

Kaplan, Inc. v WebMD Health Corp.

2025 NY Slip Op 32426(U)

July 3, 2025

Supreme Court, New York County

Docket Number: Index No. 650782/2024

Judge: Lyle E. Frank

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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:	<u>HON. LYLE E. FRANK</u>	PART	11M
	<i>Justice</i>		
-----X		INDEX NO.	<u>650782/2024</u>
KAPLAN, INC.		MOTION DATE	<u>05/05/2025, 05/12/2025</u>
Plaintiff,		MOTION SEQ. NO.	<u>003 004</u>
- v -			
WEBMD HEALTH CORP.,		DECISION + ORDER ON MOTION	
Defendant.			
-----X			

The following e-filed documents, listed by NYSCEF document number (Motion 003) 121, 122, 123, 124, 125, 126, 127, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 155
 were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 151, 152, 153, 154, 156
 were read on this motion to/for DISMISS.

Plaintiff seeks an order, motion sequence 003, pursuant to CLPR § 602, consolidating this action with Index No. 655625/2024, pending in this Court¹. Additionally, plaintiff seeks an order pursuant to CLPR §§ 3025(b) and 1002(b), granting plaintiff leave to file an amended complaint to add WebMD LLC as a party defendant. Defendant opposes the motion and moves separately, motion sequence 004, to dismiss the complaint and/or stay the case. For the reasons set forth below, the motion is granted.

Background

Plaintiff, sublandlord, and nonparty subtenant, entered into a sublease agreement for premises at 395 Hudson Street, New York, NY 10014. Additionally, defendant, Guarantor – the

¹ The Court would like to thank Marlowe Glass and Dina Aldad for their assistance in this matter.

parent company of Subtenant – executed an unconditional guarantee of Subtenant's obligations under the sublease.

Plaintiff commenced this action, against the Guarantor, by motion for summary judgment in lieu of complaint under CPLR §3213, alleging subtenant's failure to pay rent owed. this Court granted Sublandlord's motion for summary judgment in lieu of the complaint in the First Guaranty Action, which Guarantor appealed. Plaintiff alleged that subtenant continued to withhold rent and brought the second Guaranty Action under CPLR §3213 to recover the rent for the additional period.

In March 2025, the Appellate Division, First Department held that CPLR §3213 was unavailable, converted this matter into a plenary action, and remanded for further proceedings consistent with its decision. Based on that decision, this Court denied summary judgment in lieu of complaint in the Second Guaranty Action, index number 655624/2024. The Court previously joined this and the action captioned *WebMD LLC v. Kaplan, Inc.*, Index. No 655270/2024 (the "Restoration Action") for coordinated discovery and joint trial.

Motion Sequence 003:

CPLR §602(a) permits consolidation where actions involve "a common question of law or fact." Here, plaintiff has established that both matters involve the same parties, contracts, and legal claims for unpaid rent – differing only by the months at issue. This Court has also already recognized that the Guaranty Actions present overlapping legal and factual issues, and Guarantor has already consented to the consolidation of this action with the Restoration Action. The Court does not find, as defendant contends, that it will suffer prejudice if the matters are consolidated. Consolidation will eliminate duplicative proceedings, conserve judicial resources, and promote

consistent outcomes. Accordingly, the portion of plaintiff's motion that seeks consolidation is granted.

As to the portion of the motion that seeks to amend the pleadings, plaintiff has established entitlement to the relief sought.

The applicable legal standard is CPLR § 3025(b), which authorizes a party to seek leave of the Court to amend or supplement a complaint. As stated therein, leave "shall be freely given upon such terms as may be just." A motion to amend a complaint is to be granted if (a) the amended claims have merit and (b) the opposing party is not unfairly surprised or prejudiced by the filing of the amended claims.

The Court finds the amended complaint is not devoid of merit. WebMD LLC is the subtenant and was obligated to pay monthly installments to plaintiff for the duration of the lease. Adding WebMD LLC as a party defendant in an action to recover unpaid rent is neither improper nor without merit.

The Court further finds that the amendment of the complaint would not prejudice defendant. Defendant notes that the proposed amendment would prejudice WebMD LLC's ability to litigate its claims in *WebMD LLC v. Kaplan, Inc.*, Index No. 655270/2024. However, that action has already been consolidated with this action for the purposes of joint trial and discovery, so it is not sufficiently clear how the amended complaint would impair WebMD LLC's ability to litigate its ongoing claims to any greater extent than consolidated discovery would. The Court has reviewed the defendant's remaining contentions and finds them unavailing. Accordingly, the portion of plaintiff's motion that seeks to amend the pleadings is granted.

Motion Sequence 004

Defendant seeks to dismiss the instant action or in the alternative, to stay the pending determination of the Restoration Action, contending the guaranty actions are not yet ripe. Plaintiff opposes the motion to dismiss and the stay. For the reasons set forth below, defendant's motion is denied.

Standard of Review

An action is not ripe in the absence of a "real and present or imminent" problem, rather than one which is merely "abstract or hypothetical or remote." *Church of St. Paul & St. Andrew v Barwick*, 67 NY2d 510, 518 [1986]. CPLR § 3211(a)(4) provides that an action may be dismissed or stayed on the ground that "there is another action pending between the same parties for the same cause of action in a court [...]; the court need not dismiss upon this ground but may make such order as justice requires." Under CPLR § 3211(a)(4), the court bears "broad discretion to dismiss an action on the ground that another action is pending between the same parties arising out of the same subject matter or series of alleged wrongs, and it is inconsequential that different legal theories or claims were set forth in the two actions." *Shah v RBC Cap. Mkts. LLC*, 115 A.D.3d 444, 444-45 [1st Dept 2014].

Discussion

Defendant contends that if it is found that the subtenant performed all of its required restoration work, plaintiff would have no right to take any of its security deposit to pay for the disputed work, and nothing would be due by the Guarantor.

Defendant asserts that all three actions derive from a common nucleus of facts in that they require a determination of the scope of the subtenant's rent and/or restoration obligations under the same Sublease for which the payment and performance obligations were guaranteed by

WebMD. Defendant claims that dismissal of the two guaranty actions is appropriate because plaintiff's ability to recover depends on the outcome of the Restoration Action. Defendant further contends that the First Department's reversal of the grant of summary judgment in lieu of complaint, establishes that the calculus of the amount due, if any, is based on the performance of the restoration work, rendering the guaranty actions premature.

Preliminarily, as to the argument that the First Department's decision held that performance must first be established, the Court finds that argument without merit. The First Department's holding was limited to whether the matter was appropriate for disposition pursuant to CPLR § 3213, "because the guaranty permits the guarantor to raise payment and performance as a defense and there is a colorable dispute as to whether the amount due has been satisfied, CPLR 3213 relief is not available" (*Kaplan, Inc. v WebMD Health Corp.*, 236 AD3d 435, 435 [1st Dept 2025]).

Plaintiff responds, and this Court agrees, that the motion to dismiss under CPLR §3211(a)(4) is premature. While there is some overlap between the claims asserted, the motion to dismiss is premature at this time. Moreover, the mere existence of overlapping factual issues does not mandate dismissals where the claims arise under different legal theories and serve distinct purposes. As the Court has recognized, the Guaranty Actions seek monetary recovery for unpaid rent allegedly owed under the Sublease and guaranteed by defendant. The Restoration Action, by contrast, concerns an alleged failure to restore the premises to the agreed-upon condition and plaintiff's resulting entitlement to withhold funds from the security deposit.

Dismissal at this early stage would deprive plaintiff of a proper procedural path to enforce its rights under the Guaranty, and CPLR §3211(a)(4) is not intended to be used as a method to delay meritorious claims where coordination and judicial case management tools are

sufficient to mitigate any inefficiency or duplicative effort. *See AIG Fin. Prods. Corp. v. Penncara Energy, LLC*, 83 AD3d 495, 495 [1st Dept 2011]. Accordingly, defendant has not established that dismissal or a stay of the actions is warranted, and it is hereby

ORDERED that defendant's motion, motion sequence 004, is denied without prejudice; and it is further

ORDERED that plaintiff's motion, motion sequence 003, is granted in its entirety; and it is further

ORDERED that the motion is granted, and the above-captioned action is consolidated in this Court with Index No. 655624/2024, pending in this Court; and it is further

ORDERED that the consolidation shall take place under Index No. 650782/2024 and the caption in the consolidated action shall remain the same; and it is further

ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

ORDERED that, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the Court (60 Centre Street, Room 141 B), who shall consolidate the documents in the actions hereby consolidated and shall mark his records to reflect the consolidation; and it is further

ORDERED that counsel for the movant shall contact the staff of the Clerk of the Court to arrange for the effectuation of the consolidation hereby directed; and it is further

ORDERED that service of this order upon the Clerk of the Court shall be made in hard-copy format if this action is a hard-copy matter or, if it is an e-filed case, shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk*

Procedures for Electronically Filed Cases (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that, as applicable and insofar as is practical, the Clerk of this Court shall file the documents being consolidated in the consolidated case file under the index number of the consolidated action in the New York State Courts Electronic Filing System or make appropriate notations of such documents in the e-filing records of the court so as to ensure access to the documents in the consolidated action; and it is further

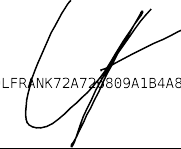
ORDERED that, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who is hereby directed to reflect the consolidation by appropriately marking the court’s records; and it is further

ORDERED that such service upon the Clerk of the General Clerk’s Office shall be made in hard-copy format if this action is a hard-copy matter or, if it is an e-filed case, shall be made in accordance with the procedures set forth in the aforesaid Protocol; and it is further

ORDERED that the plaintiff’s motion for leave to amend the complaint herein is granted, and the amended complaint in the proposed form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that the defendant shall serve an answer to the amended complaint or otherwise respond thereto within 20 days from the date of said service.

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 LYLE E. FRANK, J.S.C.

7/3/2025
DATE

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED
 SETTLE ORDER
 INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
 GRANTED IN PART OTHER
 SUBMIT ORDER
 FIDUCIARY APPOINTMENT REFERENCE