

CREP Dallas Hotels LLC v Collier

2025 NY Slip Op 33215(U)

August 26, 2025

Supreme Court, New York County

Docket Number: Index No. 651637/2024

Judge: Anar R. Patel

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 45

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CREP DALLAS HOTELS LLC,

INDEX NO. 651637/2024

Plaintiff,

MOTION
DATE 07/07/2025

- v -

MICHAEL COLLIER,

MOTION SEQ.
NO. 002

Defendant.

**DECISION + ORDER ON
MOTION**

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HON. ANAR RATHOD PATEL:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 46-65 were read on this motion for SUMMARY JUDGMENT.

Plaintiff CREP Dallas Hotels LLC, (“Plaintiff” or “CREP”) moves for summary judgment pursuant to CPLR § 3212 against Defendant Michael Collier (“Defendant” or “Collier”) in its favor on each count alleged in the Complaint. Plaintiff commenced this action with the filing of the Summons and Complaint on March 29, 2024. NYSCEF Doc. No. 1 (Summons and Complaint). The Complaint asserts four causes of action: (1) breach of Recourse Guaranty; (2) breach of Carry Costs Guaranty; (3) breach of PIP Completion Guaranty; and (4) attorneys’ fees and costs pursuant to Section 1.8 of the Recourse Guaranty, Section 1.8 of the Carry Costs Guaranty, and Section 1.5 of the PIP Completion Guaranty. Defendant filed his Answer on June 21, 2024. NYSCEF Doc. No. 8 (“Answer”). Note of Issue was filed on May 23, 2025. NYSCEF Doc. No. 42 (Note of Issue).

Plaintiff filed the present motion on July 7, 2025. The return date on the motion was July 27, 2025. Defendant, now appearing *pro se*, has not filed any opposition in response to this motion, despite having been served with the Notice of Motion and related documents. *See* NYSCEF Doc. Nos. 63, 64 (Affidavits of Service). For the reasons discussed below, and even setting aside Defendant’s lack of opposition, Plaintiff’s motion is granted.

Relevant Factual and Procedural Background

This action arises out of a commercial real estate loan (the “Loan”) pursuant to the Loan Agreement dated May 3, 2022, executed by Plaintiff as lender to Defendant’s company, HC Dallas LLC (“Borrower”), in the original principal amount of \$23,750,000. The Loan was secured by Defendant’s property, known as the Holiday Inn Dallas Market Center. NYSCEF Doc. No. 52 at 2 (“Loan”). The Loan Agreement imposes various obligations upon the Borrower, the breach of which may trigger Defendant’s liability as guarantor.

Defendant, acting as Guarantor, executed three supplemental guaranties in connection with the Loan (collectively, “Guaranties”). First, Defendant executed a Recourse Guaranty, whereby Defendant accepted complete and unconditional liability for all Borrower Recourse Liabilities. NYSCEF Doc. No. 53 (“Recourse Guaranty”). The Recourse Guaranty defines “Guaranteed Obligations” as “collectively, (a) the payment of all Borrower Recourse Liabilities under Section 17.1(a) of the Loan Agreement, and (b) the payment of the full amount of the Debt upon the occurrence of any Springing Recourse Event under Section 17.1(b) of the Loan Agreement. ...” *Id.* at § 1.2. Section 17.1(b) of the Loan defines “Springing Recourse Events.” The Recourse Guaranty also renders Defendant “absolutely, unconditionally, and irrevocably liable for full repayment of the Borrower’s Loan” upon the occurrence of any Springing Recourse Event. *Id.* at § 1.1.

Second, Defendant executed a Carry Costs Guaranty, whereby Defendant “absolutely, unconditionally, and irrevocably guarantees for the benefit of the Lender the payment and performance of the Guaranteed Obligations as and when the Guaranteed Obligations are due and payable” and Collier “absolutely, unconditionally, and irrevocably covenants and agrees that he is fully and individually liable for the Guaranteed Obligations as a primary obligor.” NYSCEF Doc. No. 54 (“Carry Costs Guaranty”) at § 1.1. The Guaranteed Obligations are defined at Section 1.2, and include all Impositions, Insurance Premiums, Operating Expenses, and interest on the unpaid Loan Principal.

Third, Defendant executed a PIP Guaranty, whereby Defendant accepted complete and unconditional liability for all costs to complete the required PIP Improvements, including converting the Holiday Inn into a Holiday Inn Express, and ensuring the property remained free of all related liens. Defendant “absolutely, unconditionally, and irrevocably guarantees for the benefit of the Lender the payment and performance of the Guaranteed Obligations as and when the Guaranteed Obligations are due and payable” and Collier “absolutely, unconditionally, and irrevocably covenants and agrees that he is fully and individually liable for the Guaranteed Obligations as a primary obligor.” NYSCEF Doc. No. 55 (“PIP Guaranty”) at § 1.1. The Guaranteed Obligations are defined at Section 1.2, and include all costs to complete the required PIP Improvements and to keep the property free of related liens, and reimbursement of Plaintiff’s out-of-pocket enforcement expenses.

In or around 2023, the Borrower defaulted on its obligations under the Loan and, despite receiving notices of default, the Borrower and Defendant failed to cure the defaults. Specifically, Plaintiff alleges five defaults occurred and are continuing. Compl. at ¶¶ 13–40. Plaintiff issued Borrower and Defendant a Notice of Default on August 19, 2022, and a Notice of Continuing Default providing additional notice of the defaults on September 19, 2022. Additional Notices of Default were sent to Defendant on June 23, 2023, and August 10, 2023. Demand Letters were sent thereafter to Defendant on August 17, 2023 and September 29, 2023. All notices invoked Plaintiff’s right to accelerate and demand payment of the entire Loan, as well as commence a foreclosure action on the collateral property. NYSCEF Doc. No. 56 (“Notices”).

As of July 1, 2025, Plaintiff calculates the Borrower’s total outstanding debt as \$11,379,261.85, and *per diem* total interest rate on each day after July 1, 2025, as \$6,791.96.

NYSCEF Doc. No. 51 (Flurry Aff.) at ¶¶ 18, 19. To date, neither Borrower nor Defendant has paid the outstanding debt or interest owed. In connection with the Guaranties, Plaintiff states it has incurred \$1,779,205.92 in unpaid sums under the Carry Costs Guaranty and \$343,868.47 under the PIP Guaranty. To date, Defendant has not paid any sums due and owing under the Guaranties. *Id.* at ¶ 24. Further, Plaintiff continues to incur costs and expenses, including attorneys' fees. *Id.* at ¶ 25.

Legal Discussion

Under CPLR § 3212, “the proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact.” *Alvarez v Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986). Once the movant has made such a showing, the burden shifts to the opposing party to demonstrate, with admissible evidence, facts sufficient to require a trial, or summary judgment will be granted. *See Winegrad v New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985). “[S]ummary judgment may be granted as to one or more causes of action, or part thereof, in favor of any one or more parties, to the extent warranted, on such terms as may be just.” CPLR 3212(e). Here, Defendant has filed no opposition to the instant motion and has not proffered any evidence to raise a triable issue of fact that may otherwise preclude a finding of summary judgment in Plaintiff's favor.

Plaintiff has satisfied its *prima facie* burden for enforcing the Guaranties by submitting: (i) the underlying Loan executed on May 3, 2022, whereby Plaintiff loaned \$23,750,000 to Borrower, with Defendant's property as collateral (NYSCEF Doc. No. 52); (ii) the Recourse Guaranty, the Carry Costs Guaranty, and the PIP Completion Guaranty, whereby Defendant obligated himself to perform absolutely and unconditionally (NYSCEF Doc. Nos. 53, 54, 55); (iii) Notices of Default demonstrating that Defendant was informed of his breach (NYSCEF Doc. No. 56); and (iv) affirmation of Defendant's failure to satisfy his obligations under the Guaranties (NYSCEF Doc. No. 51). *Davimos v. Halle*, 35 A.D.3d 270, 272 (1st Dept. 2006); *See City of New York v. Clarose Cinema Corp.*, 256 A.D.2d 69, 71 (1st Dept. 1998).

Plaintiff provides support and calculations for the interest and fees owed, including the acceleration clause under Section 17.1(b) of the Loan, which states that “the Debt will be fully recourse to the Borrower if any of the following events occur,” and identification of the relevant Springing Recourse Events. In addition, Plaintiff substantiates its entitlement to attorneys' fees with reference to the specific sections of the Guaranties, wherein Defendant agrees to pay for all out-of-pocket costs, including court costs and reasonable attorneys' fees. Finally, Plaintiff attributes the damages amount owed to each cause of action, and has requested an inquest to determine the appropriate amount of damages under Count III for breach of the PIP Completion Guaranty, and leave to submit a calculation of its attorneys' fees and other expenses incurred as to Count IV.

Upon the foregoing, Plaintiff has established that it is entitled to summary judgment in its favor as to each of the four causes of action in the Complaint because Defendant has failed to pay the amounts due and owing under the Recourse Guaranty, Carry Costs Guaranty, and PIP Guaranty.

Accordingly, it is hereby

ORDERED that Plaintiff CREP Dallas Hotels LLC's Motion for Summary Judgment in its favor as to Counts I, II, III, and IV against Defendant Michael Collier is GRANTED; and it is further

ORDERED that Plaintiff shall file a proposed judgment on NYSCEF consistent with this Decision and Order within seven (7) days of the e-filing of this Decision and Order on notice to Defendant; and it is further

ORDERED that the inquest into Plaintiff's damages as to Count III and attorneys' fees and costs as to Count IV is referred to a Judicial Hearing Officer ("JHO") or Special Referee; and it is further

ORDERED that a JHO or Special Referee shall be designated to hear and report to this Court on the amount of the damages as to Count III of the Complaint and attorneys' fees and costs as to Count IV of the Complaint in this action, which is hereby submitted to the JHO/Special Referee for such purpose; except that, in the event and upon filing a stipulation of the parties as permitted by CPLR § 4317, the JHO/Special Referee shall determine aforesaid issues; and it is further

ORDERED that counsel for Plaintiff shall serve a copy of this Decision and Order with Notice of Entry and a completed Information Sheet, upon the Special Referee Clerk in the General Clerk's Office (Room 119), within fifteen (15) days of this e-filing of this Decision and Order; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (spref@nycourts.gov, Room 119 or 646-386-3028) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/supctmanh at the "References" link), shall assign this matter at the initial appearance to an available JHO/Special Referee to hear and report as specified above; and it is further

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ORDERED that counsel for Plaintiff is directed to serve a copy of this Decision and Order together with Notice of Entry upon Defendant and the Clerk of Court within seven (7) days of the e-filing of this Decision and Order.

The foregoing constitutes the decision and order of this Court.

8/26/2025
DATE


ANAR R. PATEL, A.J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input checked="" type="checkbox"/>	REFERENCE