

1619-1625 Amsterdam Ave., LLC v Casvikes
2022 NY Slip Op 32986(U)
September 8, 2022
Supreme Court, New York County
Docket Number: Index No. 652037/2022
Judge: Nancy M. Bannon
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. NANCY M. BANNON PART 42

Justice

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1619-1625 AMSTERDAM AVENUE, LLC,

Plaintiff,

- v -

COSTA CASVIKES a/k/a CONSTANTINE CASVIKES and
PAVLOS CASVIKES a/k/a PAULOS J. CASKIVES

Defendant.

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INDEX NO. 652037/2022

MOTION DATE 07/11/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2

were read on this motion to/for JUDGMENT - SUMMARY IN LIEU OF COMPLAINT.

In this breach of contract action to recover \$444,559.72 from two guarantors on a commercial lease, the plaintiff, owner of property located at 1616-1625 Amsterdam Avenue in Manhattan, moves pursuant to CPLR 3213 for summary judgment in lieu of a complaint. No opposition is submitted. The motion is granted.

A plaintiff may seek relief under CPLR 3213 “[w]hen [the] action is based upon an instrument for the payment of money only.” See HSBC Bank USA v Community Parking Inc., 108 AD3d 487 (1st Dept. 2013); Allied Irish Banks, P.L.C. v Young Men’s Christian Assn. of Greenwich, 105 AD3d 516 (1st Dept. 2013); German Am. Capital Corp. v Oxley Dev. Co., LLC, 102 AD3d 408 (1st Dept. 2013). In order to establish a prima facie entitlement to summary judgment in lieu of a complaint, a plaintiff must produce an instrument containing an “unequivocal and unconditional obligation to repay” (Zyskind v FaceCake Mktg. Tech., Inc., 101 AD3d 550, 551 [1st Dept. 2012]), one which by its terms is for the payment of money only over a stated period of time (see Bloom v Lugli, 81 AD3d 579 [2nd Dept. 2011]), and establish that the defendant failed to pay in accordance with those terms. See Zyskind v FaceCake Mktg. Tech., Inc., *supra*; Rhee v Meyers, 162 AD2d 397 (1st Dept. 1990). It has been held that an unconditional guaranty under a lease may fall within the parameters of CPLR 3213. See Cooperative Centrale Raiffeisen-Boerenleenbank, B.A., 25 NY3d 485 (2015); Springprince, LLC

v Elie Tahari, Ltd., 173 AD3d 544 (1st Dept. 2019); Board of Mgrs. of the Saratoga Condominium v Shuminer, 148 AD3d 609 (1st Dept. 2017).

The plaintiff has submitted, *inter alia*, the property deed and the subject lease agreement between the plaintiff and non-party former tenant JGC Enterprises Corp., which operated a restaurant on the premises, dated May 25, 2016, and signed by defendant Pavlos Caskives as president of the corporate tenant, the term of which expired on March 31, 2027. The plaintiff also submits two identical “Good Guy” guaranties, one for each defendant, Costas Caskives and Pavlos Caskives, both signed on May 25, 2016, and both stating, in part, that the guarantor “hereby guaranties, unconditionally and absolutely, to owner” the tenant’s obligations “as and when due of the fixed rent, additional rent, charges and damages.. accruing on or after the commencement date, including use and occupancy for “anytime the tenant is occupying the demised premises as a holdover tenant.” The plaintiff also submits a Settlement Agreement entered by the plaintiff and tenant, executed in February 2019 in settlement of a nonpayment proceeding commenced in the Civil Court, New York County, in which the tenant acknowledges arrears of \$273,444.45 and agreed to a schedule of payment of those arrears over time, with interest. As a condition of that settlement, defendant Costas Caskives signed an Affidavit of Confession of Judgment in the sum of \$289,469.88, representing the arrears plus \$14,025.43 in conditional arrears to be paid upon execution of the settlement. The plaintiff does not sue upon the Confession of Judgment.

The plaintiff also submits an affidavit of Nikolaos Tsolkas of Alma Realty, teh plaintiff’s property manager. Tsolkas alleges that the tenant began to default on its lease obligations early in the lease term, accruing arrears in rent, additional rent, interest and late charges of \$275,444.45 as of February 2019, as acknowledged by the tenant in the Settlement Agreement. The tenant thereafter continued to default on its obligations and eventually vacated the premises in December 2021. The plaintiff re-let the premises as of July 2022. As of May 1, 2022, when this action was commenced, the tenant had accrued arrears of \$340,257.73 for fixed rent, \$62,102.56 for real estate taxes, \$3,113.55 for water and sewer charges, \$19,191.27 in key money interest, and \$19,894.61 in late charges, all contractual obligations under the lease, for a total of \$444,559.72, no amount of which has been paid.

By this proof, including the guaranty agreements, the plaintiff has met its burden of establishing an “unequivocal and unconditional obligation to repay” (Zyskind v FaceCake Mktg.

Tech., Inc., supra) a sum over a stated period of time (see Bloom v Lugli, supra) and the defendants' failure to pay in accordance with the terms of the agreement. See Bonds Financial, Inc. v Kestrel Technologies, LLC, 48 AD3d 230 (1st Dept. 2008); Zyskind v FaceCake Mktg. Tech., Inc., supra. The plaintiff further establishes a clear and unambiguous guaranty signed by each defendant with language that conclusively binds the guarantor to its terms (see Citibank, N.A. v Uri Schwartz & Sons Diamonds Ltd., 97 AD3d 444, 446-447 [1st Dept. 2012]) such that enforcement of the guaranty is warranted. While an agreement that guarantees both payment and performance does not qualify for CPLR 3213 treatment (see Punch Fashion, LLC v Merch. Factors Corp., 180 AD3d 520 [1st Dept. 2020]; PDL Biopharma, Inc. v Wohlstaddter, 147 AD3d 494 [1st Dept. 2019]), the subject guaranty agreements guarantee only payment of the tenant's various lease obligations for rent, additional rent, interest, late fees and costs. Having failed to oppose the motion, the defendants do not proffer any facts or argument to the contrary.

The plaintiff also seeks attorney's fees and disbursement under Article 19 of the lease and Paragraph 7 of the guaranties but submits no supporting proof of fees or disbursements incurred. That application is denied.

Accordingly, upon the foregoing papers, it is

ORDERED that the plaintiff's motion for summary judgment in lieu of a complaint pursuant to CPLR 3213 is granted, without opposition, and it is further

ORDERED that the Clerk shall enter judgment in favor of the plaintiff and against the defendants, jointly and severally, in the sum of \$444,559.72, plus costs and statutory interest from May 1, 2022.

This constitutes the Decision and Order of the court.

9/8/2022
DATE


NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

CHECK ONE:

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