

Harlington Realty Co. LLC v Valdome, Inc.

2023 NY Slip Op 30811(U)

March 15, 2023

Supreme Court, New York County

Docket Number: Index No. 650884/2022

Judge: Louis L. Nock

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LOUIS L. NOCK PART 38M

Justice

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HARLINGTON REALTY CO. LLC,

Plaintiff,

- v -

VALDOME, INC., DOMENICO MARZOVILLA, ASTRID
MARZOVILLA, and NICOLA MARZOVILLA,

Defendants.

-----X

INDEX NO. 650884/2022

MOTION DATE 07/29/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34

were read on this motion to DISMISS.

Upon the foregoing documents, it is ORDERED that defendants' motion to dismiss the complaint against defendants Domenico, Astrid, and Nicola Marzovilla is denied. Affidavits of service, regular on their face, attest to valid service on the defendants by delivery to persons of suitable age and discretion at their places of residence (affidavits of service, NYSCEF Doc. Nos. 3, 4, 6). Domenico Marzovilla's conclusory allegation of nonreceipt is not sufficient to challenge service (*Country-Wide Ins. Co. v Power Supply, Inc.*, 179 AD3d 405, 406 [1st Dept 2020]). Astrid and Nicola Marzovilla's assertion that service on the doorman of their building is insufficient is also unavailing, as leaving the papers in the doorman's vicinity when the doorman has barred further entry into the building is proper service (*Bank of Am., N.A. v Grufferman*, 117 AD3d 508 [1st Dept 2014]); and it is further

ORDERED that plaintiff's cross-motion for partial summary judgment on its first cause of action for breach of the lease and third cause of action for breach of personal guarantees of the lease is granted for the reasons set forth in the moving and reply papers (NYSCEF Doc. Nos. 19-

20, 32-33) and the exhibits attached thereto, in which the court concurs as summarized herein. Plaintiff has established prima facie entitlement to summary judgment against defendant Valdome, Inc. (“tenant”) by submission of “the lease . . . the tenant’s failure to pay the rent, the amount of the underpayment, and the calculation of the amounts due under the lease (*Thor Gallery at S. Dekalb, LLC v Reliance Mediaworks (USA) Inc.*, 143 AD3d 498 [1st Dept 2016]). Plaintiff has also established prima facie entitlement to summary judgment against the Marzovillas by submission of the executed guarantee and proof of defendants’ failure to pay sums owed thereunder (*Gard Entertainment, Inc. v Country in New York, LLC*, 96 AD3d 683, 683 [1st Dept 2012] [“Here, plaintiff established its entitlement to summary judgment as against Block by demonstrating proof of the guarantee he made in connection with a note executed by Country and his failure to make payments called for by its terms”]). While the Marzovillas argue that the guarantees are not supported by adequate consideration, a guarantee which makes reference to an executed lease, even if not executed simultaneously therewith, is supported by adequate consideration (*Michelin Mgt. Co., Inc. v Mayaud*, 307 AD2d 280, 281 [2d Dept 2003] [“Although the two documents were not executed on the same date, they were part of the same transaction, and there was no need for new or additional consideration to make the guaranty valid and enforceable”]).

Defendants fail to raise any meaningful opposition to the cross-motion. They argue that plaintiff failed to send the requisite notices of default before seeking to collect for nonpayment, yet the lease exempts rent defaults from the notice requirement (lease, NYSCEF Doc. No. 21, § 17[1]). Nor does the “no waiver” provision require plaintiff to apply rent payments to any particular arrears when received (*id.*, § 24). Defendants further argue that they surrendered the premises on January 14, 2022, pursuant to a written surrender declaration (surrender declaration,

NYSCEF Doc. No. 29). However, the lease provides that any surrender instrument must be signed by plaintiff (lease, NYSCEF Doc. No. 21, § 24), and the surrender declaration is only signed by defendant Nicola Marzovilla (surrender declaration, NYSCEF Doc. No. 29 at 2). Defendants' claim of a surrender by operation of law is also unavailing, as such a surrender "occurs when a landlord takes actions so inconsistent with the landlord-tenant relationship that a legal surrender can be inferred" (*Center for Specialty Care, Inc. v CSC Acquisition I, LLC*, 187 AD3d 46, 54 [1st Dept 2020]). The record on the present motion does not disclose such conduct by the landlord. Finally, defendants do not establish suggest that facts relevant to the lease and guarantees "essential to justify opposition may exist but cannot [now] be stated" (CPLR 3212[f]; *Morales v Amar*, 145 AD3d 1000, 1003 [2d Dept 2016] [The "mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is an insufficient basis for denying the motion"]); and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendant Valdome, Inc., in the principal amount of \$1,017,538.70, of which sum defendants Domenico Marzovilla, Astrid Marzovilla, and Nicola Marzovilla shall be jointly and severally liable with defendant Valdome, Inc., in the amount of \$565,871.11, with interest on said principal amount at the statutory rate from February 1, 2021¹ through entry of judgment as calculated by the Clerk, and continuing to accrue thereafter at the statutory rate until satisfaction of judgment, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the remainder of the action is severed and continued; and it is further

¹ "Where such damages were incurred at various times, interest shall be computed upon each item from the date it was incurred or upon all of the damages from a single reasonable intermediate date" (CPLR 5001[b]; *Kachkovskiy v Khlebopros*, 164 AD3d 568, 572 [2d Dept 2018]).

ORDERED that counsel shall appear for a status conference in Room 1166, 111 Centre Street, New York, New York, on April 19, 2023, at 2:00 PM.

This constitutes the decision and order of the court.



<u>3/15/2023</u>			<u>LOUIS L. NOCK, J.S.C.</u>
DATE			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>
			DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>
			<input checked="" type="checkbox"/>
			NON-FINAL DISPOSITION
			<input checked="" type="checkbox"/>
			GRANTED IN PART
			<input type="checkbox"/>
			OTHER
			<input type="checkbox"/>
			SUBMIT ORDER
			<input type="checkbox"/>
			FIDUCIARY APPOINTMENT
			<input type="checkbox"/>
			REFERENCE