

104 W. 27th St. LLC v PWA Operations LLC

2025 NY Slip Op 33100(U)

August 14, 2025

Supreme Court, New York County

Docket Number: Index No. 651984/2022

Judge: Arlene P. Bluth

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

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

104 WEST 27TH STREET LLC,

Plaintiff,

- v -

PWA OPERATIONS LLC, BROCK LEACH,

Defendants.

-----X

INDEX NO. 651984/2022

MOTION DATE 08/11/2025

MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191 were read on this motion to/for SUMMARY JUDGMENT.

Plaintiff’s motion for summary judgment on liability with respect to its affirmative claims and to dismiss defendants’ counterclaims is granted.

Background

In this landlord-tenant action, plaintiff (the landlord) seeks to recover against PWA Operations LLC (the “tenant”) and defendant Leach (the “guarantor”). Plaintiff insists that the tenant stopped paying rent and additional rent two years into the parties’ ten-year lease. It alleges that the tenant also breached the lease by failing to obtain city approval for a construction project, failing to get sign offs for an alteration application and failing to obtain a Certificate of Occupancy for the Premises.

Plaintiff contends that the subject lease was signed on April 30, 2020 and the tenant was to run a “high-end dog hotel,” the same business run in the premises by the prior tenant. It argues

that it agreed to charge tenant a “below-market” rent for the first seventeen months of lease but that the tenant stopped paying rent by January 2022.

Plaintiff observes that as this seventeen-month discount period was about to end, the tenant began citing purported justifications for not paying the rent that dated back months. It points to a March 1, 2022 notice from the tenant that cited to water intrusions from August to September of 2021. Plaintiff points to a March 29, 2022 notice sent to the tenant that discussed the tenant’s share of the real estate taxes but that the tenant refused to pay. It observes that the tenant announced it was closing its operations on May 5, 2022 and that the tenant and the tenant had not paid anything after January 2022.

Plaintiff brings fourteen causes of action all arising out of the tenant’s failure to make payments under the lease; this includes unpaid fees for items such as sprinkler charges, electrical repair, and HVAC repair.

In opposition, defendants stress that they do not dispute there was a valid lease or a guaranty. They contend that after a mutual exchange of notices of alleged defaults, the tenant gave up possession of the premises on May 5, 2022. Defendants argue that plaintiff violated various terms of the lease arising out of the water infiltration and damage. They argue that plaintiff’s insistence that any water issues were resolved is contradicted by an engineer’s report from March 2022.

Defendants maintain that any liability against defendant Leach, the guarantor, should be limited to May 5, 2022 as he signed a limited guaranty in connection with the lease. They point to Article 9 of the lease which provides that only a proportion of the lease need be paid where the premises are “totally damaged” or “rendered wholly unusable by fire or other casualty.” Defendants contend that defendant Leach sent a letter to plaintiff on December 6, 2021

complaining about flooding and sewage backups. They argue that these issues created a health and safety issue for the animals in the premises (defendants ran a pet hotel).

Defendants point to a report generated by a renovation company hired by plaintiff to inspect the water issues (NYSCEF Doc. No. 141). This report, dated February 11, 2022, from Royal Renovators, suggests that plaintiff's building is experiencing a leak into the foundation likely from the neighboring property's waterfall fountain (*id.*). Another report from a few days later completed by another inspector made a similar conclusion about the source of the leak (NYSCEF Doc. No. 142). Defendants question whether or not the fountain was actually turned off in February 2022, as plaintiff alleges, and point to another report finding that there was water damage in March 2022. Defendants argue that plaintiff had a duty to inform defendant Leach that the water leak was resolved and that plaintiff never did this.

In reply, plaintiff argues that the alleged water infiltrations do not constitute a casualty sufficient to justify the tenant's failure to pay rent starting in January 2022. It stresses that defendants did not specifically address their counterclaims or affirmative defenses and so these should be severed and dismissed.

With respect to the guaranty, plaintiff argues that defendant Leach failed to satisfy the preconditions for the limited guaranty. It insists that defendants did not leave the premises in broom clean condition as required by the lease and that they were not up to date with rent payments at the time the tenant vacated the premises—payments stopped in January 2022 and the tenant left in May 2022.

Discussion

As an initial matter, the Court grants the motion with respect to the relief requested against the tenant. The opposition suggests that the tenant has ceased all operations, has no

individuals working for it and that counsel's efforts to contact the current tenant's ownership have been unsuccessful (*see* NYSCEF Doc. No. 185, n 1 [noting also that there is no evidence that the tenant has declared bankruptcy]). In other words, it appears that the opposition is asserted largely on behalf of only defendant Leach (*id.* at 10 [the signature block for the memo of law identifies attorneys for "Defendant Brock Leach" only]).

Therefore, because the tenant is liable, the only question is whether plaintiff is entitled to summary judgment on liability as against the guarantor defendant Leach.

The guaranty provides that Mr. Leach "guarantees to the Landlord the payment of all the rent and additional rent payable by Tenant under the Lease ("Accrued Rent") up to the Surrender Date" (NYSCEF Doc. No. 129, ¶ 1). The Surrender Date is defined as:

"the date that Tenant shall have performed all of the following: (A) vacated and surrendered the demised premises to Landlord void of all subleases, licensees or other occupants, broom clean and otherwise in the condition required for the surrender of the demises premises at the end of the terms as set forth in the Lease and paid all fixed annual rent, additional rent and other charges up to and including the Surrender Date and (B) given six (6) months written notice to Landlord by certified mail, return receipt requested that it is surrendering possession of the premises and (C) delivered to Landlord a valid, legally binding and fully enforceable acknowledgment confirming the foregoing in form and substance satisfactory to Landlord" (*id.* ¶ 3).

On this record, there is no dispute that the Tenant stopped paying the rent in January 2022 and the alleged surrender date was May 5, 2022. On that day, defendant Leach sent an email announcing that the business was going to close permanently that same day due to "the facility's condition and poor post-covid rebound in New York City" (NYSCEF Doc. No. 167). It is beyond any dispute that the defendants failed to comply with the terms of the guaranty such that defendant Leach is entitled to a limitation of liability of unpaid rent starting on May 5, 2022. The guaranty makes expressly clear that the limited guaranty was only available where the tenant

has paid all rent and charges up until the surrender date. That did not happen; moreover, there was no evidence that any of the other requirements, such as the six-month notice, was satisfied.

Defendants' other central contention concerns the leak. "When a guarantor is sued on the guaranty, as is the case here, he or she cannot raise a claim or defense which is personal to the principal debtor, such as breach of the principal contract, unless it extends to a failure of consideration for the principal contract, and therefore for the guarantor's contract" (*I Bldg, Inc. v Hong Mei Cheung*, 137 AD3d 478, 26 NYS3d 463(Mem) [1st Dept 2016]). Because the tenant has seemingly abandoned its claims, defendant Leach cannot avail himself of defenses that are personal to the tenant as a way to avoid his obligations under the lease.

Even if the Court were to consider these claims, the Court would still grant plaintiff's motion. The Court has little doubt that there was some level of water intrusion into the subject premises, as evidenced by the deposition of Mr. Marvin Davis for plaintiff. He testified that plaintiff hired a water remediation company to look into the leak and that it was determined that the leak was coming from the fountain located in a neighboring property (NYSCEF Doc. No. 155 at 88). "We got in touch with the building next door. They discontinued the use of the fountain. They then took apart the entire fountain and then waterproofed the area and rebuilt—they took apart the entire fountain" (*id.*). Mr. Davis added that the fountain was discontinued (*id.*). Defendants' main argument is that the leak constituted a casualty such that rent was not due pursuant to Article 9 of the lease. This section provides, in relevant part that:

"(a) If the demised premises or any part thereof shall be damaged by fire or other casualty, Tenant shall give immediate notice thereof to Owner, this lease shall continue in full force and effect except as hereinafter set forth. (b) If the demised premises are partially damaged or rendered partially unusable by fire or other casualty, the damages thereto shall be repaired by and at the expense of Owner, and the rent and other items of additional rent, until such repair shall be substantially completed, shall be apportioned from the day following the casualty, according to the part of the demised premises which is usable. (c) If the demised premises are

totally damaged or rendered wholly unusable by fire or other casualty, then the rent and other items of additional rent, as hereinafter expressly provided, shall be proportionately paid up to the time of the casualty, and thenceforth shall cease until the date when the demised premises shall have been repaired and restored by Owner (or sooner reoccupied in part by the Tenant then rent shall be apportioned as provided in subsection (b) above), subject to Owner's right to elect not to restore the same as hereinafter provided” (NYSCEF Doc. No. 128, ¶ 9).

The Appellate Division, First Department has opined that a “casualty” as defined in this type of lease provision “clearly evidences a sudden damage-causing event like a fire” but “did not release the tenant from rent obligations based on leaks and flooding, which happened on a regular basis” (*Andreas v 186 Tenants Corp.*, 208 AD3d 406, 408, 174 NYS3d 58 [1st Dept 2022]). In other words, in order for a tenant to avail itself of a claim for proportional or reduced rent under a “casualty” provision, the tenant had to show a sudden and unexpected event. Repeated water intrusions, like the ones at issue here, do not qualify and therefore there is no basis to invoke Article 9 of the lease. The Court emphasizes that Article 4 of the lease (concerning repairs) provides that “Except as specifically provided in Article 9 or elsewhere in this lease, there shall be no allowance to the Tenant for the diminution of rental value and no liability on the part of Owner by reason of inconvenience, annoyance or injury to business arising from Owner, Tenant or others, making or failing to make any repairs” (NYSCEF Doc. No. 128, ¶ 4).

The Court observes that defendants’ papers did not address their counterclaims at all—there is a single reference to “counterclaims” and no specific references to the individual counterclaims alleged in the answer. Therefore, the Court severs and dismisses the counterclaims as defendants failed to make any arguments in support of these claims.

Summary

The record on this motion certainly shows that there were leaks, possibly even significant leaks in the premises—plaintiff’s witness admitted as much at his deposition. The problem is that these leaks did not constitute a “casualty” as this term has been defined sufficient to justify the non-payment of rent. And, as noted above, the lease had very specific requirements in order for defendant Leach to take advantage of the guaranty’s limitations on liability. The record shows that defendants did not comply with any of those obligations and so, technically, there still has not been a valid surrender to cut off Mr. Leach’s liability. Specifically, defendants were not up-to-date in terms of payments when defendants purported to surrender the premises in May 2022 nor did they provide the requisite notice. Plaintiff is therefore entitled to summary judgment against defendant Leach based on the guaranty, which includes reasonable legal fees.

Accordingly, it is hereby

ORDERED that plaintiff’s motion for summary judgment on liability and to sever and dismiss defendants’ counterclaims is granted.



8/14/2025
DATE

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