

**1001 Sixth Assoc. v Grant**

2022 NY Slip Op 32023(U)

June 28, 2022

Supreme Court, New York County

Docket Number: Index No. 655499/2021

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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1001 SIXTH ASSOCIATES

Plaintiff,

- v -

HARRY GRANT,

Defendant.

INDEX NO. 655499/2021

MOTION DATE 12/14/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, were read on this motion for SUMMARY JUDGMENT IN LIEU OF COMPLAINT.

Plaintiff 1001 Sixth Associates (“Plaintiff” or “Landlord”) seeks an award of summary judgment in lieu of complaint under CPLR 3213, based on a personal Guaranty Agreement (the “Guaranty”) executed by Defendant Harry Grant (“Defendant” or “Guarantor”) (*see* NYSCEF 4 [“Guaranty”]). The Guaranty was made pursuant to a lease agreement between Landlord and Corporate Suites 12 LLC (“Tenant”) (*see* NYSCEF 5 [“Lease”]), whereby Guarantor “unconditionally and irrevocably guarantees to [Landlord] the full and prompt payment of all fixed annual rent and additional rent due under the Lease payable by Tenant,” as well as all other sums due to Landlord from Tenant (Guaranty ¶ 1).

Guarantor is also responsible for all reasonable costs, fees, commissions and expenses, including (including, without limitation, all reasonable attorneys’ fees and disbursements) which may be incurred by Landlord in enforcing or attempting to enforce (i) any rights or remedies under the Lease or (ii) any rights or remedies under this Guaranty following any default on the

part of the Guarantor hereunder, whether the same shall be enforced by suit or otherwise” (Guaranty ¶ 8). Pursuant to the Guaranty, Landlord seeks Plaintiff seeks \$1,539,134.30 in unpaid rent and \$130,106.19 in fees and disbursements (*see* NYSCEF 13, 14). For the reasons set forth below, Plaintiff’s motion is **granted in part**.

Pursuant to CPLR 3213, a party may commence an action by motion for summary judgment in lieu of complaint when the action is “based upon an instrument for the payment of money only or upon any judgment” (*Oak Rock Fin., LLC v Rodriguez*, 148 AD3d 1036, 1039 [2d Dept 2017]). An “instrument for the payment of money only” is one that “requires the defendant to make a certain payment or payments and nothing else” (*Seaman-Andwall Corp. v Wright Mach. Corp.*, 31 AD2d 136, 137 [1st Dept 1968]; *Weissman v Sinorm Deli, Inc.*, 88 NY2d 437, 444 [1996]). “But the remedy is not available where there are other issues and considerations presented by the writing,” for example “if the liabilities and obligations can only be ascertained by resort to evidence outside the instrument, or if more than simple proof of nonpayment or a de minimis deviation from the face of the document is involved (*Kerin v Kaufman*, 296 AD2d 336, 337 [1st Dept 2002], quoting *Weissman*, 88 NY2d at 444).

Here, it is undisputed that Tenant owes Landlord \$732,606.50 in unpaid rent, from the period of February 2021 through August 2021, which this Court ordered Tenant to pay in the related action, *Corporate Suites 12, LLC v 1001 Sixth Associates* (Index No. 657315/2020, Sup Ct, NY County [the “Related Action”]), within five days of entry of that Order, which was entered on August 20, 2021 (*see* NYSCEF 9). This Court further granted Landlord declaratory relief against Tenant in the Related Action and directed the Clerk to enter judgment in Landlord’s favor in the principal amount of \$732,606.50, plus prejudgment and costs on or before December 1, 2021 (NYSCEF 146, Index No. 657315/2020 [“November 22, 2021

Decision and Order”]). On February 10, 2022, after this motion was fully briefed, judgment was entered pursuant to the November 22, 2021 Decision and Order in the amount of \$754,589.22, which included prejudgment interest and costs (NYSCEF 151, Index No. 657315/2020 [“February 10, 2022 Judgment”]).

Under CPLR 3213, summary judgment in favor of Plaintiff is appropriate where Plaintiff has established that the action is based upon a judgment. Although judgment was entered after this motion was fully briefed, this Court’s November 22, 2021 Decision and Order directed the entry of such judgment, and in the interests of economy, the Court finds that Plaintiff has establish that it is entitled to payment of \$754,589.22 from Guarantor, to the extent payment has not already been made by Tenant.

However, Landlord’s request for summary judgment as to the purportedly remaining amount of unpaid rent from 2020 (\$417,122.35) is denied.<sup>1</sup> This Court declined to order a money judgment of \$417,122.35 in the Related Action, as Landlord had not established a sufficient basis for this amount (NYSCEF 144 at 25-26; 31:6-13, Index No. 657315/2020 [“November 4, 2021 Transcript”]), a defect which Landlord has not remedied here. This issue is currently the subject of a summary judgment motion in the Related Action, and any further relief sought by Landlord in this action, including cost and attorney’s fees incurred in pursuing this action, will be deferred until that motion is resolved.

Therefore, it is

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<sup>1</sup> In its opposition papers, Defendant argued that Plaintiff maintained possession of Tenant’s security deposit of \$384,588.00, which should have been applied to any outstanding amount owed (NYSCEF 26 at 9-10). In response, Plaintiff submitted that it applied Tenant’s security deposit against the amount outstanding for rental arrears for the period from April 1, 2020 through December 31, 2020 thereby reducing the \$806,527.80 previously outstanding to \$417,122.35 (NYSCEF 36 at 7).

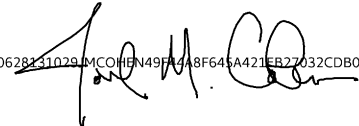
**ORDERED** that the motion for summary judgment in lieu of complaint is **granted in part**, as follows: Plaintiff has established as a matter of law that Defendant Harry Grant is liable as guarantor in the amount of the \$754,589.22 judgment entered against Corporate Suites 12 LLC in the Related Action;<sup>2</sup> it is further

**ORDERED** that Plaintiff’s claims with respect to Grant’s liability as guarantor for unpaid rent from 2020, and for fees, costs, and attorney’s fees incurred in pursuing this action, are severed and continued; it is further

**ORDERED** that Plaintiff’s moving papers are hereby deemed the complaint in this action and Defendant’s answering papers are hereby deemed the answer; and it is further

**ORDERED** that Plaintiff shall serve this Order with Notice of Entry on Defendant within five (5) days of the date of this Order.

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

6/28/2022  
DATE

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART	
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

<sup>2</sup> Prejudgment interests and costs were already calculated in this Court’s February 10, 2022 Order in *Corporate Suites 12, LLC v 1001 Sixth Associates* (NYSCEF 151, Index No. 657315/2020, Sup Ct, NY County).