

GLL BVK Props. 2014, L.P. v Laskaris
2022 NY Slip Op 34066(U)
November 30, 2022
Supreme Court, New York County
Docket Number: Index No. 655684/2020
Judge: Louis L. Nock
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PRESENT:	HON. LOUIS L. NOCK	PART	38M
-----X		INDEX NO.	655684/2020
GLL BVK PROPERTIES 2014, L.P.,		MOTION DATE	10/26/2020
Plaintiff,		MOTION SEQ. NO.	001
- v -		DECISION + ORDER ON MOTION	
JOHN LASKARIS,			
Defendant.			
-----X			

LOUIS L. NOCK, J.

Upon the foregoing documents, it is hereby ordered that plaintiff's motion for summary judgment in lieu of complaint pursuant to CPLR 3213 is granted, without opposition, for the reasons set forth in the motion, per the following memorandum decision.

In this action on a guaranty, plaintiff GLL BVK Properties 2014, L.P. (“plaintiff”), the record owner of the building located at 1243 Second Avenue, New York, New York and 200 E 66th Street, New York, New York, seeks summary judgment in lieu of complaint against defendant John Laskaris (“defendant”), who entered into a Good Guy Guaranty (the “guaranty”) dated September 10, 2012, pursuant to which he agreed to guarantee the lease obligations of non-party tenant Metro Floral, Inc. (“Metro Floral”). There is no opposition to the motion.

Pursuant to the Second Amendment to Lease dated September 19, 2012, plaintiff's predecessor in interest leased certain store and basement space in the building (the "premises") to Metro Floral for a term beginning February 1, 2013, and running through January 31, 2020

(NYSCEF Doc. No. 11, ¶ 3). During the time relevant to the instant motion, Metro Floral agreed to pay minimum monthly rent of \$13,333.58, as well as a proportionate share of Real Estate Tax escalations and utilities (*id.*, ¶¶ 4, 6; NYSCEF Doc. No. 13). As an inducement for plaintiff's predecessor in interest to enter into the Second Amendment to Lease, defendant agreed to guarantee "the full and faithful performance of those terms and conditions of the Lease that require Tenant timely to pay all Minimum Rent and additional rents required to be paid pursuant to the Lease" (NYSCEF Doc. No. 4, ¶ 1).

On August 16, 2019, plaintiff sent Metro Floral a default notice, stating that Metro Floral owed monthly rent and additional rent for February 2019 through August 2019, and other additional rent from December 2018 and January 2019, in the total amount of \$116,879.64 (NYSCEF Doc. No. 14). In response, Metro Floral vacated the premises on September 17, 2019. Thereafter, plaintiff sent additional notices directly to defendant, seeking the outstanding rent from defendant directly under the guaranty, on October 30, 2019, and November 20, 2019 (NYSCEF Doc. Nos. 15-16). By this motion, plaintiff seeks the outstanding amount due up to Metro Floral's abandonment of the premises in September 2019, a total of \$116,004.98 (NYSCEF Doc. No. 13). Plaintiff also seeks its costs and reasonable attorneys' fees under the guaranty (NYSCEF Doc. No. 4, ¶ 4).

Plaintiff commenced this action by filing a summons and notice of motion for summary judgment in lieu of complaint on October 26, 2020 (NYSCEF Doc. Nos. 1-2). The motion was returnable on December 18, 2020 (NYSCEF Doc. No. 2). Plaintiff later amended the notice of motion to make the motion returnable on January 15, 2021 (NYSCEF Doc. No. 19). An affidavit of service filed on November 23, 2020, attests to service on defendant by in-hand personal

delivery to him on November 5, 2020 (NYSCEF Doc. No. 20). To date, defendant has neither opposed the motion nor otherwise appeared in the action.

Discussion

A grant of summary judgment under CPLR 3213 is available on “an instrument for the payment of money only or upon any judgment” (CPLR 3213). A plaintiff makes out a *prima facie* case for summary judgment where they can show that the instrument is a valid instrument for the payment of money only and that the defendant has failed to pay (*Nordea Bank Finland PLC v Holten*, 84 AD3d 589 [1st Dept 2011]). It is settled law that the CPLR 3213 procedure is available for unconditional guarantees (*see, Interman Indus. Products v R.S.M. Electron Power*, 37 NY2d 151, 155 [1975] (collecting cases)).

Here, plaintiff has established its entitlement to summary judgment by submitting the guaranty (NYSCEF Doc. No. 4), the underlying lease (NYSCEF Doc. No. 11), the outstanding balance sheet for Metro Floral (NYSCEF Doc. No. 13), the affidavit of Annie Lee, the Senior Asset Manager for plaintiff’s managing agent, which attests to Metro Floral’s default under the lease triggering defendant’s liability under the guaranty (NYSCEF Doc. No. 3), and the affidavit of service demonstrating service of the summons and notice of motion on defendant (NYSCEF Doc. No. 20). As set forth in the guaranty, defendant agreed to guarantee Metro Floral’s rent obligations under the lease (NYSCEF Doc. No. 4, ¶ 1). As set forth in the balance sheet and in Lee’s affidavit, the amount of rent currently outstanding is \$116,004.98, which neither Metro Floral nor defendant have paid (NYSCEF Doc. No. 3, ¶¶ 16-19; NYSCEF Doc. No. 13).

In addition, plaintiff has satisfied its burden with respect to its costs and reasonable attorney’s fees, which are provided for under the guaranty (NYSCEF Doc. No. 4, ¶ 4). The

amount of such costs and fees will be determined by the undersigned at a hearing to be scheduled as follows.

Accordingly, it is hereby

ORDERED that the motion is granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff GLL BVK Properties 2014, L.P., against defendant John Laskaris in the principal sum of \$116,445.00, with interest at the statutory rate from September 17, 2019, as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that Plaintiff is entitled to its costs and reasonable attorneys' fees incurred in this action in an amount to be heard and determined by the undersigned at a hearing to be held on January 12, 2023, at 2:30 p.m., at the Courthouse, 111 Centre Street, Room 1166, New York, New York.

This constitutes the decision and order of the court.

ENTER:



<u>11/30/2022</u>		<u>LOUIS L. NOCK, J.S.C.</u>	
DATE			
CHECK ONE:	☒ CASE DISPOSED	☐ NON-FINAL DISPOSITION	
	☒ GRANTED ☐ DENIED	☐ GRANTED IN PART	☐ OTHER
APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT	☒ REFERENCE