

MF 385 First Ave LLC v Mason Rest. Corp.
2020 NY Slip Op 32974(U)
September 9, 2020
Supreme Court, New York County
Docket Number: 652186/2018
Judge: Debra A. James
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

-----X

MF 385 FIRST AVE LLC,

Plaintiff,

- v -

MASON RESTAURANT CORP. and NICHOLAS
KALOUDIS,

Defendants.

-----X

INDEX NO. 652186/2018

MOTION DATE 11/14/2019

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36

were read on this motion to/for

JUDGMENT - SUMMARY

ORDER

Upon the foregoing documents, it is hereby

ORDERED that plaintiff's motion for a default judgment on the third and fourth causes of action against MASON RESTAURANT CORP. is GRANTED; and it is further

ORDERED that plaintiff's motion for summary judgment on the first and second causes of action against NICHOLAS KALOUDIS is GRANTED, and, it is further

ORDERED that amount of damages, including reasonable attorneys' fees, which plaintiff is entitled to recover from each defendant on the respective causes of action shall be determined by a Special Referee pursuant CPLR § 4317(b), and it is further

ORDERED that, within 30 days from the date of this Order, plaintiff shall cause a copy of this order with notice of entry, including proof of service thereof, to be filed with the Special Referee Clerk (spref@nycourts.gov) to arrange a date for a reference to determine pursuant to CPLR § 4317 (b); and it is further

ORDERED and ADJUDGED that pursuant to CPLR § 4319 the Clerk is directed to enter judgment in favor of plaintiff against each defendant in accordance with the report of the aforementioned Special Referee without any further application.

DECISION

The court must grant the plaintiff's unopposed motion for a default judgment against defendant-tenant Mason Restaurant Corporation, as no appearance has been made by such corporation in this action.

The court shall grant plaintiff's motion for summary judgment as against pro se defendant Nicholas Kaloudis (the "individual defendant") also.

As part of the assumption of a lease dated March 31, 2002, between plaintiff as landlord and defendant-tenant Mason as assignee, plaintiff argues that the individual defendant executed a guaranty dated July 26, 2016 of Mason's obligations under the lease including the "First Amendment to Agreement of

Lease" dated July 29, 2011 and executed by the landlord's and tenant's predecessors-in-interest. The individual defendant opposes summary judgment on the grounds that, while the guaranty expressly sets forth its applicability to obligations under the original lease dated March 31, 2002, no mention is made in the guaranty as to any obligations with respect to the separately executed "First Amendment to Agreement of Lease." Plaintiff argues that as the original lease would have expired by its terms on May 31, 2012, it is clear the guaranty was intended to cover obligations under the "First Amendment to Agreement of Lease."

The court agrees with plaintiff that it is clear that the parties intended that the guaranty cover the obligations under the amended lease as the original lease had expired at the time the guaranty was made. "The guaranty must be read in the context of the [] agreement, which was executed simultaneously, and in a manner that accords the words their fair and reasonable meaning, and achieves a practical interpretation of the expressions of the parties. Put otherwise, a contract should not be interpreted to produce a result that is absurd, commercially unreasonable or contrary to the reasonable expectations of the parties." Greenwich Capital Fin. Products, Inc. v Negrin, 74 AD3d 413, 415 (1st Dept 2010). Here, without question, the guaranty at issue was only executed in connection

with the assignment of the extant lease, which was the amended lease and therefore, contrary to defendant's contention, the guaranty is enforceable.

9/09/2020
DATE

Debra A. James
DEBRA A. JAMES, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE