

ISTA Holding Co Inc v Nikolakakos

2025 NY Slip Op 34303(U)

November 10, 2025

Supreme Court, New York County

Docket Number: Index No. 650167/2024

Judge: Lyle E. Frank

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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**

<p>PRESENT: <u>HON. LYLE E. FRANK</u></p> <p align="center"><i>Justice</i></p> <p>-----X</p> <p>ISTA HOLDING CO INC</p> <p align="center">Plaintiff,</p> <p align="center">- v -</p> <p>PETER NIKOLAKAKOS,</p> <p align="center">Defendant.</p> <p>-----X</p>	<p>PART 11M</p> <p>INDEX NO. <u>650167/2024</u></p> <p>MOTION DATE <u>05/26/2025, 07/06/2025</u></p> <p>MOTION SEQ. NO. <u>002 003</u></p> <p align="center">DECISION + ORDER ON MOTION</p>
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The following e-filed documents, listed by NYSCEF document number (Motion 002) 33, 34, 35, 36, 37, 38, 42, 43, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66
 were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 40, 41, 44, 45, 46, 47, 48, 49
 were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL.

Upon the foregoing documents, motions 002 and 003 are denied.¹

Background

On or about August 16, 2000, Plaintiff (ISTA HOLDING CO INC) entered into a commercial lease agreement with 68th Grill Inc., for rental of a commercial premises in Staten Island, commencing September 1, 2000. Non-party Mersudin Radoncic, 68th Grill’s president at that time, signed the lease agreement as the agent for the corporation. Radoncic also signed a guaranty agreement for 68th Grill. The lease was extended and amended at various times, up through September 30, 2026. On or about December 29, 2010, non-party Steve Nikolakakos, who was at that time the owner of 68th Grill, signed a guaranty in connection with one of those lease extensions.

¹ The Court would like to thank Geoffrey Shamah for his assistance in this matter.

Then in November of 2014, Peter Nikolakakos, who was at that time the president of 68th Grill signed the Sixth Amendment to the Lease. This amendment contained the following language: “Guarantor hereby reaffirms the Limited Guaranty dated December 29, 2010.” The amendment was signed by Peter Nikolokakos and notarized. A seventh amendment to the lease, also signed by Peter Nikolokakos, contained the same language. In 2022, 68th Grill Inc., defaulted on the lease. On November 10, 2022, a judgment was entered in a landlord-tenant action in favor of ITSA Holding and against 68th Street Grill, awarding Plaintiff possession of the premises along with a monetary judgment in the amount of \$500,000.00.

On January 11, 2024, the present action was brought seeking to recover the judgment amount plus attorney’s fees from Defendant Peter Nikolokakos. On December 16, 2024, Defendant filed his Verified Answer, denying liability and asserting numerous affirmative defenses, including but not limited to lack of privity, lack of an enforceable guaranty, statute of frauds, and failure to state a claim. Then on May 13, 2025, Plaintiff initiated another action seeking to recover the same judgment amount plus attorney’s fees against Steve Nikolakakos, by filing a summons and complaint in Richmond County.

Plaintiff now moves, pursuant to CPLR 3211 for summary judgment dismissing Defendant’s affirmative defenses and awarding Plaintiff the relief sought in the complaint in the amount of \$500,000.00, plus legal fees in the amount of \$150,000.00. Plaintiff also moves pursuant to CPLR 602 to consolidate the present action with the action brought in Richmond County against Steve Nikolakakos.

Standard of Review

Under CPLR § 3212, a party may move for summary judgment and the motion "shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be

established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." CPLR § 3212(b). The motion must "demonstrate the absence of genuine issues of material fact on every relevant issue raised by the pleadings, including any affirmative defenses." *Aimatop Rest. v Liberty Mut. Fire Ins. Co.*, 74 A.D.2d 516, 517 [1st Dept. 1980]. Once the movant makes a showing of a prima facie entitlement to judgment as a matter of law, the burden then shifts to the opponent to "produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action." *Stonehill Capital Mgt. LLC v. Bank of the West*, 28 N.Y.3d 439, 448 [2016]. The facts must be viewed in the light most favorable to the non-moving party, but conclusory statements are insufficient to defeat summary judgment. *Id.*

Discussion

For the reasons that follow, Plaintiff's motion for summary judgment is denied and the motion to consolidate is denied.

Clear Issues of Material Fact Preclude Summary Judgment

Here, genuine issues of material fact exist. Plaintiff has failed to provide sufficient evidence to demonstrate the absence of genuine issues of material fact on the relevant issues of Defendant Peter Nikolokakos' alleged liability under the 2010 Guaranty and the interpretation of the lease documents and amendments. Contrary to statements made in Plaintiff's complaint, Defendant never signed the 2010 Guaranty, as can be seen by glancing at the signature page on that document. The lease amendments cited by Plaintiff do not contain any language by which Defendant expressly undertook any personal guaranty obligations. Under New York law, a guaranty must contain "clear and unequivocal evidence, to be gathered from the writing itself", that the guarantor intended to be bound. *Savoy Record Co. v. Cardinal Export Corp.*, 15 N.Y.2d

1, 7 [1964]; *see also Citibank, N.A. v. Uri Schwartz & Sons Diamonds Ltd.*, 97 A.D.3d 444, 446 (holding that a guaranty is binding when “clear and unambiguous on its face, and, by its language, absolute and unconditional”).

Viewing the facts in the light most favorable to the Defendant, because the Limited Guaranty Agreement was not signed by the Defendant it is unclear whether Defendant’s signing of the Lease Amendments was intended as an assumption of the guarantor obligations. This is especially true given that at other times when the principal agent for 68th Grill changed, Plaintiff had the new principal sign a new personal guaranty agreement but failed to do so with Defendant. Nor is it clear whether the language found on the lease amendments that Defendant did sign constituted clear, unambiguous, absolute, and unconditional language as required for a binding guaranty. Plaintiffs have not met their initial burden to show a prima facie entitlement to judgment as a matter of law. Therefore, the motion for summary judgment is denied.

Consolidation is Denied

CPLR § 602(a) allows for the consolidation of actions involving common questions of fact or law. *See Progressive Insurance Company v Vasquez*, 10 AD3d 518, 519 [1st Dept. 2004]; *Teitelbaum v PTR Company*, 6 AD3d 254, 255 [1st Dept. 2004]. Whether consolidation is warranted is wholly within the motion court's discretion. *Progressive*, at 519. Consolidation or joinder of cases involving common questions of law or fact is appropriate unless the party opposing consolidation demonstrates that consolidation will prejudice a substantial right. *Id.*

Here, Plaintiff filed the Richmond County action one year and a half after filing the present action. Plaintiff could have sought to amend the initial complaint if it believed additional parties were necessary but instead opted to file a separate action seeking to enforce the same alleged guaranty against a different individual. Consolidation of the actions now – while a

dispositive motion on the merits is pending in this action – would prejudice the Defendant by delaying resolution and complicating the issues. As the decision to consolidate is wholly in the Court’s discretion, and consolidation here would prejudice the Defendant, the motion to consolidate is denied. Accordingly, it is hereby

ADJUDGED that the motion for summary judgment is denied; and it is further

ADJUDGED that the motion for consolidation is denied.


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11/10/2025
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE