

Westbroad Co., LLC v GVI Tribeca, LLC

2024 NY Slip Op 33188(U)

September 4, 2024

Supreme Court, New York County

Docket Number: Index No. 652728/2022

Judge: Nicholas W. Moyne

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This opinion is uncorrected and not selected for official publication.

("Guaranty") for the lease between Westbroad and GVI, which included that such personal guarantee was absolute and unconditional (NYSCEF Doc. No. 11). After which, GVI opened and began operating said wine bar, Vin Sur Vingt, at the Subject Premises. Chandiramani alleges that, pursuant to Executive Order 202.3 issued by Governor Cuomo on March 16, 2020, GVI was then forced to cease operation of the wine bar. Chandiramani contends that as a result of such, GVI had to vacate the Subject Premises in or around August of 2020.¹

Motion to Dismiss Standard:

On a CPLR § 3211 (a)(7) motion to dismiss, the defendants bear the burden of establishing that the complaint fails to state a viable cause of action (*Connolly v Long Is. Power Auth.*, 30 NY3d 719, 728 [2018]). The question is whether the complaint adequately alleged facts giving rise to a cause of action, not whether it properly labeled or artfully stated one (*Sassi v Mobile Life Support Services, Inc.*, 37 NY3d 236, 239 [2021]).

Discussion:

Breach of Guaranty:

In this action, plaintiff is seeking to recover damages in the amount of rent and additional rent due, as well as unamortized commissions, allegedly sustained as a result of GVI's breach of the lease agreement and Chandiramani's failure to perform his obligations as set forth in the Form of Guaranty. Chandiramani now moves to dismiss the complaint as asserted against him; specifically, Chandiramani is seeking dismissal of the plaintiff's second cause of action for a breach of guaranty and the fourth cause of action for legal fees. Chandiramani asserts that

¹ GVI allegedly paid partial rent from the date of March 16, 2020, until it vacated the Subject Premises in August 2020 (NYSCEF Doc. No. 8 n. 1). However, Westbroad asserts that the tenant GVI vacated the Subject Premises on or around July 24, 2020 (complaint ¶ 12).

dismissal is warranted as the entirety of these claims are barred by the “Guaranty Law”, codified under New York City Administrative Code § 22-1005 (“Admin Code § 22-1005”).

In response to the Covid-19 pandemic, the Governor issued several executive orders, including Executive Order No. 202.3 on March 16, 2020, which restricted and/or prohibited all on-premises sale or consumption of food and beverage at eating and drinking establishments statewide. Additionally, on or around May 26, 2020, New York City’s City Council enacted various local ordinances to combat the pandemic’s economic impact. These ordinances included Local Law No. 55-2020, the aforementioned “Guaranty Law”, which governs personal liability provisions in commercial leases. As a result, Admin Code § 22-1005 provided immunity from the enforcement of certain commercial lease guaranties where personal liability arose (1) as a result of the pandemic-related executive orders affecting the tenant’s business; and (2) fell within the statutory period of March 7, 2020, to June 30, 2021 (*see 3rd and 60th Assoc. Sub LLC v Third Ave. M & I, LLC*, 199 AD3d 601 [1st Dept 2021]).

Chandiramani contends that he may not be subjected to plaintiff’s claims as he is protected under the statute. Chandiramani claims the protection of Admin Code § 22-1005 applies here, as: (1) he is a natural person who personally guaranteed a commercial lease; (2) under which, upon the occurrence of a default or other event, he would become wholly or partially personally liable; (3) the tenant GVI, his business, was required to cease serving patrons food or beverage for on-premises consumption and/or to cease operation under Executive Order No. 202.3; and (4) the default of the lease obligations occurred on or around when he vacated the Subject Premises in August 2020, within the statutory time period. Chandiramani asserts that as all the requirements of Admin Code § 22-1005 have been met, Westbroad cannot establish a valid cause of action against him for the claims arising under the Guaranty. Therefore,

Chandiramani alleges the causes of action for a breach of guaranty and legal fees should be dismissed.

However, in opposition, Westbroad asserts that the claims should not be dismissed as Admin Code § 22-1005 does not bar enforcement of the plaintiff's claims for repayment of the brokerage commissions. Plaintiff's cause of action for breach of guaranty includes seeking to recover damages in the amount of unamortized brokerage commissions sustained as a result of the alleged breach (complaint ¶¶ 19; 35). Notwithstanding the question of the constitutionality of the statute, Westbroad asserts that claims for repayment of brokerage commissions and legal fees incurred bringing such claims are not barred by Admin Code § 22-1005, and remain enforceable against Chandiramani, as the statute only expressly prohibits liability "for payment of rent, utility expenses or taxes owed by the tenant under such agreement, or fees and charges relating to routine building maintenance owed by the tenant under such agreement" (*see also 45-47-49 Eighth Ave. LLC v Conti*, 72 Misc 3d 1210[A] [Sup Ct, NY County 2021], *revd*, 220 AD3d 473 [1st Dept 2023] [claims were dismissed with the exception of the claim for repayment of the brokerage commission- which was unaffected by the statute and remains enforceable against defendant]).

Chandiramani's argument that the First Department has not specifically addressed the issue of repayment of brokerage commissions but, in accordance with the legislative intent of the Guaranty Law, plaintiff should not be able to recover these fees from Chandiramani is unavailing at this point. The declaration of legislative intent and findings of the second amendment of the Guaranty Law explains that the purpose of the statute is to protect small businesses and their owners from grave personal economic losses by providing temporary protections to natural persons who personally guarantee the financial obligations of businesses subject to the

limitations of the statutes and intended to provide the businesses a reasonable recovery period to not only survive but to generate sufficient revenues to defray owed financial obligations (Local Law No. 50/2021, City of New York, §§ 1[a][7]; [9]).

Notably, the “First Department has made clear that in construing § 22-1005, courts must pay close attention to the statutory language—and its limits—rather than relying on broader conceptions of statutory purpose” (*Mansion Realty LLC v 656 6th Ave Gym LLC*, 79 Misc 3d 372, 379 [Sup Ct, NY County 2023], *rearg denied*, 79 Misc 3d 1233[A] [Sup Ct, NY County 2023], citing *Knickerbocker Retail LLC v Bruckner Forever Young Social Adult Day Care Inc.*, 204 AD3d 536, 538 [1st Dept 2022] [finding that § 22-1005 did not apply to a guarantor in a situation where “while the spirit of the law” appeared to include them, “the letter of the law does not”]). Therefore, while the language of the statute expressly prohibits the recovery of damages and/or payments for rent, utility expenses or taxes owed by the tenant, or fees and charges related to routine building maintenance for the period, it does not contain language that would implicate a long-term limitation on an owner’s ability to recover from a guarantor the amounts of the unamortized brokerage commissions allegedly sustained due to their failure to perform as obligated under an absolute and unconditional guaranty agreement (*see* Admin Code § 22-1005).

Accordingly, plaintiff has adequately alleged a claim of breach of guaranty based on the failure to pay the unamortized brokerage commissions. To sufficiently state a claim of breach of guaranty, a plaintiff must allege the existence of the guaranty executed by defendant, the underlying debt or amount, and the defendant’s failure to perform under the guaranty (*ULMI Holding Corp. v Corbin-Hillman*, 199 AD3d 543 [1st Dept 2021]; *Sarfati v Palazzolo*, 142 AD3d 877, 877 [1st Dept 2016]). Through the Form of Guaranty, plaintiff has adequately shown the existence of an absolute and unconditional guaranty executed by Chandiramani. The Form of

Guaranty provides that: (1) “[t]he undersigned guarantee to Landlord, its successors and assigns, that they shall pay to Landlord all fixed rent and additional rent that have accrued and may accrue under the terms of the lease herein, to the latest day that tenant, if any, shall have completely performed all of the following... (e) [p]aid to the landlord the unamortized amount of any brokerage commissions paid by Landlord in connection with this Lease” (NYSCEF Doc. No. 18 at 2; 3). Plaintiff has adequately alleged the underlying debt and Chandiramani’s failure to perform with the Guaranty obligations as the complaint states the outstanding amount of such commissions and that Chandiramani has failed to pay the unamortized brokerage commissions as required under the terms of the Guaranty. Therefore, the motion to dismiss the claim for breach of guaranty based on the unamortized brokerage commissions is denied.

Legal Fees:

Additionally, plaintiff asserts that as the causes of action for breach of guaranty is not covered by the statute, and it has adequately stated a claim for such, the cause of action for legal fees for enforcement of the claim should not be dismissed. The Form of Guaranty provides that, “[t]he undersigned shall be responsible for any legal fees incurred in respect to failure to comply with the terms of this guaranty” (NYSCEF Doc. No. 18 at 2; 3). Additionally, the complaint alleges that the plaintiff is entitled to attorney’s fees as against Chandiramani for bringing this action pursuant to paragraph 1(e) of the guaranty (complaint ¶ 21). Therefore, as the plaintiff is seeking to recover legal fees from Chandiramani with respect to the claim for enforcement of the obligations under the terms of the Form of Guaranty, *i.e.* nonpayment of the brokerage commissions, and plaintiff has adequately alleged a claim of breach of guaranty, dismissal of the claim for legal fees is also unwarranted (*see Spectra Photo Art, Inc. v Mendared, LLC*, 2022 NY Slip Op 33851[U], 4 [Sup Ct, NY County 2022] [the viability of plaintiff’s cause of action for

attorney's fees depends on whether plaintiff prevails against defendant on the cause of action for breach of lease which remained viable]).

Applicability of the Statute to Liabilities Arising Outside the Statutory Time Period:

Next, Westbroad asserts that Chandiramani, as the guarantor, is still liable for monies due under the lease and/or Guaranty that fall outside of the statutory period of March 7, 2020, through June 30, 2021, and therefore those claims should not be dismissed.² Chandiramani contends that Westbroad is erroneous in the claim that the Guaranty Law only shields liability for rent accrued during the statutory period, and not through the remainder of the lease, pointing to the inclusive language of the statute. Chandiramani also relies on *274 Madison Co., LLC v Vieira*, 205 AD3d 403, 404 (1st Dept 2022), *lv to appeal dismissed*, 39 NY3d 1062 (2023) in support of his contention that he is not liable for the rent owed through the remainder of the lease. In *274 Madison Co., LLC*, the Court held that Admin Code § 22-1005 shielded a defendant-guarantor from liability for the tenant's accelerated rent through the expiration of the lease term, which became due upon the tenant's default- occurring within the statutory period (*274 Madison Co., LLC*, 205 AD3d at 404). Chandiramani contends that as the initial default which caused him to become liable, *i.e.* when GVI vacated the Subject Premises in August 2020 (after having paid partial rent since March of 2020), occurred within the statutory period he is shielded from liability that accrued after the statutory period.

However, contrary to Chandiramani's contention, the First Department has since clarified that the Guaranty Law bars only those claims against guarantors which seeks to recover rent that came due within the law's protection period (*Tamar Equities Corp. v Signature Barbershop 33*

² To the extent that plaintiff is seeking to recover damages from Chandiramani, as guarantor, which accrued during the statutory period, dismissal of those claims is premature for the reasons set forth on pages nine (9) and ten (10) of this decision.

Inc., 223 AD3d 421, 424 [1st Dept 2024]). Contrary to those claims by a plaintiff which seek to collect accelerated rents based on a default that occurred during the statutory period, a plaintiff which is not seeking to accelerate all rents due under the lease and/or collect amounts which became due during the Guaranty Law's applicability, but instead limits the damages may collect amounts due under the lease outside of the statutory period to the extent they are due and owing (*3 E. 54th New York LLC v Chatiris*, 225 AD3d 413, 414 [1st Dept 2024], compare *274 Madison Co., LLC v Vieira*, 205 AD3d 403, 404 [1st Dept 2022], *lv to appeal dismissed*, 39 NY3d 1062 [2023]).

The time period for determining whether the protections of Admin Code § 22-1005 attach is the timing of the event causing the guarantor to become liable (*274 Madison Co., LLC v Vieira*, 205 AD3d 403, 404 [1st Dept 2022], *lv to appeal dismissed*, 39 NY3d 1062 [2023]). Accordingly, the statute provides that regardless of when a tenant's lease default occurred, the critical time frame is the timing of the event giving rise to the natural person's liability as guarantor (*3rd and 60th Assoc. Sub LLC v Third Ave. M & I, LLC*, 199 AD3d 601, 602 [1st Dept 2021]). Therefore, whether Westbroad may recover from Chandiramani, as the guarantor, for amounts which arose outside the statutory period is dependent on when Chandiramani becomes responsible and/or liable for GVI's default(s) under the terms of the lease and Guaranty agreements (*Mansion Realty LLC v 656 6th Ave Gym LLC*, 79 Misc 3d 372, 378 [Sup Ct, NY County 2023], *rearg denied*, 79 Misc 3d 1233[A] [Sup Ct, NY County 2023]).

Here, under the terms of the commercial lease agreement, rent was to be paid in equal monthly installments on the first of each month during said term (NYSCEF Doc. No. 10 at 1). Additionally, the lease agreement provides that "[i]f tenant defaults in fulfilling any of the covenants of this lease including covenants for the payment of rent or additional rent; or if the

demised premises become vacant or deserted”, after the owner having served notice(s) and at the close of the notice period(s), the lease is cancelled “but [t]enant shall remain liable as hereinafter provided” (NYSCEF Doc. No. 10 at 3). After which, in case of any such default, (a) the rent, and additional rent, shall become due thereupon and be paid up to the time of such re-entry, dispossess and/or expiration, (b) owner may re-let... and may grant concessions... and/or (c) tenant or the legal representatives shall pay, “as liquidated damages... any deficiency between the rent hereby reserved and/or covenanted to be paid and the net amount, if any, of the rents collected on account of the subsequent lease” “for each month of the period which would have otherwise constituted the balance of the term of the lease” (NYSCEF Doc. No. 10 at 3). The lease provides that “[a]ny such liquidated damages shall be paid in monthly installments by [t]enant on the rent day specified in this lease” (*Id.*).

Considering, under the terms of the lease agreement GVI was responsible for paying each month’s rent or deficiency as it became due, with each failure by the tenant GVI to pay constituting a separate independent default under the lease and GVI becoming liable for unpaid rent as it accrued (*Tamar Equities Corp. v Signature Barbershop 33 Inc.*, 223 AD3d 421, 424 [1st Dept 2024]; *Mansion Realty LLC v 656 6th Ave Gym LLC*, 79 Misc 3d 372, 378 [Sup Ct, NY County 2023], *rearg denied*, 79 Misc 3d 1233[A] [Sup Ct, NY County 2023]). Thus, Chandiramani may be rendered liable for each of GVI’s defaults and/or the unpaid amounts as they accrued each month but would not be liable for future rents which had not yet accrued (*Id.*). As there are no allegations in the complaint that plaintiff sought to collect accelerated rents during the statutory time period, the portions of Westbroad’s claims seeking to recover amounts due based on the defaults that accrued outside the statutory period should not be dismissed (*3 E. 54th New York LLC v Chatiris*, 225 AD3d 413, 414 [1st Dept 2024]).

Constitutionality of the Statute:

Finally, Westbroad asserts that Admin Code § 22-1005 violates the Contracts Clause of the U.S. Constitution (*see* NYSCEF Doc. No. 26). Plaintiff cites to *Melendez, et al v City of New York, et al*, which concluded that the “Guaranty Law” violated the Contracts Clause of the U.S. Constitution by substantially impairing contracts and was not a reasonable and appropriate means to pursue the City’s professed public purpose by placing the burden of the “Guaranty Law” exclusively upon landlords (*Melendez v City of New York*, 668 F Supp 3d 184, 197 [SDNY 2023]). However, the Court of Appeals has proscribed that while all courts are bound by the United States Supreme Court’s interpretations of the U.S. Constitution and Federal laws, interpretation of a Federal Constitutional question by the lower Federal Courts are not binding on New York Courts but, may serve as useful and persuasive authority (*People v Kin Kan*, 78 NY2d 54, 60 [1991]). Although the reasoning in *Melendez* has been adopted by some in the Supreme Court, the Second Circuit has yet to issue a decision on the pending appeal of *Melendez v City of New York*, 668 F Supp 3d 184, 197 (SDNY 2023) and/or the Appellate Division has yet to issue a decision holding Admin Code § 22-1005 unconstitutional (*see 370 8th Ave. Group, LLC v Burke*, 2023 NY Slip Op 34309[U], 3 [Sup Ct, NY County 2023]; *Judson Realty LLC v Hayward Luxury, Inc.*, 2024 NY Slip Op 30744[U], 8 [Sup Ct, NY County 2024]; *compare 141 Ave. A Assoc., LLC v Sneak EZ LLC*, 80 Misc 3d 1225[A] [Sup Ct, NY County 2023]). Considering the viability of plaintiff’s other causes of action against Chandiramani and that this area of law is still unsettled, at this juncture and in the interest of judicial economy, granting of the motion and/or dismissal of the complaint pursuant to Admin Code § 22-1005 would be premature (*see Tamar Equities Corp. v Signature Barbershop 33 Inc.*, 223 AD3d 421, 425 [1st Dept 2024]; *721 Borrower LLC v Moha*, 204 AD3d 510, 511 [1st Dept 2022]; *Seventh Ave. Corp v Barbers, Inc.*

[Sup Ct, NY County 2024]). Accordingly, Chandiramani's motion is denied without prejudice to renew upon the Second Circuit issuing its decision on the appeal of Melendez or the First Department rendering a decision on the constitutionality of Admin Code § 22-1005 (*see 45-47-49 Eighth Ave. LLC v Conti*, 220 AD3d 473, 474 [1st Dept 2023]).

Conclusion:

Accordingly, it is hereby

ORDERED that the portion of the motion by defendant Rakesh Chandiramani seeking to dismiss the second cause of action for breach of guaranty for liabilities arising during the statutory period, pursuant to Administrative Code § 22-1005, is DENIED, without prejudice, pending the Second Circuit's decision on the appeal of *Melendez v City of New York*, 668 F Supp 3d 184, 197 (SDNY 2023) or in the alternative the First Department issuing a decision on the constitutionality of Administrative Code § 22-1005; and it is further

ORDERED that the portion of the motion seeking to dismiss the second cause of action for breach of guaranty to recover for unamortized brokerage commissions and/or liabilities which may have accrued outside of the statutory period governed by Administrative Code § 22-1005 is DENIED; and it is further

ORDERED that the portion of the motion seeking to dismiss the fourth cause of action for legal fees is DENIED.

This constitutes the decision and order of the court.



9/4/2024
DATE

NICHOLAS W. MOYNE, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE