

511 E. 80th St. LLC v Margalit
2022 NY Slip Op 33609(U)
October 19, 2022
Supreme Court, New York County
Docket Number: Index No. 154702/2021
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 38M

Justice

-----X

511 EAST 80TH STREET LLC,

Plaintiff,

- v -

JULES MARGALIT,

Defendant.

-----X

INDEX NO. 154702/2021

MOTION DATE 11/24/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 20

were read on this motion for SUMMARY JUDGMENT.

LOUIS L. NOCK, J.

Upon the foregoing documents, it is ORDERED that so much of plaintiff’s motion seeking summary judgment on its complaint for breach of a guaranty is denied, for the reasons set forth in the opposition papers (NYSCEF Doc. No. 17), in which the court concurs as further set forth below. Plaintiff, the landlord of the property located at 511 East 80th Street, entered into a series of leases for an apartment in the building with nonparties Adam Ferraro and Samantha Margalit (“tenants”). The first lease, dated February 11, 2016, ran for two years through February 28, 2017, and was guaranteed by defendant (NYSCEF Doc. No. 10 at 4). The Guaranty of Payment provides that it “will not be affected by any change in the Lease, whatsoever. This includes, but is not limited to, any extension of time or renewals. The Guaranty will bind [defendant] even if [defendant] is not a party to these changes” (*id.*, ¶ 3). Plaintiff entered into two subsequent leases with tenants dated November 30, 2017, and December 18, 2019, neither of which referenced the first lease and neither of which were signed by defendant as Guarantor (NYSCEF Doc. Nos. 11, 12).

“It is a general principle that only the parties to a contract are bound by its terms” (*Highland Crusader Offshore Partners, L.P. v Targeted Delivery Tech. Holdings, Ltd.*, 184 AD3d 116, 121 [1st Dept 2020]). Here, while the language of the Guaranty provisions indicates that defendant’s liability should continue if the original lease was renewed or extended, the subsequent leases entered into by plaintiff and tenants are not titled “Renewal of Lease” or similar, and do not make any references to any prior lease between plaintiff and tenants. Each lease has a separate date, and the court also notes that nine months passed between the expiration of the term of the first lease and the date of the second lease. “A contract is ambiguous if it is susceptible to more than one reasonable interpretation” (*Discovision Assoc. v Fuji Photo Film Co., Ltd.*, 71 AD3d 488, 489 [1st Dept 2010] [internal quotation marks and citations omitted]), and here it is reasonable to interpret the subsequent leases as separate leases rather than renewals or extensions of the first lease. It is also reasonable to infer from the record that defendant only intended to be bound by the first lease given that defendant did not sign the subsequent leases. On a motion for summary judgment, the court must give the nonmoving party the benefit of all reasonable and favorable inferences (*e.g. Cetindogan v Schuyler*, 95 AD3d 577, 578 [1st Dept 2012]). Moreover, where, as here, there are ambiguities in the contract, summary judgment is rarely appropriate (*International Asbestos Removal, Inc. v Beys Specialty, Inc.*, 146 AD3d 609, 609 [1st Dept 2017] [“Ambiguities in the prime contract, which was incorporated into the subcontract, present issues of fact”]; *Reiner v Wenig*, 269 AD2d 379, 379 [2d Dept 2000] [“The stock option contracts which are the subject of this action are ambiguous and subject to different interpretations. Therefore, the Supreme Court properly found that triable issues of fact exist which must be resolved by a trial”]); and it is further

ORDERED that so much of plaintiff's motion seeking dismissal of defendant's affirmative defenses is granted in part. In his opposition to the motion, defendant raises as defenses that there is a prior action pending in Housing Court between plaintiff and tenants, and that there is no signed Guaranty between the parties, corresponding to the second and third affirmative defenses, respectively. As he is silent regarding the first and fourth through twelfth affirmative defenses, they are dismissed (*Steffan v Wilensky*, 150 AD3d 419, 420 [1st Dept 2017] ["By his silence in his opposition brief, defendant concedes, as plaintiff argues, that the second, third, and sixth affirmative defenses should be dismissed"]). The third affirmative defense of lack of a signed Guaranty is addressed above. With regard to the second affirmative defense of a prior action pending, assuming arguendo that landlord may enforce the Guaranty of the most recent lease against defendant, the Guaranty provides that it may be enforced independently of the lease (NYSCEF Doc. No. 12 at 4, ¶ 5).

Finally, defendant also raises as a defense that plaintiff breached the warranty of habitability regarding the apartment. Assuming arguendo that defendant, who was not a tenant in the apartment, may raise such a defense, defendant failed to support this defense with an affidavit of a person with knowledge or any documentary evidence. As such, the warranty of habitability defense must fail (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980] ["Normally if the opponent is to succeed in defeating a summary judgment motion he, too, must make his showing by producing evidentiary proof in admissible form"]); and it is further

ORDERED that the first, second, and fourth through twelfth affirmative defenses are severed and dismissed; and it is further

ORDERED that counsel shall appear for a status conference in Room 1166, 111 Centre Street, on November 9, 2022 at 2:00 PM.

This constitutes the decision and order of the court.

ENTER:

Louis L. Nock

<u>10/19/2022</u>			<u>LOUIS L. NOCK, J.S.C.</u>	
DATE				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input checked="" type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE