

**Harlington Realty Co. LLC v  
Green Healthy Living LLC**

2025 NY Slip Op 34285(U)

November 7, 2025

Supreme Court, New York County

Docket Number: Index No. 653379/2024

Judge: Kathleen Waterman-Marshall

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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. KATHLEEN WATERMAN-MARSHALL PART 31**

*Justice*

-----X

HARLINGTON REALTY CO. LLC, CLEARWATER  
PROPERTIES LLC,

Plaintiff,

- v -

GREEN HEALTHY LIVING LLC, HUMAN ESSENTIALS  
INC., MARCUS LIU

Defendant.

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INDEX NO. 653379/2024

MOTION DATE 10/25/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30

were read on this motion to/for PARTIAL SUMMARY JUDGMENT.

This matter was administratively transferred to Part 31 after the instant motion was fully submitted. Upon the foregoing documents, the motion by plaintiffs Harlington Realty Co. LLC (“Harlington Realty”) and Clearwater Properties LLC (“Clearwater,” together “Plaintiffs”) for partial summary judgment on their first and third causes of action against defendants Green Healthy Living, LLC (“Green Healthy”), Human Essentials, Inc. (“Human Essentials”), and Marcus Liu (“Mr. Liu,” together “Defendants”) for breach of a commercial lease and guaranty, is granted.

**Background**

*Bronx Property*

Harlington Realty, as agent for The Broadway Land Company LLC, leased a commercial premises located at 5625 Broadway in the Bronx to Green Healthy for a 5 year and 17-day term, beginning on January 15, 2023 and expiring January 31, 2028, for the purposes of operating a business selling CBD and cannabis products. The lease required Green Healthy to pay base monthly rent (which increased each year: 1<sup>st</sup> year - \$6,000.00; 2<sup>nd</sup> year - \$6,250.00; 3<sup>rd</sup> year - \$6,437.50; 4<sup>th</sup> year - \$6,630.63; 5<sup>th</sup> year - \$6,829.54), as well as a share of the real estate tax escalations, water, and sewer charges, as additional rent. Mr. Liu personally guaranteed these payments via a Limited Lease Guaranty. On November 1, 2023, Green Healthy failed to pay the rent and additional rent, and vacated the premises on November 27, 2023. Mr. Liu did not make payments pursuant to the guaranty. Harlington Realty re-leased the premises to a new tenant, with rent under the new lease beginning January 1, 2025.

Green Healthy contends that it surrendered its lease after an unspecified government agency sent Harlington Realty a cease-and-desist letter regarding Green Healthy’s business of selling cannabis products. It alleges that, after the parties discussed how to proceed, Harlington Realty indicated that it would prefer Green Healthy to surrender the lease. According to Green Healthy, Harlington Realty’s agent advised that once the keys to the premises were returned, the property

would be surrendered and Green Healthy would not have any further liability. Green Healthy provided the keys to Harlington Realty and vacated the premises.

Harlington Realty does not dispute that Green Healthy returned the keys and vacated the premises; it disputes only the dates on which those events occurred. However, Harlington Realty does dispute that a surrender occurred under the lease in that the lease requires Harlington Realty's signed written acceptance of surrender. It contends that it never signed a written acceptance of surrender and, therefore, the lease was not surrendered.

#### *Manhattan Property*

Clearwater, as agent for Transference Realty LLC, leased a commercial premises located at 98 Christopher Street in Manhattan to Human Essentials for a 5 year and 19-day term, beginning on February 10, 2023 and expiring on February 29, 2028, for the purposes of operating a business selling CBD and cannabis products. The lease required Human Essentials to pay base monthly rent (which increased each year: 1<sup>st</sup> year - \$9,500.00; 2<sup>nd</sup> year - \$10,000.00; 3<sup>rd</sup> year - \$10,500.00; 4<sup>th</sup> year - \$11,000.00; 5<sup>th</sup> year - \$11,500.00), as well as a share of the real estate tax escalations, water, and sewer charges, as additional rent. Mr. Liu personally guaranteed these payments via a Limited Lease Guaranty. In May and June of 2024, Human Essentials failed to pay the rent and additional rent, and Mr. Liu failed to make payments under the guaranty. Clearwater re-leased the premises to a new tenant, with rent under the new lease beginning December 14, 2024.

Human Essentials contends that in May of 2024 it noticed that neighboring stores selling similar cannabis and CBD products were being closed by governmental agencies. Although no cease-and-desist letters or citations were received for its business, Human Essentials contends that it sought guidance from Clearwater, and Clearwater indicated it preferred that Human Essentials surrender the property. It therefore returned the keys and vacated the premises in May of 2024.

According to Clearwater, Human Essentials failed to make monthly payments beginning on May 1, 2024, vacated the premises on June 1, 2024, and Mr. Liu did not make payments pursuant to the guaranty. Clearwater does not dispute that Human Essentials returned the keys and vacated the premises, but asserts that it never executed a written acceptance of surrender, as required for a surrender under the lease, and Human Essentials and Mr. Liu therefore remain liable under the lease and guaranty.

#### **Discussion**

On a motion for summary judgment, the burden rests with the moving party to make a prima facie showing they are entitled to judgment as a matter of law and demonstrate the absence of any material issues of fact (*Friends of Thayer Lake, LLC v Brown*, 27 NY3d 1039 [2016]). Once met, the burden shifts to the opposing party to submit admissible evidence to create a question of fact requiring trial (*Kershaw v Hospital for Special Surgery*, 114 AD3d 75 [1st Dept 2013]). However, a "feigned issue of fact" will not defeat summary judgment (*Red Zone LLC v Cadwalader, Wickersham & Taft LLP*, 27 NY3d 1048 [2016]). A failure to make a prima facie showing requires the Court to deny the motion, regardless of the sufficiency of opposing papers (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; see also *JMD Holding Corp. v Congress Financial Corp.*, 4 NY3d 373 [2005]).

"When a tenant abandons a lease, the court may enter judgment in the amount of rent for the remainder of the lease term, less any rent received from new tenants" (*1140 LLC v Meis Studio Inc*,

225 AD3d 516 [1st Dept 2024]). While “[a] lease may be surrendered by express surrender or surrender by operation of law” (*Matter of Wasserman v Ewing*, 270 AD2d 427 [2d Dept 2000]), a surrender by operation of law occurs only when the parties to the lease act “so inconsistent with the landlord-tenant relationship that it indicates their intent to deem the lease terminated” (*9-11 Stanton St. Realty Corp. v Stanton St. Cleaners, Inc.*, 222 AD3d 570 [1st Dept 2023]). Where a lease requires a written notice or declaration of surrender, vacatur of the premises and return of keys will not constitute surrender as an operation of law (*id.* at 572; *see also Connaught Tower Corp. v Nagar*, 59 AD3d 218 [1st Dept 2009] [surrender of keys to landlord’s agent insufficient to constitute surrender where lease specified that delivery of keys to agent would not operate as termination or surrender]).

Plaintiffs have made a prima facie showing that they are entitled to judgment as a matter of law. The lease agreements require payment of the base rent (Articles 1 and 17), additional rent (Articles 41 and 42), costs associated with improper use and occupancy (Article 54), brokerage fees associated with reletting the premises (Article 18), and attorney’s fees (Article 19).

Although Defendants claim that they relied on the assurances of Plaintiffs’ agents that the lease agreements were terminated upon the surrender of the premises, the lease agreements provide that no acts of the landlords or their agents shall be deemed acceptance of a surrender unless signed in writing by the landlord (Article 24). It is undisputed that Plaintiffs never accepted surrender via a signed writing. Review of the record reveals no meeting of the minds as to the surrender (*Connaught Tower Corp.*, 59 AD3d 218). Therefore, Defendants have not raised a triable issue of fact to defeat summary judgment (*1140 LLC*, 225 AD3d 516 [“It is undisputed that landlord never accepted surrender in a signed writing. Therefore, tenant and assignee have not raised a triable issue of fact with respect to liability for post-surrender rent”]).

Plaintiffs have also made a prima facie showing that they are entitled to judgment as a matter of law on their breach of guaranty claim. Plaintiffs have demonstrated proof of the guaranty, the underlying debt, and failure to perform under the guaranty (*Cooperatieve Centrale Reaiffeisen-Boerenleenbank, B.A. v Navarro*, 25 NY3d 485, 492 [2015]). While the Limited Lease Guarantees provide that the guarantor’s liability will terminate if the tenant provides 60 or 120-days written notice of its intent to vacate the premises to the landlord and the tenant continues to pay rent and additional rent during this period (NYSCEF Doc. No. 11 at 17), the Defendants did not provide such written notice in accordance with the guaranty nor did they continue paying rent during this period. Consequently, the guarantor’s liability did not terminate upon the tenants vacating the premises. (*9-11 Stanton St. Realty Corp.*, 222 AD3d at 571 [guarantor had continuing liability after tenant vacated the premises because tenant did not comply with written declaration of surrender] *compare 1995 Cam LLC v West Side Advisors, LLC* (2025 NY Slip Op 05782 [Court of Appeals 2025] [liability under “good guy” guaranty ended upon commercial tenant’s surrender of possession in accordance with guaranty]).

Consequently, Harlington Realty has established damages in the amount of \$102,723.83 (unpaid base rent: \$74,208.08 [Nov. 2023 thru Aug. 2024]; unpaid water and sewer \$248.51; and brokerage fees to relet the premises \$28,267.24) via the affidavit of Harlington’s manager and exhibits thereto. Similarly, Clearwater has established damages in the amount of \$113,109.01 (unpaid base rent: \$50,000.00 [June 2024 thru Oct. 2024]; unpaid real estate taxes \$6,210.68; unpaid water/sewer \$516.57; brokerage fees to relet the premises \$56,381.76) via the manager’s affidavit and exhibits thereto. However, Harlington Realty’s request to recover legal fees of \$9,890.75 for Green Healthy’s alleged improper use must abide a hearing to determine whether same are

reasonable (*American Motorists Ins. Co. v Napco Sec. Sys.*, 244 AD2d 197 [1st Dept 1997] [where attorney fees are authorized, either by statute or agreement, the fee sought must nevertheless be reasonable]).

As the breaches of the lease agreements continued to occur for several months, the Court directs that interest on the awards shall be calculated from the approximate mid-point of these breaches (CPLR § 5001[b]).

**Conclusion**

Accordingly, it is

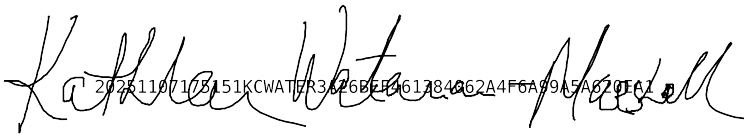
**ORDERED** that Plaintiffs’ motion for summary judgment on their first and third causes of action is granted and Defendants affirmative defenses are stricken; and it is further

**ORDERED, DECLARED, and ADJUDGED** that Harlington Realty Co. LLC shall have judgment and does recover as against Green Healthy Living LLC and Marcus Liu, jointly and severally, the amount of \$102,723.83 together with costs, disbursements, and interest at the statutory rate from March 15, 2024, as taxed and calculated by the Clerk of the Court; and it is further

**ORDERED, DECLARED, and ADJUDGED** that Clearwater Properties LLC shall have judgment and does recover as against Human Essentials Inc. and Marcus Liu, jointly and severally, the amount of \$113,109.01 together with costs, disbursements, and interest at the statutory rate from August 1, 2024, as taxed and calculated by the Clerk of the Court; and it is further

**ORDERED** that the issue of Plaintiffs’ reasonable attorney’s fees incurred in this action is severed and shall proceed to inquest together with an inquest on Harlington Realty Co.’s request for \$9,890.75 in attorney’s fees related to defending Green Healthy Living LLC in an improper use matter, on **March 26, 2026 at 10:00am** in Courtroom 623 at 111 Centre Street New York, NY 10013; and it is further

**ORDERED** that judgment shall be submitted to the Clerk of the Court, and not to chambers or the Part, unless directed otherwise by the Clerk of the Court.



11/7/2025  
DATE

KATHLEEN WATERMAN-MARSHALL,  
J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED		

<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE