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| <b>1998 Alexander Karten Annuity Trust v Chalaf</b>                                                                                                                                                                            |
| 2023 NY Slip Op 33870(U)                                                                                                                                                                                                       |
| October 30, 2023                                                                                                                                                                                                               |
| Supreme Court, New York County                                                                                                                                                                                                 |
| Docket Number: Index No. 159481/2020                                                                                                                                                                                           |
| Judge: Debra A. James                                                                                                                                                                                                          |
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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. DEBRA A. JAMES

PART 59

*Justice*

-----X

THE 1998 ALEXANDER KARTEN ANNUITY TRUST,

Plaintiff,

- v -

YANNIV CHALAF,

Defendant.

-----X

INDEX NO. 159481/2020MOTION DATE 05/03/2023MOTION SEQ. NO. 001 002

## DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26

were read on this motion to/for

STRIKE PLEADINGS.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41

were read on this motion to/for

JUDGMENT - SUMMARY.

### ORDER

Upon the foregoing documents it is,

ORDERED and ADJUDGED that the motion of plaintiff THE 1998 ALEXANDER KARTEN ANNUITY TRUST for summary judgment on the complaint (motion sequence number 002) herein is granted and the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendant in the amount of \$993,225.85, together with interest at the rate of 9% per annum from the date of this April 1, 2020, until the date of the decision and order on this motion, in the amount of \$ \_\_\_\_\_, for a total of \$ \_\_\_\_\_ and thereafter at the statutory rate, as calculated by the Clerk, together with costs and disbursements to be taxed by

the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the second cause of action of the complaint seeking a declaratory judgment in plaintiff's favor is denied; and it is further

ADJUDGED and DECLARED that Executive Order Section 8.202.28 (9 NYCRR 8.202.28), which concerns written rental agreements with respect to security deposits related to residential properties, is inapplicable to the action at bar; and it is further

ADJUDGED and DECLARED that, to the extent that the terms of the underlying lease or any other written agreement between the parties do not provide for the forfeiture of defendant's \$40,000.00 security deposit and the application thereof to unpaid and outstanding rent, defendant does not forfeit such security deposit and such security deposit may not be applied to the unpaid and outstanding rent, after application of such amount that would cover any damages that defendant caused at the Subject Premises; and it is further

ORDERED that the motion of the plaintiff THE 1998 ALEXANDER KARTEN ANNUITY TRUST to strike the defendant's answer for his failure to respond to discovery demands (motion sequence number 001) is dismissed as moot.

DECISION

The plaintiff THE 1998 ALEXANDER KARTEN ANNUITY TRUST (the "Trust") is granted summary judgment on its complaint seeking damages for breach of a guaranty stemming from a default on a commercial lease.

The defendant YANNIV CHALAF ("Chalaf"), the guarantor, fails to raise a triable issue of fact to defeat the motion for summary judgment. Chalaf's affidavit does not contest that he is the personal guarantor of the underlying lease that is in default (NYSCEF Doc. No. 34; ¶ 5). Chalaf's argument that the enforcement of personal guarantees was suspended through March 31, 2021, is of no merit, as Chalaf fails to raise an issue of fact that under New York City Administrative Code § 22-1005, between March 7, 2020, and June 30, 2021, the underlying tenant, either:

(a) ceased serving patrons food or beverage for on-premises consumption or to cease operation under executive order number 202.3 issued by the governor on March 16, 2020; or

(b) was a non-essential retail establishment subject to in-person limitations under guidance issued by the New York state department of economic development pursuant to executive order number 202.6 issued by the governor on March 18, 2020; or

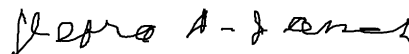
(c) was required to close to members of the public under executive order number 202.7 issued by the governor on March 19, 2020.

Defendant's "mere hope of evidence sufficient to avoid summary judgment" is insufficient to defeat plaintiff's motion

herein. See State of New York ex rel Perkins v Cooke Center for Learning & Development, Inc, 164 AD3d 445, 446 (1<sup>st</sup> Dept 2018).

In light of the above, the Trust's motion to strike the answer for defendant's discovery violations (motion sequence number 001) is dismissed as moot.

The court agrees with plaintiff that this court may take judicial notice of its own judgment in 1998 Alexander Karten Annuity Trust v NYC Auto, Inc., Index No 151514/2021, which was entered subsequent to the return date of the herein motion. See Matter of Linda UU v Dana VV, 212 AD3d 906, 907 (3d Dept 2023). On such basis, this court fixes the damages against Chalaf, the personal guarantor herein, in the amount of \$993,225.85, based on the judgment issued after the inquest held in such related action commenced by the Trust against the underlying tenant (NYSCEF Doc. No. 40).



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10/30/2023

DATE

CHECK ONE:

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CASE DISPOSED

☐

GRANTED

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DENIED

APPLICATION:

☐

SETTLE ORDER

CHECK IF APPROPRIATE:

☐

INCLUDES TRANSFER/REASSIGN

☐

NON-FINAL DISPOSITION

☒

GRANTED IN PART

☐

OTHER

☐

SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE

DEBRA A. JAMES, J.S.C.