

Paganini v 40 W. 127th St. LLC
2021 NY Slip Op 32089(U)
October 28, 2021
Supreme Court, New York County
Docket Number: Index No. 651548/2021
Judge: Louis L. Nock
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. LOUIS NOCK PART 38M

Justice

-----X

REBECCA PAGANINI, GRACE TEXTER, and NIKKI FABRIZIO,

Plaintiffs,

INDEX NO. 651548/2021

MOTION DATE 05/10/2021

MOTION SEQ. NO. 001

- v -

40 WEST 127TH STREET LLC and E&C MANAGEMENT,

Defendants.

DECISION + ORDER ON MOTION

-----X

40 WEST 127TH STREET LLC,

Third-Party Plaintiff,

Third-Party
Index No. 595254/2021

-against-

JOHN TEXTER, MELANIE MARTIN, and AGOSTINO PAGANINI,

Third-Party Defendants.

-----X

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

were read on this motion for DISMISSAL.

LOUIS L. NOCK, J.

Upon the foregoing documents, and after argument held on the record this day, it is ORDERED that the motion by third party defendants to dismiss the third party complaint is GRANTED.

The third party complaint seeks enforcement of guaranties executed by the third party defendants. Those guaranties (dated, respectively, November 30, 2018, December 1, 2018, and December 1, 2018) upon which the third party complaint is premised were executed in connection with a prior lease entered into by the parties to the third party complaint, dated June

25, 2019 (NYSCEF Doc. No. 19 [prior lease]; NYSCEF Doc. No. 18 [guaranties]). The third party claims seek to hold third party defendants liable under those guaranties to the extent of accruals coming due after their early vacatur from the premises, but as applied to an entirely separate, subsequent, lease dated July 10, 2020 (NYSCEF Doc. No. 20), as to which no new guaranties were executed.

The erstwhile guaranties contained no language, as they might have, indicating that they shall survive the expiration date of the 2019 lease such that they would have application to a subsequent lease the parties might enter to, and nothing in the body of the 2020 lease indicates that it is a mere renewal of the 2019 lease. Likewise, nothing in the erstwhile guaranties indicates that they might continue in full force and effect as to any renewal of the 2019 lease. But in any event, as observed above, the 2020 lease regarding which the third party action bears relevance is not a renewal lease; but a newly executed subsequent full form of lease regardless of any similarity or extent of identicality as to terms shared with the prior, expired, 2019 lease.

It is well established that “[a] guaranty is to be interpreted in the strictest manner” (*White Rose Food v. Saleh*, 99 N.Y.2d 589, 591, 758 N.Y.S.2d 253, 788 N.E.2d 602 [2003]), particularly in favor of a private guarantor (see *665–75 Eleventh Ave. Realty Corp. v. Schlanger*, 265 A.D.2d 270, 271, 697 N.Y.S.2d 270 [1999]), and cannot be altered without the guarantor's consent (see *White Rose Food v. Saleh*, 99 N.Y.2d at 591, 758 N.Y.S.2d 253, 788 N.E.2d 602). In this regard, a “guarantor should not be bound beyond the express terms of his guarantee” (*665–75 Eleventh Ave. Realty Corp.*, 265 A.D.2d at 271, 697 N.Y.S.2d 270 [internal quotation marks and citation omitted]).

(*Lo-Ho LLC v Batista*, 62 AD3d 558, 559-60 [1st Dept 2009].)

Counsel for third party plaintiff placed primary reliance of a letter written by counsel for the third party defendants, dated January 12, 2021 (NYSCEF Doc. No. 29), in which counsel for the third party defendants refers to the 2020 lease as a “renewal lease.” But as noted by counsel for the third party defendants today at argument, his own, personal, misdescription of the true nature of the 2020 lease in a non-filing cannot work a nullification of the indisputable reality that

the actual substance of the 2020 lease bears independent witness to the fact that it was not a renewal, at all. It was a new “Lease Agreement” for a brand new lease term (NYSCEF Doc. No. 20). No ambiguity exists in any of the pertinent documents – not in the leases or the guaranties. Even were the court to consider counsel’s letter utterance of “renewal” as evidence, the absence of any ambiguity in the leases and guaranties would render such extrinsic evidence of no consequence as parol evidence (*e.g.*, *Buckthorn, Ltd. v Rollins Burdick Hunter of N.Y., Inc.*, 109 AD2d 8 [1st Dept 1985]). And concomitantly, even if there was an ambiguity, the leases and the guaranties would be construed against the drafter – in this case, third party plaintiff landlord (*e.g.*, *327 Realty, LLC v Nextel of N.Y., Inc.*, 150 AD3d 581 [1st Dept 2017]).

In sum, no sufficient basis exists to allow this court to render a finding that the erstwhile guaranties executed in connection with the 2019 lease continue to have effect vis-à-vis the subsequent 2020 lease (*see, White Rose Food v Saleh*, 99 NY2d 589, 591 [2003] [“A guaranty is to be interpreted in the strictest manner”]). For this reason, the motion to dismiss the third party complaint must be granted.

Accordingly, it is

ORDERED that the motion by third party defendants to dismiss the third party complaint is granted, and said complaint is hereby dismissed.

This will constitute the decision and order of the court.

ENTER:

Louis L. Nock

<u>10/28/2021</u>			<u>LOUIS NOCK, J.S.C.</u>
DATE			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> GRANTED IN PART
		<input type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE