9).

In its motion for summary judgment, Huang argues that Platinum was current on its rent obligations to the Plaintiffs through the Surrender Date (Krassner affirmation, ¶ 12-13). Huang further argues that he signed a “good guy” guaranty, and since Platinum has complied with all

¹ See letter dated June 29, 2012 from Platinum’s attorney to the plaintiffs, advising the plaintiffs that Platinum shall surrender the Premises on or before June 30, 2012, and promising to return the keys and leave the Premises in a broom clean condition prior to that date.

payment and other obligations under the sublease, he is relieved of personal liability under the “good guy” guaranty (§ 13). Huang has not furnished any cases to support his contention that the guaranty contains a “good guy” clause or any specific language to suggest it was a “good guy” guaranty (*see* NYSCEF Doc. 116 at 3).² Instead, Huang asks this Court to read the guaranty agreement as a “good guy” guaranty because the Court must construe a contract in favor of the non-drafting party [Huang] if it contains ambiguities. *See 67 Wall Street Co. v Franklin National Bank*, 37 NY2d 245 (1975).

In opposition to Huang’s motion and in further support of their cross motion for summary judgment, the Plaintiffs assert that the executed guaranty agreement was not a “good guy” guaranty but rather a full and unconditional guaranty, and Huang is therefore personally liable through the Sublease Expiration date. To support their contention, the Plaintiffs point to the plain language of the guaranty and several Appellate Division, First Department and Second Circuit cases (*see* NYSCEF Doc. 117). The Plaintiffs argue that Huang is personally liable for Platinum’s obligations under the sublease until its expiration on June 30, 2014.

The guaranty at issue is not a “good guy” guaranty but rather a full and unconditional guaranty. A “good guy” guaranty typically contain a so-called “good guy” clause, limiting the guarantor’s liability to the date until the tenant of the premises actually vacates or surrenders the premises. *See Russo v Heller*, 80 AD3d 531 (“Good Guy guaranties are commonly understood to apply to obligations which accrue prior to the surrender of the lease premises”). The following is an example of a “good guy” clause: “Notwithstanding anything herein to the contrary, Guarantor’s obligations herein shall only be applicable with respect to period [sic] prior to such time as Owner obtains vacant, unencumbered possession of the Demised Premises, free and clear

² “Since this Guarantee is not a pre-printed form cases could not be found which interprets this precise language.”

of all tenants, subtenants and occupants” (*L & B 57th Street, Inc. v E.M. Blanchard, Inc.*, 143 D.3d 88, 90 [2d Cir. 1998]; *see also Zevnik, Horton, Guibord, McGovern, Palmer & Fognani v Sheraton Holding Corp.*, 304 AD2d 455 [1st Dep’t 2003]; *Zevnik* 304 AD2d 455 (1st Dep’t 2003) (“[In *L&B*] a ‘good guy’ clause in a guarantee extinguished the guarantor’s liability for a tenant’s obligations in the event the tenant vacated”); *see also 300 Park Ave., Inc. v Café 49, Inc.*, 89 AD3d 634 [1st Dep’t 2011]).

The guaranty agreement that Huang had executed clearly and unambiguously states that the guaranty is primary, absolute, and unconditional. The guaranty does not contain a clause or language limiting the guarantor’s liability to the actual surrender date. What is more, the guaranty expressly states the guarantors’ liability shall remain until the tenant vacates *and* fulfills its obligations under the sublease. Thus, Platinum breached the sublease agreement by vacating prior to the Sublease Expiration date, and the defendant Kenneth Huang is personally liable under the guaranty.

For all the foregoing reasons, it is hereby

ORDERED that the defendant Kenneth Huang’s motion for summary judgment is denied, and the Plaintiffs’ cross motion for summary judgment against Huang is granted on liability. The parties are directed to appear for an inquest on damages on Thursday, October 6, 2016 at 10 a.m. in Room 341.

Dated: September 19, 2016


 BARRY R. OSTRAGER J.S.C.
 JSC