

304 E. 20th St. LLC v Granite

2025 NY Slip Op 33104(U)

July 24, 2025

Supreme Court, New York County

Docket Number: Index No. 653501/2022

Judge: Nicholas W. Moyne

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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. NICHOLAS W. MOYNE PART 41M

Justice

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304 EAST 20TH STREET LLC,

Plaintiff,

- v -

IRINA NANCA GRANITE, THOMAS GRANITE

Defendant.

-----X

INDEX NO. 653501/2022

MOTION DATE 04/22/2024, 11/25/2024

MOTION SEQ. NO. 002 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 42

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER

The following e-filed documents, listed by NYSCEF document number (Motion 003) 43, 44, 45, 46

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Upon the foregoing documents, it is

Plaintiff, 304 East 20th Street LLC, commenced this action against Defendants, Irina Nanca Granite ("Irina") and Thomas Granite ("Thomas"), for breach of lease agreement by failing to make lease payments on and between April 1, 2021 through August 1, 2022, the latter date when Irina vacated the premises, for breach of the guarantor rider to the lease agreement, and attorney fees and disbursements, in the amount of \$59,500 for the breaches of contract and in the amount to be determined by this Court at trial for attorney fees and disbursements. Plaintiff now moves this Court to vacate the Order (NYSCEF Doc No. 42) dated and filed October 28, 2024, which dismissed this action as abandoned, restore Plaintiff's motion (motion seq. 002) to renew to the calendar, and to award such other and further relief that this Court deems just and proper. For the following reasons, the motion is granted.

On March 21, 2024, the Court denied, in part, Plaintiff's motion for summary judgment against Defendant Thomas without prejudice to renew on a proper showing that the lease that was the basis for the guarantee was extended (NYSCEF Doc No. 26, decision and order on motion seq. 001). Pursuant to CPLR § 2221 (e) and § 3212, Plaintiff moved this court to renew that part of its prior motion for summary judgment and, upon such renewal, to grant summary judgment in favor of Plaintiff and against Defendant in the amount of \$59,500.00, plus interest from October 1, 2021 (NYSCEF Doc No. 28, notice of motion seq. 002). Plaintiff had fully briefed the Court on motion seq. 002 (see NYSCEF Doc Nos. 28-39), including documents showing that the lease that was the basis for the guarantee was extended (see NYSCEF Doc Nos. 29, 36).

Defendant failed to submit any opposition papers to the motion before the motion hearing date on May 16, 2024. On May 16, 2024, the parties stipulated and agreed that, at Defendant Thomas' request, the opposition to motion seq. 002 was to be filed on or before May 30, 2024, the reply to Defendant Thomas' opposition was to be filed on or before June 6, 2024, and the motion would be returnable on June 13, 2024, for submission (NYSCEF Doc No. 41). Again, Defendant failed to submit opposition papers by the deadline on May 30, 2024. Therefore, Plaintiff did not submit any reply papers by the deadline on June 6, 2024. No further action was taken on the case until, on October 28, 2024, when the Court ordered that the action be dismissed as abandoned because the stipulated briefing schedule had not been adhered to (NYSCEF Doc No. 42).

A court which rendered a judgment or order may relieve a party from it upon such terms as may be just, on motion of any interested person with such notice as the court may direct, upon the ground of excusable default, if such motion is made within one year after service of a copy of the judgment or order with written notice of its entry upon the moving party, or, if the moving party has entered the judgment or order, within one year after such entry (see CPLR § 5015[a][1]). "Upon an application satisfying the requirements of subdivision (d) of section 3012 or subdivision (a) of rule 5015, the court shall not, as a matter of law, be precluded from exercising its discretion in the interests of justice to excuse delay or default resulting from law office failure" (CPLR § 2005).

Plaintiff has demonstrated that they are entitled to vacatur of the decision, order, and judgment denying motion sequence 002 and dismissing the action. Plaintiff argues that they did not neglect the case, and the delay was "the result of affording Defendant an opportunity to cure the default in opposing the motion" (NYSCEF Doc No. 44 ¶ 6). The Court finds this to be a justifiable excuse for the delay. Furthermore, Plaintiff had done what they needed to do on the motion, it was Defendant's failure to file any opposition, even after having been afforded additional time, which occasioned the delay. The public policy of this state favors disposition on the merits (*Home Ins. Co. v Meyers Parking Sys., Inc.*, 186 AD2d 497, 498 [1st Dept 1992]). Furthermore, "the record does not otherwise contain evidence of a pattern of persistent neglect or delay in prosecuting the action or an intent to abandon the action" *Holness v Gigglesworld Corp.*, 233 AD3d 661, 663 [2nd Dept 2024]).

Plaintiff also has a meritorious cause of action for breach of the lease agreement and for breach of the guaranty. Plaintiff submitted evidence of the lease agreement (NYSCEF Doc No. 35), the guarantor rider of the lease agreement (NYSCEF Doc No. 37), the extension of the lease agreement (NYSCEF Doc No. 36), and an affidavit made by Jason Harounian, managing agent for the Plaintiff (NYSCEF Doc No. 29) in support of Plaintiff's motion to renew and to grant summary judgment in its favor (see NYSCEF Doc No. 28). Therefore, the decision and order to dismiss the action as abandoned (NYSCEF Doc No. 42) is vacated and Plaintiff's motion, motion sequence 002 (NYSCEF Doc No. 28 et. seq.), is restored.

Upon restoring Plaintiff's motion, the Court grants Plaintiff's motion for leave to renew, and upon such renewal, grants summary judgment against Defendant Thomas Granite in the amount of \$59,500 plus interest from October 1, 2021. The decision and

order which denied Plaintiff's summary judgment motion (motion seq. 001) as to defendant Thomas Granite was denied with leave to renew on a proper showing that the lease that was the basis for the guarantee was extended. Plaintiff has demonstrated that the lease that was the basis for the guarantee was extended. Plaintiff submitted an affidavit made by Plaintiff's managing agent stating that the lease was extended to a term ending on January 31, 2021 (NYSCEF Doc No. 29 at 3 ¶ 14) and that the guaranty applied to the lease and to any lease extensions (*id.* at 4 ¶¶ 19-20). Plaintiff also submitted the lease (NYSCEF Doc No. 35), the extension of the lease (NYSCEF Doc No. 36), and the guarantor rider (NYSCEF Doc No. 37), which states in relevant part, "[t]he Guarantor further agrees that his guaranty shall remain in full effect for this lease and each subsequent renewal lease through the next seven calendar years beginning from initial lease commencement date and even if the Lease is renewed, changed or extended in any way and even if owner has to make a claim against Guarantor" (*id.*). Accordingly, Plaintiff has established prima facie entitlement to judgment as a matter of law, the Defendant has failed to oppose the motion or raise any triable issue of fact. Accordingly, the motion is granted.

For the reasons set forth herein above, it is hereby

ORDERED that the Plaintiff's motion to vacate the decision and order of this court dated October 28, 2024 (NYSCEF Doc. No. 42) is GRANTED, and said order is vacated; and it is further

ORDERED that Plaintiff's motion to renew (motion sequence 002) is restored; and it is further

ORDERED that Plaintiff's motion to renew (motion sequence 002) is granted; and it is further

ORDERED that, upon renewal, the plaintiff's motion for summary judgment against defendant Thomas Granite is granted; and it is further

ORDERED and ADJUDGED that the plaintiff is to serve a copy of this order with notice of entry upon the Office of the County Clerk, who is directed to enter judgment in favor of plaintiff, 304 East 20th Street LLC, and against defendant, Thomas Granite, in the amount of \$59,500, plus interest at the rate of 9% per annum from the date of October 1, 2021, and costs and disbursements, as taxed by the Clerk of the Court upon the submission of proper proof thereof; and it is further


ORDERED and ADJUDGED that the liability of defendant Thomas Granite shall be joint and several with the liability of defendant Irina Nanca Granite, which was previously granted pursuant to the decision and order of this court dated March 21, 2024; and it is further

ORDERED that plaintiff shall submit judgment directly to the Clerk of the Court, not chambers or the Part, unless otherwise directed by the Clerk of the Court; and it is further

ORDERED that any such service upon the Clerk of the Court 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 "efiling" page on this court's website).

This constitutes the decision and order of the court.

Motion Sequence 002



7/24/2025
DATE


NICHOLAS W. MOYNE, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED SETTLE ORDER GRANTED IN PART OTHER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE

Motion Sequence 003



7/24/2025
DATE

NICHOLAS W. MOYNE, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED SETTLE ORDER GRANTED IN PART OTHER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE