

Trigon 52 L.L.C. v SDKD Enters., Inc.

2025 NY Slip Op 32598(U)

June 26, 2025

Supreme Court, New York County

Docket Number: Index No. 655105/2020

Judge: Emily Morales-Minerva

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. EMILY MORALES-MINERVA PART 42M

Justice

-----X

TRIGON 52 L.L.C.,

Plaintiff,

- v -

SDKD ENTERPRISES, INC., SANJIV CHAND

Defendant.

-----X

INDEX NO. 655105/2020
MOTION DATE 06/01/2024
MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 136, 137, 138, 139, 141, 142, 143, 144, 145, 146, 147, 148, 149, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160

were read on this motion to/for
APPEARANCES:

JUDGMENT - SUMMARY

Cyruli Shanks & Zizmor LLP, New York, NY (Christopher J. Dylewski, Esq., of counsel), for plaintiff.

Stradley Ronon, New York, NY (Eric Brent Porter, Esq., of counsel), for defendants.

EMILY MORALES-MINERVA, J.S.C.

In this commercial landlord-tenant action, plaintiff TRIGON 52 L.L.C. moves, for the third time, by notice of motion (sequence no. 004), for (1) an order, pursuant to CPLR § 3212, granting it summary judgment against defendant SANJIV CHAND on the third and fourth causes of action and for (2) an order, pursuant CPLR § 3211 (b), dismissing defendants SDKD ENTERPRISES, INC. and SANJIV CHAND affirmative defenses. Defendants appear and submit written opposition to the motion.

For the reasons that follow, the motion is denied.

BACKGROUND

On or about August 22, 1990, non-party Arbus Corporation, as owner and landlord, and non-party Adelfia Associates, as tenant, entered a 15-year commercial lease (see New York State Court Electronic Filing System [NYSCEF] Doc. No. 001, Complaint). Pursuant to said lease, Adelfia Associates leased from Arbus Corporation portions of the basement, ground floor, and mezzanine levels at 16 East 52d Street, New York, NY (premises) (see id.).

Prior to the lease expiring, plaintiff TRIGON 52, L.L.C. (owner-landlord) became owner and landlord of the subject property. On January 01, 2005, it then executed an extension of the commercial lease with non-party Adelfia Associates, extending the lease term until June 30, 2016 (see id.).

Thereafter, on August of 2008, owner-landlord and non-party Adelfia Associates agreed to assign the commercial lease to defendant SDKD ENTERPRISES, INC. (SDKD) who became tenant of the premises. SDKD dissolved as a corporation in 2013 but, on September 21, 2015, executed a second lease modification and extension agreement with owner-landlord, continuing to identify itself as SDKD ENTERPRISES, INC. (see id.; see also NYSCEF Doc. No. 125, Lease Extension Agreement).

This lease modification and extension is immediately followed by a witness page and notary's endorsement, which is completed (see id. at p 7-8). The document also contains an "Exhibit A: Limited Personal Lease Guaranty" which is immediately followed by a witness and notary page that is not endorsed (see id., Ex. A, Limited Personal Lease Guaranty).

The body of said guaranty identifies the guarantor of the lease extension as defendant SANJIV CHAND. The signature page includes a signature with said defendant's name below in print. However, it does not include witnesses, a date, or an endorsement of a notary public (id.).

Two years later, on October 05, 2015, SDKD, Inc. -- identified as tenant -- assigned its commercial lease to non-party 1652 Food Corporation (Food Corp.) (see NYSCEF Doc. No. 127, Assignment and Assumption of Lease, dated October 05, 2015). The assignment provides that, for a certain monetary consideration, SDKD transferred to Food Corp.:

"a certain lease between Landlord's predecessor in interest and Tenant's predecessor in interest dated as of August 22, 1990 (the "Original Lease"), as amended by that certain Lease Modification Agreement dated as of July 15, 1991, Lease Modification Agreement dated as of December 9, 1992 and Lease Modification and Extension Agreement dated as of January 1, 2005, and as assigned to Tenant by Assignment of Lease with Assumption dated as of July 14, 2008, and as further amended by Second Lease Modification and Extension Agreement dated

as of September (the Original Lease, as amended and assigned, hereinafter the "Lease")"

(id.).

On October 05, 2015, Food Corp. took possession of the premises and paid rent directly to owner-landlord, and owner-landlord returned SDKD's security deposit after it relinquished the premises (see NYSCEF Doc. No. 42, Tenant's Estoppel Certificate [referring to non-party 1652 Food Corporation as the tenant], Doc. No. 148, Letter from counsel for non-party 1652 Food Corporation (Food Corp.) to owner-landlord [providing that "(owner-)landlord billed 1652 Food Corp. for the rent and accepted rent payment from 1652"], and Doc. No. 32, Affidavit of Sanjiv Chand [providing that "(owner-landlord) returned SDKD's security deposit to me and accepted a letter of credit from 1652 in the amount of \$432,000.00"]).

After at or around five years of this arraignment, things began to sour between non-party Food Corp. and owner-landlord. Said non-party ceased paying the rent due under the assigned lease (see NYSCEF Doc. No. 18, Arrears Report).

Consequently, on October 08, 2020, owner-landlord commenced this action against SDKD and defendant SANJIV CHAND, as an individual, but not Food Corp., alleging three causes of action: (1) breach of contract against SDKD, (2) breach of contract

against Sanjiv Chand, and (3) attorneys' fees against both defendants (see NYSCEF Doc. No. 001, Summons & Complaint).

Defendants answered, asserting eight affirmative defenses, which include: estoppel; waiver; the "winding up of" SDKD enterprises; limited liability of Sanjiv Chand; and failure to join necessary parties (see NYSCEF Doc. No. 007, Answer).

Owner-landlord then moved, by notice of motion (seq. no. 001), for an order of summary judgment against defendants on all causes of action, and for an order dismissing defendants' affirmative defenses (see CPLR 3212 [governing summary judgment]; see also CPLR § 3211 [b] [governing **write in title**]).

Defendants submitted opposition, and cross-moved for an order of summary judgment against owner-landlord (see NYSCEF Doc. No. 30, Defendants' Notice of Cross-Motion and in Opposition to Motion).

The court (L. Love, J.S.C.) denied both motion and cross-motion (see NYSCEF Doc. No. 53, Decision and Order, dated October 15, 2021). The court reasoned that, "through the submitted affidavits, email exchanges, and documents submitted there remains questions of fact along with evidence that does not warrant dismissal of this case" (id.).

Thereafter, owner-landlord moved, by notice of motion (seq. no. 002), for leave to amend the complaint seeking to add a fourth cause of action against defendant Sanjiv Chand for breach

of the guaranty (see NYSCEF Doc. No. 67, Proposed Amended Complaint). Over defendants' objection, the court (S. Adams, J.S.C) granted owner-landlord's motion, deeming the amended complaint served on defendants. Justice Adams reasoned:

"[owner-landlord] seeks leave to assert an additional claim alleging that Chand is personally liable to [owner-landlord] in the sum of \$500,806.40 because the moratorium on Chand's liability as a personal guarantor under the Guarant[y] Law expired on July 30, 2021. [] Defendants do not allege any prejudice or surprise with respect to the proposed new claim"

(NYSCEF Doc. No. 76, Decision and Order, dated December 09, 2022).

Thereafter, defendants moved (mot. seq. no. 003) to reargue owner-landlord's motion, and owner-landlord cross-moved for summary judgment a second time. Both parties then withdrew their motions (see NYSCEF Doc. No, 112, Decision and Order, dated June 01, 2023).

Defendants then answered the amended complaint, asserted 16 affirmative defenses (see NYSCEF Doc. No. 114, Amended Answer to Amended Complaint). Among those defenses are failure to state a claim; release of liability; unclean hands; failure to mitigate; and failure to join necessary parties (see id.).

Despite this motion practice, seeking summary judgment no less, in the almost five years that this matter has been pending

-- prior to being transferred to the undersigned -- the parties have not engaged in a preliminary conference, any discovery exchange or status conference.

Still, once again, owner-landlord moves (mot. seq. no. 004) for an order, pursuant to CPLR § 3212, granting it summary judgment against defendant Sanjiv Chand on its third cause of action (reasonable attorneys' fees) and its fourth cause of action (breach of the guaranty). Owner-landlord also moves for an order, pursuant to CPLR § 3211 (b), dismissing defendants' affirmative defenses.

Defendants appear and submit written opposition to the motion.

ANALYSIS

Law of the Case

The doctrine of the law of the case applies to legal determinations that were necessarily resolved on the merits in a prior decision, and to the same questions presented in the same case (Chanice v Fed. Exp. Corp., 118 AD3d 634 [1st Dept 2014]); see Ruiz v Anderson, 96 AD3d 691 [1st Dept 2012]). "The doctrine of law of the case contemplates that the parties had a full and fair opportunity to litigate when the initial determination was made" (Chanice, 118 AD3d at 635; People v Evans, 94 NY2d 499, 502 [2000]).

Regarding owner-landlord's motion for an order of summary judgment granting it reasonable attorneys' fees, the law of case applies. The court (L. Love, J.S.C.) denied owner-landlord's initial motion for summary judgment (seq. no. 001), which requested an order of summary judgment on the third cause of action for reasonable attorneys' fees against both defendants (see NYSCEF Doc. No. 53, Decision and Order, dated October 15, 2021). While said court issued a short order, the decision broadly stated that upon review of the proof submitted -- including affidavits, e-mails and other documents -- issues of fact existed precluding the summary judgment motion entirely (see id.). Further -- although owner-landlord subsequently amended its complaint -- the amended complaint contains the same cause of action for reasonable attorneys' fees pled in the initial complaint.

As owner-landlord had a full and fair opportunity to be heard in this regard, the court shall not address its motion on the merits to the extent owner-landlord seeks an order of summary judgment on its third cause of action.

However, contrary to defendants' contention, the law of the case does not apply to preclude owner-landlord's instant motion (seq. no. 004) to dismiss defendants' affirmative defenses. The prior decision of the court (L. Love, J.S.C.) is silent as to owner-landlord's application, pending before it at the time, to

dismiss defendants' affirmative defenses (see NYSCEF Doc. No. 53, Decision and Order, dated October 15, 2021). Therefore, in this regard, owner-landlord's initial motion was not "necessarily resolved on the merits in a prior decision" (see generally Chanice v Fed. Exp. Corp., 118 AD3d 634 [1st Dept 2014]; see Ruiz v Anderson, 96 AD3d 691 [1st Dept 2012])).

Notwithstanding, the instant motion (seq. no. 004) to dismiss defendants' affirmative defenses pertain to the affirmative defenses asserted in the amended answer.

Summary Judgment as to the Fourth Cause of Action

Summary judgment is an extraordinary remedy and is only appropriate where the movant has established that there is no question of fact on any issue which would require a trial (see Andre v Pomeroy, 35 NY2d 361, 364 [1974]; see also Bronx-Lebanon Hosp. Ctr. v Mount Eden Ctr., 161 AD2d 480 [1st Dept 1990] [holding that "summary judgment is a drastic remedy, the procedural equivalent of a trial [] it should not be granted where there is any doubt about the issue"])). The court may grant summary judgment upon prima facie showing of entitlement to judgment as a matter of law, through admissible evidence sufficient to eliminate material issues of fact (CPLR § 3212[b]);

Nomura Asset Capital Corp. v Cadwalader, Wickersham & Taft LLP, 26 NY3d 40, 49 [2015]; Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986]; Winegrad v New York Univ. Med. Ctr., 64 NY2d 851 [1985]). If the moving party makes the requisite showing, the non-moving party then has the burden "to establish the existence of [factual issues] which require a trial of the action'" (Nomura Asset Capital Corp., 26 NY3d at 49, citing Vega v Restani Constr. Corp., 18 NY3d 499, 503 [2012], quoting Alvarez, 68 NY2d at 324).

However, summary judgment is premature if -- as here -- discovery is incomplete and note of issue has not been filed (see Jeffrey v DeJesus, 116 AD3d 574, 575 [1st Dept 2014] [finding that motion for summary judgment was properly denied as premature as limited discovery had been conducted]; see also Curry v Hundreds of Hats, Inc., 146 AD3d 593, 594 [1st Dept 2017]). Despite this case having been filed in 2020, depositions, not the least of which, remain outstanding (see Bey v Rosado, 192 AD3d 575 [1st Dept 2021] [finding that summary judgment motion was premature given defendants did not have the opportunity to depose plaintiff]; see also Mediant Communications Inc. v Spectrum Pharm, Inc., 2025 NY Slip Op 03161 [1st Dept, May 27, 2025] [holding that it was premature for the trial court to grant summary judgment to plaintiff where

discovery, including depositions of key witnesses, had not yet occurred]).

Here, not even a preliminary conference has been held let alone discovery (see Rutherford v Brooklyn Navy Yard Dev. Corp., 174 AD3d 932 [2d Dept 2019] [reasoning that motion for summary judgment made before a preliminary conference was held, before any written discovery was exchanged, and before depositions were taken was premature]).¹ Therefore, the motion (seq. no. 004) for summary judgment is denied, as premature, without prejudice.

Dismissal of Affirmative Defenses

"The standard of review on a motion to dismiss an affirmative defense pursuant to CPLR § 3211 (b) is akin to that used under CPLR § 3211 (a) (7), i.e., whether there is any legal or factual basis for the assertion of the defense" (Matter of Ideal Mut. Ins. Co., 140 AD2d 62, 67 [1st Dept 1988]). "On a motion to dismiss affirmative defenses pursuant to CPLR § 3211 (b), the plaintiff bears the burden of demonstrating that the defenses are without merit as a matter of law" (534 E. 11th St. Hous. Dev. Fund Corp. v Hendrick, 90 AD3d 541, 541 [1st Dept 2011] [emphasis added]). "Upon a motion to dismiss a defense, a

¹ The court notes that this case was transferred to the undersigned already pending for five years without a preliminary conference, status conferences, or other essential case management steps.

defendant is entitled to the benefit of every reasonable intendment of the pleading, which is to be liberally construed" (Warwick v Cruz, 270 AD2d 255 [2d Dept 2000]). "A defense should not be stricken where there are questions of fact requiring trial" (534 E. 11th St. Hous. Dev. Fund Corp., 90 AD3d at 542, citing Atlas Feather Corp. v Pine Top Ins. Co., 128 AD2d 578, 578-579 [1987]).

Here, defendants' first (failure to state a cause of action) and thirteenth (barred by documentary evidence) affirmative defenses are viable. "No motion by the plaintiff lies under CPLR § 3211(b) to strike the defense of failure to state a cause of action, as this amounts to an endeavor by the plaintiff to test the sufficiency of his or her own claim" (Ochoa v Townsend, 209 AD3d 867, 868 [2d Dept 2022]; see Tribbs v 326-338 E 110th LLC, 215 AD3d 480 [1st Dept 2023]).

Therefore, owner-landlord's motion to dismiss the first and thirteenth affirmative defenses is denied.

The court also denies owner-landlord's application to dismiss the second (defendants did not breach the terms of a contract), third (SDKD has not had a lease with owner-landlord since 2015), fourth (release of claims), sixth (winding up), and fourteenth (failure to join necessary parties) affirmative defenses. Owner-landlord has not satisfied its burden that these defenses are without merit as a matter of law (see Granite

State Ins. Co. v Transatlantic Reinsurance Co., 132 AD3d 479, 481 [1st Dept 2015]). Further, "a defense should not be stricken where there are questions of fact requiring a trial" as previously held in this matter (see 534 E. 11th St. Hous. Dev. Fund Corp., 90 AD3d at 542).

However, the court agrees with owner-landlord that defendants' fifth affirmative defense -- that owner-landlord acted in bad faith and has unclean hands -- requires dismissal. Defendants plead this claim as a conclusion of law without any factual support; they fail to allege any specific immoral or unconscionable conduct by owner-landlord (see Citibank, N.A. v Am. Banana Co., 50 AD3d 593, [1st Dept 2008] [providing that to charge a party with unclean hands, it must be alleged that said party was guilty of immoral or unconscionable conduct directly related to the subject matter]). Therefore, the fifth affirmative defense is dismissed.

Similarly, defendants do not state any facts whatsoever to support the following affirmative defenses: seventh (barred pursuant to New York City Administrative Code 22-1005), eighth (doctrine of estoppel), ninth (Sanjiv Chand's limited liability pursuant to the Guaranty), tenth (failure to mitigate damages), eleventh (owner-landlord's own culpable conduct), twelfth (lack of proximate cause), fifteenth (defendants' acted reasonably) and sixteenth (statute of limitations). They plead these

defenses as conclusions of law (see Chelsea 8th Ave. LLC v Chelseamilk LLC, 220 AD3d 565, 566 [1st Dept 2023] [holding that "bare legal conclusions are insufficient to raise an affirmative defense"], citing Robbins v Growney, 229 AD2d 356, 358 [1st Dept 1996]). Finally, as defendants do not address any of these affirmative defenses in their opposition papers, these "defenses are deemed abandoned" (Knickerbocker Retail LLC v Bruckner Forever Young Social Adult Day Care Inc., 204 AD3d 536, 538 [1st Dept 2022], citing McHale v Anthony, 41 AD3d 265, 266-267 [1st Dept 2007]).

Accordingly, it is hereby

ORDERED that plaintiff TRIGON 52 L.L.C.'s motion (seq. no. 004) is denied, in part, to the extent that plaintiff's motion for summary judgment as to the third cause of action (reasonable attorneys' fees) is dismissed; it is further

ORDERED that plaintiff TRIGON 52 L.L.C.'s motion (seq. no. 004) is dismissed without prejudice, in part, to the extent it seeks an order of as to the fourth cause of action (breach of the guaranty); it is further

ORDERED that plaintiff TRIGON 52 L.L.C.'s motion (seq. no. 004) to dismiss defendants' SDKD ENTERPRISES, INC. and SANJIV CHAND affirmative defenses, is granted, in part, to the extent that defendants' affirmative defenses numbered fifth, seventh,

eighth, ninth, tenth, eleventh, twelfth, fifteenth and sixteenth are dismissed; it is further

ORDERED that plaintiff TRIGON 52 L.L.C.'s motion (seq. no. 004) to dismiss the affirmative defenses of defendants SDKD ENTERPRISES, INC. and SANJIV CHAND is otherwise denied; it is further

ORDERED that plaintiff TRIGON 52 L.L.C shall serve defendants SDKD ENTERPRISES, INC. and SANJIV CHAND with notice of entry within ten days from the date of this decision and order; and it is further

ORDERED that this matter is scheduled for a preliminary conference on August 20, 2025, at 10:30 A.M. in Part 42M at 111 Centre Street, Courtroom 574.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

6/26/25
DATE

Emily Morales-Minerva

EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE