

**Saxon 83rd LLC v Chuan Biao Li**

2024 NY Slip Op 30623(U)

February 28, 2024

Supreme Court, New York County

Docket Number: Index No. 654982/2022

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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SAXON 83RD LLC,

Plaintiff,

- v -

CHUAN BIAO LI,

Defendant.

-----X

INDEX NO. 654982/2022

MOTION DATE 03/28/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29

were read on this motion for SUMMARY JUDGMENT.

LOUIS L. NOCK, J.S.C.

Upon the foregoing documents, the motion is granted for the reasons set forth in the moving and reply papers (NYSCEF Doc. Nos. 6-7, 28-29) and the exhibits attached thereto, in which the court concurs, as summarized herein.

In this action on the guarantee of a commercial lease, plaintiff has established *prima facie* entitlement to summary judgment by submission of the lease and amendments (NYSCEF Doc. No. 8, 11-12), the guaranty (NYSCEF Doc. No. 9), the rent ledger (NYSCEF Doc. No. 13), the real estate tax assessments (NYSCEF Doc. Nos. 14-15), and the affidavit of Evan Waldman, plaintiff’s building manager, who attests to the outstanding arrears and defendant’s failure to pay (NYSCEF Doc. No. 6) (*Gard Entertainment, Inc. v Country in N.Y., 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”]).

In opposition, defendant fails to raise a triable issue of fact (*Kershaw v Hospital for Special Surgery*, 114 AD3d 75, 82 [1st Dept 2013]). Defendant avers that plaintiff orally agreed to terminate the lease early and release defendant from the terms of the guaranty with no remaining balance due, and in fact accepted the keys from defendant and his manager on January 4, 2022 (Li aff., NYSCEF Doc. No. 21, ¶¶ 11-26). Defendant's self-serving affidavit is insufficient to overcome the terms of the guaranty, which provides that "[n]o waiver or modification of any provision of this Guaranty nor any termination of this Guaranty except in accordance with its terms shall be effective unless in writing and signed by Landlord, nor shall any waiver be applicable, except in the specific instance for which it is given" (guaranty, NYSCEF Doc. No. 9 at 3). The guaranty requires several conditions before defendant is excused from post-vacatur rent. To wit, the tenant must: give 90 days prior written notice of the intent to surrender the premises; vacate and surrender the premises to plaintiff free of any defaults and in the condition required by the lease; pay all outstanding rent and other sums due and owing through the date of surrender; deliver the keys to plaintiff; and execute and deliver to plaintiff "an unequivocal and irrevocable statement reasonably satisfactory to Landlord pursuant to which Tenant agrees that the Lease and any right of Tenant to use or occupy the Premises shall have terminated" (*id.* at 1).

There is no dispute that the tenant failed to provide such a statement to plaintiff, or to provide prior written notice of its intent to surrender, and there is no writing signed by plaintiff accepting a modification of these terms. Defendant's submission of emails received from plaintiff's broker regarding showing the premises to prospective tenants does not establish a waiver by plaintiff of the requirements of the guaranty. Moreover, and contrary to defendant's contention that there were no arrears at the time the tenant vacated the premises, the second

amendment to the lease memorializes that the tenant owed \$8,000 in arrears as of March 2021, which were to be paid in equal installments from January through June 2022 (second amendment to lease, NYSCEF Doc. No. 12, ¶ 2). None of this amount had been paid at the time the tenant vacated the premises. Defendant, therefore, cannot establish the conditions necessary to relieve him from liability for post-vacatur rent.

Further, plaintiff has established *prima facie* entitlement to summary judgment on its third cause of action for recovery of attorneys' fees, pursuant to the terms of the guaranty (guaranty, NYSCEF Doc. No. 9 at 1). The amount of such fees shall be determined at a further hearing before the undersigned.

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 and against defendant Chuan Biao Li, also known as Chuan B. Li, Chuan Li, Chuanbiao Li, Biao Lichuan, Biao Li Chuan, Li Chuan, B. Lichuan, and Chen Li, in the amount of \$212,153.36, plus interest thereon at the statutory rate from January 1, 2022 through entry of judgment, as calculated by the Clerk, and continuing to accrue thereon through satisfaction of judgment, together with costs and disbursements as taxed by the Clerk on submission of an appropriate bill of costs; and it is further

ORDERED that plaintiff is entitled to its reasonable attorneys' fees pursuant to the terms of the guaranty (guaranty, NYSCEF Doc. No. 9 at 1), and the issue of the amount of such fees is severed and set down for a further hearing before the undersigned; and it is further

ORDERED that the parties shall appear for said hearing in Room 1166, 111 Centre Street, New York, New York, on May 7, 2024, at 10:00 AM; and it is further

ORDERED that plaintiff shall submit the documentation it intends to proffer in support of its fee application to defendant and the court on or before April 23, 2024.

This constitutes the decision and order of the court.

ENTER:



2/28/2024

DATE

LOUIS L. NOCK, J.S.C.

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