Mattone Group Raceway, LLC v Brinker Intl., Inc.

2022 NY Slip Op 30136(U)

January 19, 2022

Supreme Court, New York County

Docket Number: Index No. 151196/2021

Judge: Lynn R. Kotler

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON.LYNN R. KOTLER, J.S.C. PART 8

MATTONE GROUP RACEWAY, LLC et al.

INDEX NO. 151196/2021

MOT. DATE

- v -

MOT. SEQ. NO. 001

BRINKER INTERNATIONAL, INC.

The following papers were read on this motion to/for sj

Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits ECFS Doc. No(s)._____
Notice of Cross-Motion/Answering Affidavits — Exhibits ECFS Doc. No(s)._____
Replying Affidavits ECFS Doc. No(s)._____

This is an action for breach of a guaranty. Plaintiffs move for summary judgment and to amend the pleadings to conform to the proof. Defendant opposes the motion. Issue has been joined and note of issue has not yet been filed. Therefore, summary judgment relief is available. For the reasons that follow, the motion is denied.

Plaintiffs are Mattone Group Raceway, LLC, Gart Roosevelt Associates, LLC and JMM Raceway, LLC (collectively "landlord") which own the real property located at 1177 Corporate Drive, Westbury, New York (the "property"). In 1995, non-party MCM Realty Partners, L.P., landlord's predecessor in interest, entered into a lease for the property with non-party Brinker Restaurant Corporation ("Brinker Restaurant") as tenant. The lease was for a term of 15 years and was set to expire April 30, 2011. The lease also set out five options to renew for five years each. Defendant Brinker International, Inc. (the "guarantor") guaranteed the lease between landlord and Brinker Restaurant in a written guaranty dated June 15, 1995.

The guaranty provides in relevant part as follows:

1. [Guarantor] … absolutely and unconditionally guarantees the payment and performance of, and agrees to pay and perform as primary obligor, all liabilities, obligations, and duties (including but not limited to payment of rent) imposed upon [Brinker Restaurant] under the terms of the foregoing lease.

2. Guarantor expressly waives … notice of any and all proceedings in connection with the Lease (including notice of [Brinker Restaurant's] default under the Lease)…

Dated: 1/19/22

HON. LYNN R. KOTLER, J.S.C.

1. Check one: ☒ **CASE DISPOSED** ☐ **NON-FINAL DISPOSITION**

2. Check as appropriate: Motion is ☒ **GRANTED** ☐ **DENIED** ☐ **GRANTED IN PART** ☐ **OTHER**

3. Check if appropriate: ☐ **SETTLE ORDER** ☐ **SUBMIT ORDER** ☐ **DO NOT POST**

☐ **FIDUCIARY APPOINTMENT** ☐ **REFERENCE**

3. Without notice to or consent by Guarantor, Landlord and [Brinker Restaurant] may at any time, modify, extend, amend, or make other covenants respecting the Lease as may be appropriate, including subleasing and assigning the Lease to third parties. Guarantor shall not be released but shall continue to be fully liable for payment and performance of all liabilities, obligations, and duties of Tenant under the Lease as modified, extended or amended.
...

5. Guarantor's liability shall not be affected by an indulgence, compromise, or settlement agreed upon by Landlord and [Brinker Restaurant], bankruptcy or similar proceeding instituted by or against [Brinker Restaurant], or any Lease termination to the extent [Brinker Restaurant] continues to be liable.

In 2003, Brinker Restaurant assigned the lease to non-party Cozymel #16 LLC d/b/a Cozymel's Mexican Grill a/ak/a Cozymel's Coastal Grill ("Cozymel"). Landlord claims that Cozymel thereafter extended the term of the lease through April 30, 2021. There is no dispute that Cozymel did not pay base rent as of April 1, 2020 and ultimately vacated on April 12, 2021. Landlord now seeks from the guarantor all rent and additional rent due from April 1, 2020 through April 30, 2021 totaling $453,934.00, plus expenses to prepare the property for re-letting and attorneys' fees in both this action and an underlying summary proceeding against Cozymel.

In opposition to the motion, defense counsel asserts that "[w]hile the [landlord's] allegations are relatively straightforward, they barely skim the surface and discovery has yet to commence, let alone be completed." Guarantor argues that the guaranty does not apply after any assignment of the lease, the guaranty lapsed after the landlord rejected Cozymel's exercise of the renewal option in 2016 and the landlord has not eliminated all triable issues of fact. Guarantor points to a Notice of Expiration of Obligations and Liabilities (the "notice") it served on or about December 16, 2010 claiming that guarantor had no liability under the lease. Guarantor also points to communications between it and landlord including the parties' dispute as to the notice.

DISCUSSION

On a motion for summary judgment, the proponent bears the initial burden of setting forth evidentiary facts to prove a prima facie case that would entitle it to judgment in its favor, without the need for a trial (CPLR 3212; *Winegrad v. NYU Medical Center*, 64 NY2d 851 [1985]; *Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]). If the proponent fails to make out its prima facie case for summary judgment, however, then its motion must be denied, regardless of the sufficiency of the opposing papers (*Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]; *Ayotte v. Gervasio*, 81 NY2d 1062 [1993]).

Granting a motion for summary judgment is the functional equivalent of a trial, therefore it is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue (*Rotuba Extruders v. Ceppos*, 46 NY2d 223 [1977]). The court's function on these motions is limited to "issue finding," not "issue determination" (*Sillman v. Twentieth Century Fox Film*, 3 NY2d 395 [1957]).

At the outset, the court rejects the guarantor's argument that the guaranty was no longer enforceable after the lease was assigned by Brinker Restaurant to Cozymel. As plaintiffs' counsel correctly points out, the guaranty expressly provides that the landlord and Brinker Restaurant could assign the lease without notice to the guarantor and without the guarantor's consent and the guarantor would still remain liable.

The court next considers the guarantor's argument that the lease expired on April 30, 2016 and with it, the guaranty. Guarantor claims that Cozymel's attempt to exercise its right to renew the Lease for the period from May 1, 2016 through April 30, 2021 was rejected by the landlord due to Guarantor's notice. Guarantor has provided to the court copies of letters between Cozymel and plaintiffs' counsel

wherein the former exercised the option to renew the lease and the latter rejected Cozymel's exercise finding that the guarantor's notice constituted a default under the lease.

Guarantor has provided another letter to the court dated April 29, 2016 wherein counsel for the landlord wrote to Cozymel in pertinent part as follows:

> We understand that [Cozymel] is having continued discussions with Guarantor to resolve the default and based upon [Cozymel's] assurances that the default will be resolved, Landlord is willing to accept rent from Tenant during the Renewal Term but the acceptance of such rent shallbe without prejudice to Landlord and shall in no event constitute a waiver of Landlord's right to assert its rights and remedies under the Lease, at law or in equity.

Guarantor admits that it rescinded the notice at Cozymel's request but argues that "the Lease expired on April 30, 2016" and "[a]t a minimum, there is a question of fact on this issue that prevents summary judgment in favor of [the l]andlord." The court disagrees. Even if the lease ended after April 30, 2016, the guaranty provides that the guarantor will continue to be liable after "any Lease termination to the extent [Cozymel] continues to be liable." Further, in support of the motion-in-chief, landlord provided a copy of a December 1, 2017 amendment to the Lease whereby landlord and Cozymel ratified the lease. Although guarantor is silent as to the 2017 amendment, its effect eliminates any triable issue of fact as to whether the lease was properly extended to April 30, 2021. Thus, it is of no moment whether the lease lapsed for a period of time, since the guarantor agreed to remain liable in that event and landlord has otherwise established that the lease was extended to April 30, 2021.

Otherwise, guarantor's argument that summary judgment is premature is rejected since guarantor has failed to identify what facts are not in its possession but are discoverable and would enable it to defeat plaintiffs' motion. Finally, guarantor's attempt to raise a triable issue of fact based upon letters between it and landlord's counsel is unavailing, since letters do not modify contractual obligations, guarantor's unilateral attempt to rescind the guaranty is unenforceable, and guarantor did not need to reaffirm the guaranty to remain liable thereunder.

Accordingly, plaintiffs are granted summary judgment and a money judgment for all rent and additional rent due from April 1, 2020 through April 30, 2021 totaling $453,934.00. Plaintiffs are further entitled to an award for their reasonable expenses to prepare the property for re-letting and reasonable attorneys' fees incurred in both this action and an underlying summary proceeding against Cozymel. Since such amounts cannot be determined on these papers, plaintiffs' request for these sums is denied without prejudice to renewal upon a proper showing.

CONCLUSION

In accordance herewith, it is hereby:

ORDERED that plaintiffs are granted summary judgment on the complaint and dismissing defendant's affirmative defenses; and it is further

ORDERED that the Clerk is directed to enter a money judgment in favor of plaintiffs and against defendant for all rent and additional rent due from April 1, 2020 through April 30, 2021 totaling $453,934.00; and it is further

ORDERED that plaintiffs request for an award for their reasonable expenses to prepare the property for re-letting and reasonable attorneys' fees incurred in both this action and an underlying summary proceeding against Cozymel is denied without prejudice to renewal upon a proper showing.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly rejected and this constitutes the decision and order of the court.

Dated: 1/19/22
New York, New York

So Ordered:

Hon. Lynn R. Kotler, J.S.C.