

Hil Realty Co. LLC v Joo Hwan Han

2025 NY Slip Op 33127(U)

August 14, 2025

Supreme Court, New York County

Docket Number: Index No. 651484/2025

Judge: Leslie A. Stroth

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH PART 12M

Justice

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HIL REALTY CO. LLC

Plaintiff,

- v -

JOO HWAN HAN,

Defendant.

-----X

INDEX NO. 651484/2025

MOTION DATE 06/29/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 14, 15, 16, 17, 18, 19, 23, 24, 25, 26, 27

were read on this motion to/for SUMMARY JUDGMENT(BEFORE JOIND)

FACTUAL BACKGROUND

Plaintiff Hil Realty Co. LLC ("Plaintiff" or "Hil") moves, pursuant to CPLR 3213, for summary judgment in lieu of complaint against Defendant Joo Hwan Han ("Defendant" or "Guarantor") to recover amounts due under an absolute and unconditional personal guaranty executed on October 17, 2011, securing a commercial lease between Plaintiff and Tenant Hans Family Fruit & Vegetable Inc. a/k/a Hans Fruit & Vegetables Inc. d/b/a Han's Family Market ("Tenant") for premises located at 2501 Broadway a/k/a 251 West 93rd Street, New York, New York.

Under the Lease, Tenant agreed to pay rent and additional rent. The Guaranty obligated Defendant to pay all amounts owed by Tenant. Plaintiff alleges that Tenant defaulted under the Lease, that Plaintiff obtained possession after stipulation in a prior nonpayment proceeding, and that as of surrender on June 13, 2024, \$479,750.00 remained due and owing.

Plaintiff submits the Guaranty, Lease, rent ledger, and an affidavit of nonpayment from its member, Jason Snow, as proof of the underlying debt.

LEGAL STANDARD

“Pursuant to CPLR 3213, when an action is based upon an instrument for the payment of money only or upon any judgment, the plaintiff may serve with the summons a notice of motion for summary judgment and the supporting papers in lieu of a complaint” (*Kitchen Winners NY, Inc. v Triptow*, 226 AD3d 989, 990-91 [2d Dept 2024], quoting *Cooperative Centrale Raiffeisen-Boerenleenbank, B.A., “Rabobank Intl.,” N.Y. Branch v Navarro*, 25 NY3d 485, 491 [2015] [internal quotation marks omitted]). “To meet its prima facie burden on its summary judgment motion, [the movant] must prove the existence of the guaranty, the underlying debt and the guarantor's failure to perform under the guaranty.” (*Cooperative Centrale Raiffeisen-Boerenleenbank, B.A. v Navarro*, 25 NY3d 485, 492 [2015]).

DISCUSSION

Plaintiff has satisfied its prima facie entitlement to summary judgment by submitting proof of the guaranty, the underlying debt and nonperformance. First, as to the guaranty, Plaintiff submits a duly executed, absolute, and unconditional personal guaranty signed by Defendant on October 17, 2011, obligating him to pay all sums owed by the Tenant under the Lease. Next, as to the underlying debt, Plaintiff submits documentary proof, including the Lease, rent ledger, and affidavit of Jason Snow, showing that as of Tenant's surrender on June 13, 2024, \$479,750.00 in unpaid rent and additional rent remained outstanding. Finally, as to nonperformance, the Snow affidavit attests that Defendant has failed to remit any portion of the outstanding balance despite demand even though demand was not required under the Guaranty.

This evidence establishes an instrument for the payment of money only and nonpayment thereunder, satisfying CPLR 3213's requirements (*See Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A.*, 25 NY3d 485).

As to the issues remaining related to the timeliness of Defendant's opposition. Defendant's opposition was filed three weeks after the Court-marked submission date without leave and is therefore untimely. Even if considered, the affidavit fails to raise a triable issue of fact. The alleged 2021 oral agreement to accept partial payments and "forgive" the balance is unsupported by any writing, sworn third-party statement, or documentary proof; barred by the statute of frauds (General Obligations Law § 15-301[1]); and precluded by the Guaranty's explicit waiver of defenses and survival clause, which render Defendant liable notwithstanding any lease modifications.

The accountant's ledger annexed to Defendant's affidavit is unsworn hearsay and, even if considered, merely reflects alleged payments without negating the existence or amount of the underlying debt. Self-serving assertions without corroboration are insufficient to defeat summary judgment (*See Spaulding v Benenati*, 57 NY2d 418, 425 [1982]). Accordingly, even if this Court were to consider Defendants late filed opposition, the Court nonetheless finds summary judgment appropriate.

Plaintiff has proven the existence of the Guaranty, the underlying indebtedness, and Defendant's failure to perform. Defendant has not presented admissible evidence raising a triable issue of fact. Summary judgment in lieu of complaint is therefore warranted.

The court has considered the remaining arguments of the parties and finds such unavailing.

Accordingly; it is hereby

ORDERED that Plaintiff's motion for summary judgment in lieu of complaint is granted; and it is further

ADJUDGED and ORDERED that the Clerk of the Court is directed to enter judgment in favor of Plaintiff Hil Realty Co. LLC, and against Defendant Joo Hwan Han, in the principal amount of \$479,750.00, plus annualized interest at the statutory rate accruing from June 13, 2024, late fees and costs and disbursements related to this action, including from and after entry of judgment;

ORDERED that Plaintiffs shall serve a copy of this Order with Notice of Entry upon Defendants, within thirty (30) days of the date of entry.

8/14/2025
DATE

CHECK ONE:

CASE DISPOSED

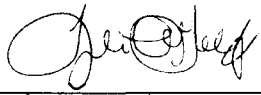
GRANTED DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN



HON. LESLIE A. STROTH
J.S.C.

NON-FINAL DISPOSITION

GRANTED IN PART OTHER

SUBMIT ORDER

FIDUCIARY APPOINTMENT REFERENCE