

<b>108 Commercial LLC v Singh</b>
2021 NY Slip Op 30355(U)
January 29, 2021
Supreme Court, New York County
Docket Number: 656136/2020
Judge: Louis L. Nock
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. LOUIS L. NOCK PART IAS MOTION 38EFM**

*Justice*

-----X

108 COMMERCIAL LLC,

Plaintiff,

- v -

GURINDER SINGH,

Defendant.

-----X

INDEX NO. 656136/2020  
MOTION DATE 11/09/2020  
MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 10 were read on this motion to/for JUDGMENT - SUMMARY IN LIEU OF COMPLAINT.

Upon the foregoing documents, the motion of plaintiff 108 Commercial LLC (“Plaintiff”) for summary judgment against defendant Gurinder Singh (“Defendant”) pursuant to CPLR 3213 is granted on default and without opposition, in accord with the following memorandum decision.

**Discussion**

Plaintiff commenced this action for summary judgment in lieu of complaint against Defendant in connection with his guaranty of a commercial lease agreement. Defendant has not opposed the motion or otherwise appeared in the action. In support of its motion, Plaintiff submits the affidavit of Kevin Padgett, Vice President of non-party BMH Realty, Ltd. d/b/a Heller Realty (“Heller”), managing agent of Plaintiff, with exhibits thereto, memorandum of law, and affidavits of service. Padgett attests that non-party Priya 200 Enterprises, Inc. (“Priya”) entered into a lease agreement, dated May 31, 2000 (the “Lease”), with Plaintiff for commercial real property located at 2803 Broadway, New York, New York 10025 (the “Premises”) (Padgett aff ¶ 3). The term of the lease commenced on June 1, 2000 and had a ten-year term, which was

extended by a Lease Extension and Modification Agreement dated May 31, 2010 and a Second Lease Extension and Modification Agreement dated May 31, 2020 (*id.*). As extended, the Lease expired on May 31, 2025 (*id.*). Concurrent with execution of the Lease, Defendant executed and delivered an unconditional guaranty (the “Guaranty”) to Plaintiff whereby Defendant guaranteed Priya’s financial obligations under the terms of the Lease, including, *inter alia*, Fixed Rent, Additional Rent, damages, costs, and attorneys’ fees and expenses arising from Priya’s default under the Lease (*id.* ¶ 4, exhibit A; NYSCEF Doc no 4).

In March 2019, Priya defaulted on the Lease by failing to pay amounts due for utility charges, as provided for by paragraph 61 to a Rider to the Lease, and thereafter failing to pay additional amounts owed under the Lease (Padgett aff ¶ 5, exhibit B at 7 ¶ 61.1; NYSCEF Doc no 5). After application of Priya’s security deposit to the amount owed, a balance of \$77,652.72 remained as of November 1, 2020, which Priya has failed and refused to pay (*id.* ¶ 6-8, exhibit D; NYSCEF Doc no 7). Plaintiff now moves for summary judgment in lieu of complaint to enforce the terms of the Guaranty and recover the amounts owed by Priya pursuant to the terms of the modified Lease. An affidavit of service filed by Plaintiff establishes *prima facie* that Defendant was timely served with the motion pursuant to CPLR 308 (2) (NYSCEF Doc no 10).

CPLR 3213 provides that “[w]hen an action is based upon an instrument for the payment of money only or upon any judgment, the plaintiff may serve with the summons a notice of motion for summary judgment and the supporting papers in lieu of a complaint” (*see Cooperatieve Centrale Raiffeisen-Boerenleenbank. B.A., “Rabobank Intl.,” N.Y. Branch v Navarro*, 25 NY3d 485, 491-492 [2015]). “The purpose of CPLR 3213 is ‘to provide quick relief on documentary claims so presumptively meritorious that a formal complaint is superfluous, and even the delay incident upon waiting for an answer and then moving for summary judgment is

needless” (*SpringPrince, LLC v Elie Tahari, Ltd.*, 173 AD3d 544, 545 [1st Dept 2019], quoting *Weissman v Sinorm Deli*, 88 NY2d 437, 443 [1996]). An unconditional guaranty of the payment of rent, additional rent, and other charges pursuant to a lease agreement is an instrument for the payment of money only within the meaning of CPLR 3213 (*Rabobank Intl.*, 25 N.Y.3d at 492; *Jones v Madison Plaza Commercial Owners, LLC*, 173 AD3d 599, 600 [1st Dept 2019]).

“On a motion for summary judgment to enforce an unconditional guaranty, the creditor must prove the existence of the guaranty, the underlying debt and the guarantor’s failure to perform under the guaranty” (*Davimos v Halle*, 35 AD3d 270, 272 [1st Dept 2006]; accord *Rabobank Intl.*, 25 NY3d at 492; *Verela v Citrus Lake Dev., Inc.*, 53 AD3d 574, 575 [2d Dept 2008]). Thus, submission of an unconditional guaranty along with an affidavit of nonpayment is sufficient for a judgment under CPLR 3212 (*European Am. Bank & Trust Co.*, 108 AD2d at 684). Thereafter, “the burden shifts to the defendant to establish, by admissible evidence, ‘the existence of a triable issue with respect to a bona fide defense’” (*Cutter Bayview Cleaners, Inc. v Spotless Shirts, Inc.*, 57 AD3d 708, 710 [2d Dept 2008] [citation omitted]). Plaintiff has met that burden and demonstrated its entitlement to summary judgment in lieu of complaint by submission of the Padgett affidavit and exhibits attached thereto. By failing to appear and contest the allegations asserted by Plaintiff, Defendant is deemed to have admitted all factual allegations contained therein and all reasonable inferences that flow from them (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). Therefore, the motion for summary judgment in lieu of complaint is granted.

Accordingly, it is

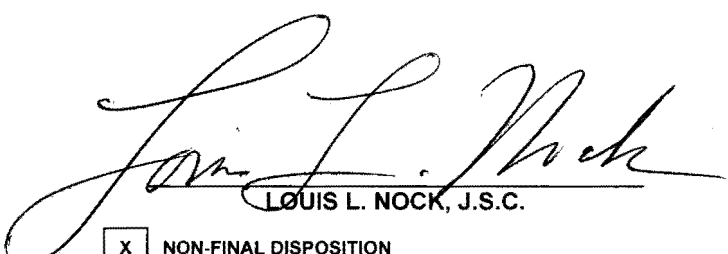
ORDERED that the motion for summary judgment in lieu of complaint is granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff 108 Commercial LLC and against defendant Gurinder Singh in the sum of \$77,652.72, in addition to interest, reasonable attorneys' fees and additional unpaid amounts due under the Lease from and after November 1, 2020, as determined by an inquest of damages, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that sum of interest, attorneys' fees and additional unpaid amounts due under the Lease from and after November 1, 2020 shall be set down for an inquest to determine the appropriate amount due, and Plaintiff shall file a Note of Issue, pay the appropriate fees, and the action shall be placed on the calendar for such assessment; and it is further

ORDERED that the Clerk shall enter judgment accordingly.

1/29/2021  
DATE

  
LOUIS L. NOCK, J.S.C.

CHECK ONE:

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