

**64 W. 10th St., LLC v L-Ray, LLC**

2024 NY Slip Op 30980(U)

March 25, 2024

Supreme Court, New York County

Docket Number: Index No. 650670/2022

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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64 WEST 10TH STREET, LLC,

Plaintiff,

- v -

L-RAY, LLC, CHRISTOPHER CHESNUTT, JOHN DOE,  
JANE DOE, and XYZ CORP.,

Defendants.

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INDEX NO. 650670/2022

MOTION DATE 05/12/2023

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, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 45, and 46

were read on this motion for SUMMARY JUDGMENT.

LOUIS L. NOCK, J.S.C.

Upon the foregoing documents, so much of the motion as seeks summary judgment on the first three causes of action against defendant L-Ray, LLC (“tenant”) is granted. At oral argument, counsel for defendants conceded that summary judgment against tenant was appropriate (transcript of proceedings, NYSCEF Doc. No. 41 at 3-4).

So much of the motion as seeks summary judgment against defendant Christopher Chesnutt (“guarantor”) is denied, and the cross-motion seeking dismissal of the complaint against guarantor is granted, for the reasons stated in the opposition papers (NYSCEF Doc. Nos. 36-37) and the exhibits attached thereto, in which the court concurs, as summarized herein.

Guarantor signed a good guy guarantee of the original lease between plaintiff and tenant, which provided that he would guarantee “the payment and performance” of all payments, covenants, obligations and agreement on the part of tenant to be paid or performed hereunder up to and until delivery of vacant possession of the demised premises” (guarantee, NYSCEF Doc.

No. 17). The guarantee does not provide that it is automatically renewed upon renewal of the underlying lease, which expired on March 31, 2018 (lease, NYSCEF Doc. No. 15 at 1). A good guy guarantee, even one that lasts until the vacate date, does not survive the expiration of the original lease unless specifically renewed (*Paganini v 40 W. 127th St., LLC*, 204 AD3d 473, 474 [1st Dept 2022]; *PRG Assoc. Ltd. Partnership v Planet Organic Holding Corp.*, 188 AD3d 740, 742 [2d Dept 2020] [“the guarantor cannot be held responsible for the failure of the principal to perform an obligation other than the obligation originally guaranteed”]). The Net-Lease Extension Agreement, dated April 11, 2018, though executed by guarantor, makes no provision for or reference to any guaranty of the extended lease by guarantor. Plaintiff argues that such an obligation should be read into the extended lease given that guarantor executed it in his capacity as tenant’s principal, however, it is axiomatic that “courts may not by construction add or excise terms, nor distort the meaning of those used and thereby make a new contract for the parties under the guise of interpreting the writing” (*Vermont Teddy Bear Co., Inc. v 538 Madison Realty Co.*, 1 NY3d 470, 475 [2004])

So much of the motion as seeks summary judgment on the seventh cause of action for attorneys’ fees alleged against both defendants is denied, as the lease provision relied on by plaintiff does not allow such recovery. The cross-motion seeking dismissal of this claim against guarantor is granted.

Accordingly, it is hereby

ORDERED that the motion for partial summary judgment by plaintiff is granted to the extent of the first through third causes of action against defendant L-Ray, LLC, and is otherwise denied; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendant L-Ray, LLC on the first and second cause of action in the amount of \$2,788,089.08, with interest thereon at the statutory rate from October 21, 2021<sup>1</sup> through entry of judgment, as calculated by the Clerk, and continuing to accrue thereon through the date of 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 motion of plaintiff for summary judgment on the third cause of action for ejectment is granted; and it is further

ADJUDGED that plaintiff is entitled to possession of 64 West 10th Street, New York, New York as against defendant L-Ray, LLC, and the Sheriff of the City of New York, County of New York, upon receipt of a certified copy of this Order and Judgment and payment of proper fees, is directed to place plaintiff in possession accordingly; and it is further

ADJUDGED that immediately upon entry of this Order and Judgment, plaintiff may exercise all acts of ownership and possession of 64 West 10th Street, New York, New York, including entry thereto, as against defendant L-Ray, LLC; and it is further

ORDERED that the cross-motion for summary judgment dismissing the action against defendant Christopher Chesnutt is granted; and it is further

ADJUDGED and DECLARED that defendant Christopher Chesnutt is not able to plaintiff for Rent and/or Holdover Damages for the continued use of the Premises pendente lite and until the date plaintiff obtains legal vacant possession of the Premises; and it is further

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<sup>1</sup> “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 the Clerk of the Court is directed to enter judgment in favor of defendant Christopher Chesnutt dismissing the complaint against him.

This constitutes the decision and order of the court.

<u>3/25/2024</u>			<u>LOUIS L. NOCK, J.S.C.</u>	
<b>DATE</b>				
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input 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