

Daval 37 Assoc. LLC v Alameda Fascination LLC

2021 NY Slip Op 30159(U)

January 15, 2021

Supreme Court, New York County

Docket Number: 656273/2019

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 14

Justice

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INDEX NO. 656273/2019

DAVAL 37 ASSOCIATES LLC,

Plaintiff,

MOTION DATE 01/12/2021

MOTION SEQ. NO. 001

- v -

ALAMODA FASCINATION LLC, HOUMAN PAYAMI

Defendant.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41 were read on this motion to/for PARTIAL SUMMARY JUDGMENT.

The motion by defendant Payami for summary judgment dismissing the complaint as to him is granted. The cross-motion by plaintiff for summary judgment is granted in part and denied in part.

Background

In this commercial landlord-tenant case, plaintiff claims that defendant Alameda (“Tenant”) breached the lease by not paying rent starting in October 2019 and vacating the premises.

The Guarantor moves to dismiss the claims against him based on the terms of the guaranty. He claims that his obligations ended when the Tenant vacated and the keys were turned back to plaintiff.

In opposition and in support of its cross-motion for summary judgment, plaintiff claims that the Tenant clearly breached the terms of the lease by vacating the premises before the end of

the lease term. Plaintiff asserts that it never accepted the Tenant's surrender of the lease in writing so the lease was not properly terminated.

In reply, the Guarantor asserts that the terms of the guaranty were met to properly absolve him of any obligations. He claims that the premises were surrendered without any rent owed, so he does not owe anything. The Guarantor points out that the rent ledgers submitted by plaintiff show that the rent obligations were up to date through September 30, 2019—the same day the Tenant vacated the premises.

In reply to the cross-motion, plaintiff emphasizes that the Guarantor should be liable.

Discussion

As an initial matter, there is no dispute that the Tenant is liable for the rent sought by plaintiff. Therefore, the branch of the cross-motion by plaintiff for summary judgment against the Tenant is granted.

The central question of this motion is the guaranty. It provides, in part, that “Under all circumstances, including Tenant’s default, and in addition to the security deposit posted under this Lease, Guarantor guarantees to Landlord the payment and performance of Tenant’s obligations under and in accordance with the Lease, including without limitation, (i) the payment of Fixed and Additional Rent which accrue under the Lease *up to and including the date Tenant and any party claiming under Tenant vacate the entire Demised Premises, the delivery of the keys therefor and, at Landlord’s option, the execution by Tenant and delivery of an instrument of surrender and release*, and (iii) if applicable the payment for all of Tenant’s Work in conjunction with Tenant’s build-out of the Demised Premises” (NYSCEF Doc. No. 33 at 1) [emphasis added]).

The complaint alleges that the Tenant abandoned the premises the first week of October 2019 (NYSCEF Doc. No. 1, ¶ 2) and the interrogatory responses from plaintiff acknowledge that the keys were received on October 1, 2019 (NYSCEF Doc. No. 19 at 3). The Guarantor claims that all of his obligations under the guarantee were satisfied—all amounts were paid up to the abandonment and the keys were returned.

Plaintiff's argument focuses on the fact that it did not accept the surrender by Tenant and cites to Article 24 of the lease. Plaintiff also argues that the guaranty makes the Guarantor liable for all of the Tenant's obligations through the end of the lease term. It points out that its counsel wrote to the Guarantor to inform him of the Tenant's default.

The Guarantor seems to argue that the guaranty is a "good guy guaranty" that absolves him of the Tenant's obligations as long as the Tenant is up to date with rent payments at the time the Tenant surrenders the premises. Plaintiff argues that it was a guaranty for all amounts due under the lease and the surrender had no effect on the guaranty.

The Court finds that the Guaranty is what is commonly referred to as a "good guy guarantee" – where someone promises that he or she will be personally be responsible for all monetary obligations so long as the tenant is in the premises. After the tenant leaves and the keys are returned, the tenant may still be on the hook, but not the guarantor. "Courts are obliged to interpret a contract so as to give meaning to all of its terms" (*Bruckmann, Rosser, Sherrill & Co., L.P. v Marsh USA, Inc.*, 87 AD3d 65, 70, 926 NYS2d 471 [1st Dept 2011] [internal quotations and citation omitted]). Here, plaintiff's reading of the guaranty would render the vast majority of it superfluous. The Court questions why plaintiff would have included the specific actions in the guaranty (such as the returning of the keys and the date the Tenant vacated) if it wanted a guaranty for the full amount of Tenant's obligations regardless of any surrender. It

could have insisted on a guaranty that simply said: the guarantor is liable for all of Tenant's obligations

Plaintiff's attempt to ignore the "good guy" aspect of this guaranty is without merit. The Court cannot ignore the language of the guaranty, which in substance is a good guy guaranty. Sure, it is a little clunky – it would have been better if it was titled "Good Guy Guaranty" but there is no dispute that all rent was paid through the end of September 2019 and plaintiff (or its agent) received the keys on October 1, 2019.

To the extent that plaintiff claims defendant could not return the keys to plaintiff or its agent-- that plaintiff could refuse to accept the keys and somehow transform a good guy guaranty into a full guaranty-- that is just nonsense. The lease (article 24) and the guaranty allow the Guarantor to absolve himself of any further obligations by returning the keys but could not return the keys to the plaintiff's agent? That makes no sense.

Nor does plaintiff's other argument withstand common sense analysis. The guaranty allows plaintiff the option to demand a writing for the surrender of the premises; this was obviously to document that the landlord had possession and avoided the need for an eviction proceeding. There is no indication that plaintiff ever made such a demand. Instead, plaintiff appears to have taken the position that the Tenant was not allowed to surrender the premises and that the Guarantor was on the hook regardless. In light of the good guy guaranty, that argument makes no sense, either.

Summary

"[A] court should not read a contract so as to render any term, phrase, or provision meaningless or superfluous" (*Givati v Air Techniques, Inc.*, 104 AD3d 644, 645, 960 NYS2d 196

[2d Dept 2013]). Here, the parties entered into a guaranty that obligated the Guarantor to fulfill the obligations of the Tenant so long as the tenant was in possession and included language about the Tenant vacating the premises and turning in keys. That language is typically used in good guy guarantees—agreements permitting a guarantor to avoid having to cover the rent for the entire lease term as long as the rent is paid up when the premises are surrendered.

Plaintiff’s reading of the guaranty would render nearly the entire guaranty as meaningless. It decided to include language it now wants the Court to find was extraneous, but the rules of contract interpretation forbid that view. The fact is that the Tenant paid rent for the month of September 2019 and returned the keys on October 1, 2019. The tenant is still on the hook; the guarantor is not.

Accordingly, it is hereby

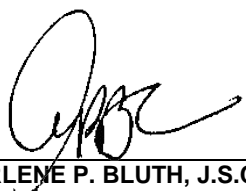
ORDERED that the motion by defendant Payami for summary judgment dismissing the claims against only him is granted, and those claims are severed and dismissed; and it is further

ORDERED that the cross-motion by plaintiff for summary judgment is granted only to the extent that it sought relief against defendant Alameda Fascination LLC, plaintiff is granted a judgment on liability only against Alameda, there shall be an inquest to determine the amount due to plaintiff from Alameda, and plaintiff shall file a note of issue for an inquest on or before February 25, 2021.

1/15/2021

1/15/2021

DATE



ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: