

Realties 1430 v Schwartz

2025 NY Slip Op 33216(U)

August 26, 2025

Supreme Court, New York County

Docket Number: Index No. 651817/2024

Judge: Leslie A. Stroth

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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. LESLIE A. STROTH PART 12M

Justice

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REALTIES 1430

Plaintiff,

- v -

ELCHONON SCHWARTZ,

Defendant.

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INDEX NO. 651817/2024

MOTION DATE 06/30/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

FACTUAL BACKGROUND

Plaintiff Realities 1430 alleges that it is the landlord under a commercial lease agreement originally executed on April 27, 2007, with tenant Nightingale Properties LLC (“Nightingale”) for office premises located at 1430 Broadway, New York, New York. Plaintiff further alleges that the Lease was subsequently modified on three separate occasions to extend the term through April 30, 2027 and to expand the premises covered.

According to Plaintiff, in connection with the Lease, defendant Elchonon Schwartz executed a Limited Guaranty dated April 27, 2007, in which he agreed to absolutely and unconditionally guarantee payment of all amounts due under the Lease, including rent, additional rent, and related charges, regardless of any amendment or modification. Plaintiff alleges that Defendant reaffirmed this Guaranty at each modification of the Lease.

Plaintiff contends that Nightingale defaulted on its Lease obligations as of April 1, 2024, by failing to pay rent and other charges such as utilities, real estate taxes, and rubbish removal

fees. Plaintiff claims that the total arrears as of that date were \$339,037.33, and that after applying a security deposit in the amount of \$91,330.05, the balance due is \$247,707.28.

Plaintiff commenced this action on April 8, 2024, and alleges that it properly served Defendant in July and September 2024. Defendant interposed an Answer on November 20, 2024. Plaintiff now moves pursuant to CPLR 3212 for summary judgment against Defendant, asserting that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law for \$247,707.28, together with prejudgment interest, attorneys' fees, and costs.

LEGAL STANDARD

The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 323 [1986]). Once a party has submitted competent proof demonstrating that there is no substance to its opponent's claims and no disputed issues of fact, the opponent, in turn, is required to "lay bare [its] proof and come forward with some admissible proof that would require a trial of the material questions of fact on which [its] claims rest" (*Ferber v Sterndent Corp.*, 51 NY2d 782, 783 [1980]). The party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted (*See Dauman Displays, Inc. v Masturzo*, 168 AD2d 204, [1st Dept 1990]).

"On a motion for summary judgment to enforce a written guaranty, all that the creditor need prove is an absolute and unconditional guaranty, the underlying debt, and the guarantor's failure to perform under the guaranty" (*H.L. Realty, LLC v Edwards*, 131 AD3d 573, 574 [2015] [internal quotation marks omitted]). Moreover, "A guaranty is to be interpreted in the strictest manner." (*White Rose Food v Saleh*, 99 NY2d 589, 590 [2003]).

DISCUSSION

The Court finds that Plaintiff has satisfied its prima facie burden of entitlement to summary judgment as a matter of law. Plaintiff submitted competent proof demonstrating the existence of the Lease, the Lease Modification Agreements, the Limited Guaranty executed by Defendant Schwartz, and business records evidencing Tenant's default and resulting arrears.

First, Plaintiff has tendered evidence showing the absence of any material factual dispute regarding the validity and enforceability of the Guaranty. The Guaranty is expressly designated as "absolute and unconditional," and by its terms, Schwartz guaranteed the prompt payment and performance of all Lease obligations, including base rent, additional rent, and related charges, notwithstanding any modification of the Lease. As such, Plaintiff has demonstrated the existence of an absolute and unconditional guaranty.

Second, Plaintiff has submitted detailed rent ledgers and lease modification agreements demonstrating the underlying debt. The business records reflect consistent defaults in base rent, real estate tax escalations, utilities, and rubbish removal charges from August 2023 forward, with arrears exceeding \$150,000 by March 2024. These records constitute evidence of the debt owed. (NYSCEF Doc No. 22).

Third, Plaintiff has demonstrated Defendant's failure to perform under the Guaranty. Despite written demand, Schwartz has not satisfied the Tenant's obligations. This un rebutted failure to perform fulfills the final element under *H.L. Realty*. Defendant has failed to oppose the instant motion.


Accordingly, Plaintiff has proven (i) an absolute and unconditional guaranty, (ii) the underlying debt, and (iii) the guarantor's failure to perform, thereby establishing entitlement to summary judgment as a matter of law.

Accordingly, it is hereby

ORDERED that Plaintiff Realities 1430's motion for summary judgment pursuant to CPLR 3212 is granted in its entirety; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of Plaintiff Realities 1430 and against Defendant Elchonon Schwartz in the amount of \$247,707.28, together with costs, and disbursements related to this action.

The foregoing constitutes the decision and order of the Court.

8/26/2025 DATE					
	HON. LESLIE A. STROTH				
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	J.S.C.
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<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 type="checkbox"/> REFERENCE