OCFBrook Holdings, LLC v TKS Brooklyn Ctr. Holding, LLC

2025 NY Slip Op 33483(U)

September 17, 2025

Supreme Court, New York County

Docket Number: Index No. 154460/2024

Judge: Anar R. Patel

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

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OCFBROOK HOLDINGS, LLC,

Plaintiff,

-against-

TKS BROOKLYN CENTER HOLDING, LLC, TKS BROOKDALE MANAGER, LLC, TKS BROOKLYN CENTER LLC, SHAUL SPRUNG, BENJAMIN SCHLOSSBERG, BERNARD S. BERTRAM, SHELBORNE GLOBAL SOLUTIONS, LLC, JEFFREY AREM, and PLAINVIEW HEALTH LLC,

Defendants.

INDEX NO. 154460/2024

MOTION DATE 06/16/2025, 06/17/2025, 06/16/2025

MOTION SEQ. NO. 004 005 006

DECISION + ORDER ON MOTION

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HON. ANAR RATHOD PATEL:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 159–183, 202–204, 211, 214, 217, 222, 225, 243–294, 296, 301–305 were read on this motion to/for JUDGMENT – SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 205–210, 213, 215, 224, 226, 292, 295, 297, 298–300 were read on this motion to/for JUDGMENT – SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 184–201, 212, 216, 219, 223, 227–242, 306–308 were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

Relevant Factual and Procedural History

The Court incorporates by reference the recitation of facts, including defined terms, and procedural history set forth in its November 25, 2024 Decision and Order. NYSCEF Doc. Nos. 117–19 ("November 2024 Decision"). The Court sets forth additional relevant facts for purposes of the instant motions, which are consolidated herein for disposition.

As stated in the November 2024 Decision, this action arises from a dispute between the parties to the Loan Agreement, Guaranty, and Note securing the mortgage loan for a multi-tenant corporate office building known as Brookdale Corporate Center I and II in Brooklyn Center, Minnesota (Property). NYSCEF Doc. No. 161 (Compl.), Preliminary Statement. In his

affirmation,[1] Yisacher Feldberg, Chief Financial Officer of former Defendant Shelborne Global Solutions, LLC ("Shelbourne"), states that Shelbourne was a member of former Defendant TKS Brooklyn Center, LLC ("TKS Center"), which was the sole member of former Defendant TKS Brooklyn Center Holding, LLC ("Borrower"), and that Borrower was managed by former Defendant TKS Brookdale Manager LLC ("TKS Manager"). NYSCEF Doc. No. 170 (Feldberg Aff.), at ¶¶ 2, 3. Borrower acted through its sole member, former Defendant TKS Center, which was managed by former Defendant TKS Manager.

Feldberg further asserts that, by December 2022, Sprung, as the Borrower's manager, "was having difficulty managing Borrower and overseeing the management of the Property and effectively walked away from managing the Borrower," at which time "Shelbourne then took over management of the Property." *Id.* ¶¶ 17–18. For a time, Shelbourne sought to "get Borrower on its feet" but could not and so it "cooperated with Lender to change the property management" to Cushman & Wakefield in July 2023. *Id.* ¶¶ 19–21, *citing* NYSCEF Doc. No. 180 (June 28, 2023 e-mail from nonparty OWS Real Estate Finance to Mr. Feldberg).

On August 11, 2023, Plaintiff filed its foreclosure complaint in the Minnesota Action. *Id.* ¶ 22; NYSCEF Doc. No. 29 (Foreclosure Compl.). Borrower did not answer the Foreclosure Complaint "or assert[] a defense in a pleading in the Minnesota Action." *Id.* ¶ 23; NYSCEF Doc. No. 167 (Minnesota Action hearing Tr., at 14–16).

In the present action, Plaintiff asserted five causes of action, only three of which were directed against Guarantors: breach of contract; fraud/aiding and abetting fraud, and joint enterprise liability. This Court dismissed the Complaint, as asserted against Borrower and several other defendants, in its November 2024 Decision, which also granted Defendants' Bertram and Schlossberg's motion to dismiss Plaintiff's fifth cause of action for joint enterprise liability. Plaintiff's first cause of action, for breach of contract, remains as asserted against Guarantors Bertram, Schlossberg, and Sprung.

The crux of Plaintiff's breach of contract cause of action is that former Defendant Borrower and Guarantor Defendants Bertram, Schlossberg, and Sprung are alleged to have made intentional or negligent misrepresentations to Plaintiff regarding the efficacy of their leasing efforts, "the financial health of the Property, and the Borrower's ability to repay the Loan." Compl., at ¶ 61.

Defendants Bertram and Schlossberg move for summary judgment in Motion 004, seeking dismissal of Plaintiff's cause of action for breach of contract, the sole claim remaining against them. *See* NYSCEF Doc. No. 159 (Notice of Motion). Plaintiff opposes.

Defendant Sprung moves for summary judgment in Motion 005, also seeking dismissal of Plaintiff's cause of action for breach of contract, by adopting the factual and legal arguments made Defendants Bertram and Schlossberg. *See* NYSCEF Doc. No. 205 (Notice of Motion). Plaintiff opposes.

[1] This document is titled "Affidavit in Support of Guarantor Defendants' Motion for Summary Judgment," but is made "pursuant to CPLR 2106," follows the Rule's form for affirmations, and lacks notarization.

In Motion 006, Plaintiff moves for summary judgment, dismissing the defenses of *res judicata* and *collateral estoppel*, and all affirmative defenses, asserted by Defendant Guarantors Bertram, Schlossberg, and Sprung. *See* NYSCEF Doc. No. 184 (Notice of Motion). Defendants Bertram, Schlossberg, and Sprung oppose.

Legal Analysis

Summary Judgment Standard

"It is well established that '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.'" *Stonehill Capital Mgt., LLC v. Bank of the W.*, 28 N.Y.3d 439, 448 (2016), *quoting Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986). "Once the movant makes the proper showing, 'the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action.'" *Id.*, *quoting Alvarez* at 324. "The facts must be viewed in the light most favorable to the non-moving party." *Id*. (internal quotation marks and citation omitted). "However, bald, conclusory assertions or speculation and '[a] shadowy semblance of an issue' are insufficient to defeat summary judgment, as are merely conclusory claims." *Id.* (citations omitted).

Res Judicata Bars Plaintiff's Remaining Claim against Bertram, Schlossberg, and Sprung

The November 2024 Decision stated that neither Defendants Bertram nor Schlossberg sought to dismiss the Complaint as asserted against them, based on *res judicata* in Motion 002. NYSCEF Doc. No. 118, at n. 7. Notably, the Court held that *res judicata* barred Plaintiff's claims against Defendant TKS Holding. *Id*., at Section III. In the present Motion 004, Defendants Bertram and Schlossberg move for summary judgment under CPLR § 3212, seeking dismissal of Plaintiff's remaining cause of action for breach of contract. In Motion 005, Defendant Sprung moves for summary judgment to dismiss the sole remaining cause of action asserted against him, by adopting the contentions of fact and law set forth by his co-Defendants Bertram and Schlossberg in Motion 004.

Defendants Bertram and Schlossberg argue that Plaintiff's breach of contract claim must be dismissed on several grounds, most notably because such claim is barred by *res judicata*, which argument is appropriately made here. Defendants assert that they are entitled to summary judgment because Plaintiff already brought a suit and obtained a judgment on the merits against Borrower in the Minnesota foreclosure action, *see* Compl., at ¶¶ 40–42, with respect to the same transaction under the Loan Agreement and Guaranty at issue here, and that their common interest with Borrower make them Borrower's privies, which bars the remaining claim against them under the doctrine of *res judicata*.

Bertram and Schlossberg also argue that they, as Guarantors, could not be held liable for breach of contract under the Loan Agreement because the Guaranty they signed is a "springing"

Guaranty.[2] They maintain that the only event which could have possibly triggered their liability under the terms of the Guaranty and Loan Agreement *after* Plaintiff commenced the Minnesota Action—breach of Section 9.4 (c)(vii) of the Loan Agreement[3]—never occurred, as neither Borrower nor any Guarantor ever "filed an answer or sought any judicial intervention in the Minnesota Action at all." *See* NYSCEF Doc. No. 160 (Rosenberg Aff.), at ¶ 16, *citing* Minnesota Action hearing Tr., at 14–16.

Bertram and Schlossberg further assert that "the court in the Minnesota Action did not make a finding that an asserted defense was without merit or a request for judicial intervention or injunctive or other equitable relief unwarranted." *Id.*, *citing* NYSCEF Doc. No. 181 (Foreclosure Judgment in Minnesota Action).

The Court need not consider the merits of Bertram and Schlossberg's "springing" Guaranty argument, however, because application of the doctrine of *res judicata* resolves this action in their favor:

> "The doctrine of *res judicata* exists to allow parties to find comfort in the finality of their lawsuits and the judgments issued in those suits. Under *res judicata*, or claim preclusion, a valid final judgment bars relitigation between the same parties, or those in privity with them, of a cause of action arising out of the same transaction or a series of transactions that either were raised or could have been raised in the prior proceeding."

Gulf LNG Energy, LLC v. Eni S.p.A., 232 A.D.3d 183, 191 (1st Dept. 2024) (citation omitted).

"As a general rule, 'once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy.'" *Id.*, *quoting Parker v. Blauvelt Volunteer Fire Co.*, 93 N.Y.2d 343, 347 (1999), *quoting O'Brien v. City of Syracuse*, 54 N.Y.2d 353, 357 (1981). "In other words, claim preclusion may foreclose litigation of a matter that never has been litigated because of a

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[2] Under a "'springing,' 'exploding,' or 'limited recourse' guaranty . . ., the guarantor's liability springs into existence only upon the occurrence of some undesirable event that the lender is seeking to discourage (*e.g.*, the filing of bankruptcy; the assertion of defenses, counterclaims, or claims in foreclosure, foreclosure-related, or deficiency actions, or independent lender liability lawsuits; or the taking of any action to frustrate or delay the lender's exercise of default remedies)." Michael T. Madison, Jeffry R. Dwyer, and Steven W. Bender, 2 Law of Real Estate Financing §15:6 (July 2025 Update).

[3] Section 9.4 (c) of the Loan Agreement provides that the Lender's agreement "not to pursue recourse liability as set forth in Subsection (a)" of Section 9.4 "SHALL BECOME NULL AND VOID and shall be of no further force and effect and the Loan shall become fully recourse to Borrower and Guarantor, jointly and severally: ... (vii) if Borrower, Guarantor or any Affiliate of any of the foregoing shall, in connection with any enforcement action 0r exercise or assertion of any right or remedy by or on behalf of Lender under or in connection with this Agreement, the Note, the Security Instrument or any other Loan Documents, asserts a defense, seeks judicial intervention or injunctive or other equitable relief of any kind or asserts in a pleading filed in connection with a judicial proceeding any defense against Lender or any right in connection with any security for the Loan which the court in such action or proceeding determines is without merit (in respect of a defense) or unwarranted (in respect of a request for judicial intervention or injunctive or other equitable relief). . ." NYSCEF Doc. No. 171.

determination that it should have been interposed in a prior action." *Id.* (citation omitted). "The rationale underlying this principle is that a party who has been given a full and fair opportunity to litigate a claim should not be allowed to do so again." *Matter of Hunter*, 4 N.Y.3d 260, 269 (2005) (citations omitted).

Further, "[t]he term privity does not have a technical and well-defined meaning." *Doe v. New York Univ.*, 6 Misc. 3d 866, 872–73 (Sup. Ct., NY County 2004), *quoting Watts v. Swiss Bank Corp.*, 27 N.Y.2d 270, 277 (1970). "Rather, it 'is an amorphous concept not easy of application.'" *Id.*, *quoting D'Arata v New York Cent. Mut. Fire Ins. Co.*, 76 N.Y.2d 659, 664 (1990). "'It includes those who are successors to a property interest, those who control an action although not formal parties to it, those whose interests are represented by a party to the action, and possibly coparties to a prior action (Restatement, Judgments, §§ 81–90).'" *Id.*, *quoting Watts*, 7 N.Y.2d at 277.

The Court of Appeals has stated that "'[s]ound public policy . . .'requires that different judicial decisions shall not be made on the same state of facts, and that a judgment rendered jurisdictionally and unimpeached for fraud shall be conclusive, as to the questions litigated and decided, upon the parties thereto and their privies, whom the judgment, when used as evidence, relieves from the burden of otherwise proving, and bars from disproving, the facts therein determined.'" *Matter of Shea*, 309 N.Y. 605, 616–17 (1956) (citation omitted).

Bertram and Schlossberg's arguments comport with the November 2024 Order, at 17–18, in which the Court held:

> "that there has been a prior adjudication between Plaintiff and Borrower seeking to recover pursuant to the same Loan Agreement and related document as the present action. . .. In fact, it appears that Plaintiff could have asserted the causes of action brought in this matter during the Minnesota Action and allowed the Fourth Judicial District of Minnesota to determine the providence of such claims but chose not to. In fact, Plaintiff's Complaint from the Minnesota Action includes numerous alternative causes of action including Money Judgment, Mortgage Foreclosure, and Replevin. NYSCEF Doc. No. 29. Plaintiff cannot now seek to relitigate this transaction or series of transaction to recover either: (1) the remainder of the judgment; or (2) an amount in excess of the judgment as adjudicated in the Minnesota Action."

Further, the November 2024 Decision stated that "[t]he only Defendant in common between the present action and the Minnesota Action is [Borrower] TKS Holding," citing the caption of the complaint in the Minnesota Action (NYSCEF Doc. No. 29, at 1), but it also found that the organizational chart for TKS Center, annexed as an exhibit to the Loan Agreement (NYSCEF Doc. No. 81, at 145), "denotes that" several of the TKS entities, "and, to a lesser extent, [] Bertram, and Schlossberg [and their company Shelborne] likely share a common interest. Accordingly, these parties may be considered privies to [Borrower] TKS Holding and claims against them may therefore be barred by the doctrine of *res judicata*."

Plaintiff opposes Bertram and Schlossberg's motion, but does not undermine their *res judicata* arguments. Accordingly, Bertram and Schlossberg's motion for summary judgment,

dismissing Plaintiff's sole remaining cause of action asserted against them, for breach of contract, is GRANTED.

The same may be said with respect to Defendant Sprung because, in addition to his role as Guarantor in the underlying transactions, the organizational chart also reflects that he contributed five percent of the capital invested in TKS Center, compared to the four percent Bertram and Schlossberg contributed though Shelbourne, demonstrating that he shares their common interests, and therefore Motion 005, seeking dismissal of Plaintiff's sole remaining cause of action, for breach of contract as to Defendant Sprung, is GRANTED.

The Court has considered the parties' remaining contentions and finds them to be unavailing.

Accordingly, for the foregoing reasons, it is hereby

ORDERED that Defendants Bertram and Schlossberg's Motion for Summary Judgment (Motion 004) is GRANTED; and it is further

ORDERED that Defendant Sprung's Motion for Summary Judgment (Motion 0005) is GRANTED; and it is further

ORDERED that Plaintiff's Motion for Summary Judgment (Motion 006) is DENIED as moot; and it is further

ORDERED that the Complaint is dismissed with costs and disbursements to Defendants Bertram, Schlossberg, and Sprung as taxed by the Clerk of the Court upon submission of a bill of costs; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

9/17/2025
DATE

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

CHECK ONE:	X	CASE DISPOSED				NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE