

**High Line Dev. LLC v Neatppon Chelsea LLC**

2020 NY Slip Op 33874(U)

November 22, 2020

Supreme Court, New York County

Docket Number: 654095/2019

Judge: Marcy Friedman

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estate tax recovery charges pleaded in the complaint, and that \$15,294,589.40 is the balance due for the entire term of the lease. This amount represents unpaid rent reserved under the lease through the expiration date of the lease, pursuant to section 26.01 of the lease (NYSCEF Doc. No. 7). Interest will be awarded on this amount from May 22, 2019, the date plaintiff terminated the lease as a result of defendants' failure to pay the rent due under the lease.

As to the branch of the motion against defendant-guarantor, plaintiff appears to seek judgment in two separate amounts – the amount of \$15,294,589.40 under a “Good Guy” Guaranty, and the amount of \$1,000,000 under a separate unconditional Guaranty. (See Aff. of Andrew Pistor [Pl.’s Atty] In Supp., ¶ 14 [NYSCEF Doc. No. 32].) The complaint (NYSCEF Doc. No. 1) pleads two separate causes of action – the third and fourth causes of action, respectively – for these sums. Defendant-guarantor signed two separate guaranties of defendant-tenant's rent obligations under a lease dated as of September 7, 2018. Both guaranties are dated September 7, 2018, and guarantee defendant-tenant's rent obligations for the same premises.

The Good Guy Guaranty (NYSCEF Doc. No. 8) provides for defendant-guarantor to guarantee defendant-tenant's rent obligations during the time defendant-tenant occupies the premises (or in specified circumstances for a limited time thereafter) (“the Good Guy Period”), provided that tenant vacates and surrenders the premises in the condition required by the lease and “is not in default of its obligations under the Lease on the date of said surrender.” (Good Guy Guaranty, § 1.) Plaintiff takes the position that because defendant-tenant was in default at the time it surrendered the premises, the Good Guy Period was “inapplicable,” and defendant-guarantor was accordingly liable for all of defendant-tenant's obligations under the lease. (Aff. of John Alba [Pl.’s Vice President], ¶¶ 12-13 [NYSCEF Doc. No. 25].)

The second Guaranty (NYSCEF Doc. No. 9) unconditionally guarantees defendant-tenant's rent obligations under the lease. It provides that “Guarantor’s liability for the foregoing [rent obligations] shall not exceed one million and 00/100 (\$1,000,000.00) Dollars.” (Guaranty, § 1 [A].)

As plaintiff recognizes, the Guaranty “cap[s]” defendant-guarantor's obligation at one million dollars. (Alba Aff., ¶ 14.) Plaintiff apparently claims, however, that the cap applies under this Guaranty only. (Id.) This contention ignores the settled principle of contract interpretation that “documents executed at about the same time and covering the same subject matter are to be interpreted together, even if one does not incorporate the terms of the other by reference, and even if they are not executed on the same date, so long as they are ‘substantially’ contemporaneous.” (Brax Capital Group, LLC v WinWin Gaming, Inc., 83 AD3d 591, 592 [1st Dept 2011], citing (Nau v Vulcan Rail & Constr. Co., 286 NY 188, 197 [1941] rearg denied 287 NY 630; Teletech Europe B.V. v Essar Servs. Mauritius, 83 AD3d 511, 512 [1st Dept 2011]; Gulf Ins. Co. v Transatlantic Reins. Co., 69 AD3d 71, 81 [1st Dept 2009].) Put another way, contemporaneous agreements that are part of the same transaction must be “read together” (Nau, 286 NY at 197; accord Teletech Europe B.V., 83 AD3d at 512) or “read as a whole.” (Bank Leumi Trust Co. of N.Y. v Toms, 117 AD3d 555, 556 [1st Dept 2014].)

Here, reading the Good Guy Guaranty and the Guaranty as a whole, the court holds that they complement each other and unambiguously govern different obligations of the guarantor. The Good Guy Guaranty relieves the guarantor of his obligation to guarantee the tenant’s rent obligations if the tenant vacates the premises before the expiration of the lease term and is not in arrears. The Guaranty requires the guarantor to guarantee the tenant’s rent obligations if the tenant vacates early and is in arrears; but, in this circumstance, the Guaranty imposes a monetary

cap on the guarantor's obligation. Any other reading of the two guaranties would vitiate the cap imposed by the Guaranty. In reading agreements, however, a court should construe them "so as to give full meaning and effect to the material provisions. A reading of the contract should not render any portion meaningless." (Beal Sav. Bank v Sommer, 8 NY3d 318, 324-325 [2007] [internal quotation marks and citations omitted].) The court accordingly holds that judgment against defendant-guarantor should be awarded in the amount of \$1 million.

In so holding the court notes that the January 8, 2020 order identified a deficiency in the affidavit of non-military service for defendant-guarantor. A satisfactory affidavit has now been provided (NYSCEF Doc. No. 39). Plaintiff also gave notice of this renewed motion to defendant-guarantor, who has continued to fail to appear.

Finally, plaintiff's attorney withdraws the claim for attorney's fees. (Pistor Aff., ¶ 12.)

It is accordingly hereby ORDERED that the motion of plaintiff High Line Development LLC for judgment by default against defendant Neatppon Chelsea LLC and defendant Johnny Wooh is granted to the following extent:

It is ORDERED that judgment is granted in favor of plaintiff High Line Development LLC and against defendant Neatppon Chelsea LLC in the amount of \$15,294,589.40, with interest calculated on that amount by the Clerk at the statutory rate from May 22, 2019 until the date of entry of judgment, and thereafter with interest at the statutory rate, together with costs and disbursements as taxed by the Clerk; and it is further

ORDERED that judgment is granted in favor of plaintiff High Line Development LLC and against defendant Johnny Wooh in the amount of \$1,000,000.00, with interest calculated on that amount by the Clerk at the statutory rate from May 22, 2019 until the date of entry of

judgment, and thereafter with interest at the statutory rate, together with costs and disbursements as taxed by the Clerk; and it is further

ORDERED that the Clerk shall enter judgment accordingly.

ENTER:

11/22/2020  
DATE

  
MARCY S. FRIEDMAN, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
				<input type="checkbox"/> REFERENCE