

**Trico Equities Co. LLC v Solomou**

2025 NY Slip Op 34370(U)

November 14, 2025

Supreme Court, New York County

Docket Number: Index No. 157019/2021

Judge: Denis Reo

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. DENIS REO PART 65**

*Acting Justice*

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**INDEX NO.** 157019/2021

TRICO EQUITIES COMPANY LLC,

**MOTION DATE** 07/25/2023

Plaintiff,

**MOTION SEQ. NO.** 002

- v -

MICHALIS SOLOMOU and PEM NURA SHERPA,

**DECISION + ORDER ON  
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93

were read on this motion to/for

JUDGMENT - SUMMARY

In this action to enforce two commercial lease guaranties, plaintiff Trico Equities Company LLC (plaintiff) moves post-judgment for leave to file an amended complaint pursuant to CPLR 3025, and for summary judgment on the proposed amended complaint, pursuant to CPLR 3212. Defendants Michalis Solomou and Pem Nura Sherpa (defendants) oppose the motion. Upon the foregoing papers and for the reasons that follow, the motion is denied without prejudice.

**Background and Procedural History**

This action is one of many involving the Guaranty Law, passed by the New York City Council in May 2020 in response to the COVID-19 pandemic. The Guaranty Law bars enforcement of a guaranty of a commercial lease given by a natural person if the tenants' business was required to close under pandemic-related Executive Order (A. Cuomo) Nos. 202.3, 202.6, or 202.7 (9 NYCRR 8.202.3, 8.202.6, 8.202.7), and "[t]he default or other event causing such natural persons to become . . . personally liable for such obligation occurred between March

7, 2020 and June 30, 2021” (Administrative Code § 22-1005). The law has been held to bar only those claims against guarantors seeking rent that came due within the law’s protection period (between March 7, 2020, and June 30, 2021) (*see Tamar Equities Corp. v Signature Barbershop 33 Inc.*, 223 AD3d 421, 424 [1st Dept 2024]).

At issue here are two commercial leases between non-party Pekic Fitness Inc. d/b/a Lex Fit Fitness Club (the tenant) and plaintiff, under which the tenant leased two spaces, known as Stores #1 and #4 (the premises), in a building located at 131 East 31st Street (a/k/a 184 Lexington Avenue) in Manhattan. The tenant entered into possession of the premises pursuant to the leases, one for each store.

The lease for Store #1 was for an 11 year and 11 month term beginning on January 1, 2013 and ending November 30, 2024 (NYSCEF Doc. No. 13). The lease for Store #4 was for a 15 year and 4 month term beginning on December 1, 2009 and ending on November 30, 2024 (NYSCEF Doc. No. 14). Defendants each signed a personal guaranty for both leases (NYSCEF Doc. Nos. 15 & 16).

According to defendants, in November 2014, the tenant subleased the premises to non-party Strive Total Wellness, LLC (the subtenant) (NYSCEF Doc. No. 31 at ¶ 5; NYSCEF Doc. No. 32 at ¶ 3). The subtenant remained open during the pandemic (NYSCEF Doc. No. 48 at ¶ 13; NYSCEF Doc. No. 75 at ¶ 13). However, it defaulted on paying rent as of April 2020 for pandemic-related reasons and vacated the premises in or around March 2021 (NYSCEF Doc. No. 31 at ¶ 7; NYSCEF Doc. No. 32 at ¶ 3). As a result, the tenant could no longer afford to make payments to plaintiff under the leases (*id.*). The tenant then vacated the premises on or about September 30, 2021 (NYSCEF Doc. No. 48 at ¶ 18; NYSCEF Doc. No. 75 at ¶ 18).

In the interim, on July 28, 2021, plaintiff commenced this action against defendants to recover damages for breach of guaranty, unpaid rent, and additional rent (first cause of action), and attorney's fees (second cause of action). In the complaint, plaintiff expressly sought to recover only those amounts that became due *outside* of the Guaranty Law's protection period.

By order, dated July 14, 2022, the Honorable Shlomo S. Hagler granted plaintiff's motion for summary judgment on the issue of liability (NYSCEF Doc. No. 38). On March 28, 2023, plaintiff withdrew its cause of action for attorney's fees without prejudice, and Justice Hagler granted a judgment in favor of plaintiff against defendants jointly and severally in the sum of \$192,896.14, with interest thereon from July 28, 2021, plus costs and disbursements (NYSCEF Doc. No. 41 at 15:23-25; NYSCEF Doc. No. 43). Judgment was entered on July 18, 2023, amounting to the sum of \$228,001.22 (NYSCEF Doc. No. 46). On August 28, 2023, defendants satisfied the judgment (NYSCEF Doc. No. 75 at page 4, ¶ 8; NYSCEF Doc. No. 78 at ¶ 8).

On or about July 25, 2023, plaintiff filed the instant motion seeking (1) leave to file an amended complaint, pursuant to CPLR 3025, so as to include a claim for damages accruing *during* the Guaranty Law's protection period (amending first cause of action), plus attorney's fees (amending/reinstating second cause of action), and (2) for summary judgment on the proposed amended complaint pursuant to CPLR 3212 (NYSCEF Doc. No. 47). As a basis for the proposed amendment, plaintiff cites a decision issued by the United States District Court for the Southern District of New York in *Melendez v City of New York*, finding that the Guaranty Law violates the Contracts Clause of the United States Constitution (*Melendez v City of New York*, 668 F Supp 3d 184, 189 [SD NY 2023]) (*Melendez III*).

In the *Melendez* action, the Southern District initially dismissed the plaintiffs' Contracts Clause claim (*see Melendez v City of New York*, 503 F Supp 3d 13 [SD NY 2020]) (*Melendez I*).

On appeal, the United States Court of Appeals for the Second Circuit reversed, concluding that plaintiffs “state[d] a sufficiently plausible Contracts Clause challenge to the Guaranty Law to withstand dismissal” (*Melendez v City of New York*, 16 F 4th 992, 1032 [2d Cirt 2021]) (*Melendez II*). The Second Circuit noted that the Guaranty Law “significantly impairs personal guaranty agreements,” and while the record, as developed up to that point, “demonstrate[d] a plausible significant public purpose for the impairment,” it also “raise[d] at least five serious concerns about that law being a reasonable and appropriate means to pursue the professed public purpose” (*id.* at 1047). The “five serious concerns” included that the Guaranty Law was not “a temporary” or “limited impairment of contract” and that the burden imposed fell on the “few shoulders of commercial landlords” (*id.* at 1041-1042). In addition, the law was “not conditioned on need” and “permanently absolve[d] all small-business lease guarantors of any responsibility for up to sixteen months of rent arrears regardless of their ability to pay” (*id.* at 1043). The Second Circuit remanded the case to allow the parties to develop the record further and to address these concerns.

On remand, after the parties engaged in discovery and cross-moved for summary judgment, the district court rendered the decision in *Melendez III*, upon which the plaintiff relies in making the instant motion. The court in *Melendez III* determined that the Guaranty Law is unconstitutional under the Contracts Clause, finding that the contractual impairment imposed by the law was substantial in that it rendered unenforceable any personal guaranties of rent obligations arising under commercial leases during the law’s protection period. The court further determined that while the City’s effort to mitigate the devastating economic impact of the pandemic constituted a legitimate public purpose, the law failed to withstand means-ends scrutiny because the City was unable to produce evidence demonstrating that the law “was

reasonably tailored to accomplish its legitimate policy goals” (*Melendez III*, 668 F Supp 3d at 189). Among other things, the court observed that the City failed to “meaningfully articulate[] a record-based position to conclude that the Law’s lack of compensation to landlords . . . was a reasonable and appropriate means of advancing the legislation’s purpose” (*id.* at 207).<sup>1</sup>

In addition to citing *Melendez III* as a basis for granting leave to file the proposed amended complaint, plaintiff relies on a decision issued by a justice of this court, the Honorable Arlene P. Bluth, on May 17, 2023, adopting the reasoning set forth in *Melendez III* (*see Kensington House NY LLC v Accardi*, 2023 NY Slip Op 31673 [U], \*3 [Sup Ct, NY County 2023] [Bluth, J.]). In that case, Justice Bluth permitted the plaintiff to amend the complaint to seek unpaid rent under the subject guaranty that came due within the Guaranty Law’s protection period, noting that the defendants failed to explain why the court “should depart from the reasoning in *Melendez [III]* or suggest ways in which the instant matter might differ from that case and render its holding inapplicable to the instant circumstances” (*id.* at \*2).

After hearing oral argument on the instant motion to amend, Justice Hagler issued an interim order directing plaintiff to serve notice on the City of New York (the City) under CPLR 1012 (b) (2)<sup>2</sup> and directing the parties and the City to brief the issue of whether the Guaranty Law is unconstitutional under the Contracts Clause of the federal constitution (NYSCEF Doc.

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<sup>1</sup> Ultimately, in *Bochner v City of New York* (118 F 4th 505 [2nd Cir 2024]), the Second Circuit vacated the district court’s award of summary judgment in plaintiff’s favor in *Melendez III* on standing grounds and remanded the case to the district court with instructions to dismiss for lack of subject matter jurisdiction. In doing so, the Second Circuit noted: “The City does not here dispute the district court’s determination that the Guaranty Law is unconstitutional. Rather, it challenges the court’s jurisdiction to hear the action at all, arguing that the Bochner Plaintiffs cannot demonstrate standing” (*id.* at 507).

<sup>2</sup> CPLR 1012 (b) (2) provides that where “the constitutionality of a local law, ordinance, rule or regulation of a city . . . is involved in an action to which the city . . . is not a party, such city . . . shall be notified and permitted to intervene in support of its constitutionality.”

No. 82). Plaintiff thereafter served notice on the City, and the parties and the City each submitted memoranda of law briefing this issue (NYSCEF Doc. Nos. 83, 84, 87, 89, 90).

### Discussion

CPLR 3025 (b) provides that a party may amend or supplement his or her pleading “at any time by leave of court or by stipulation of all parties.” “Motions for leave to amend pleadings should be freely granted (CPLR 3025 [b]) absent prejudice or surprise resulting from the proposed amendment, unless the proposed amendment is palpably insufficient or patently devoid of merit” (*Badesch v Fort 710 Assoc., L.P.*, 233 AD3d 604, 604 [1st Dept 2024]). While “delay alone is not a sufficient ground for denying leave to amend” (*Johnson v Montefiore Med. Ctr.*, 203 AD3d 462, 463 [1st Dept 2022] [quotation marks and citations omitted]), “[w]hen there has been an extended delay in moving to amend, the party seeking leave to amend must establish a reasonable excuse for the delay” (*GMF 157 LP v Inspirit Dev. & Constr., LLC*, 235 AD3d 493, 494 [1st Dept 2025] [internal quotation marks and citation omitted]).

Here, plaintiff seeks this amendment two years after it commenced the action, after it submitted a motion for summary judgment on the issue of liability which the court resolved in its favor, and after a final judgment was entered and satisfied. Plaintiff also seeks to proceed on a new theory, namely that it is entitled to damages for the time period of March 7, 2020 through June 30, 2021 because the Guaranty Law violates the Contracts Clause of the United States Constitution.

As an initial matter, plaintiff indicates in its statement of undisputed material facts that the subtenant was an “essential business” and “remained open during the Covid-19 pandemic,” seemingly implying that the Guaranty Law may not apply in the first instance (NYSCEF Doc. No. 48, ¶ 13; admitted by defendants at NYSCEF Doc. No. 75, ¶ 13). If that were the case

(which the court does not determine here), the court would have no occasion to consider the constitutionality of the Guaranty Law (*see Tamar Equities Corp. v Signature Barbershop 33 Inc.*, 223 AD3d at 425; *see generally Matter of Peters v New York City Hous. Auth.*, 307 NY 519, 527 [1954]; *Matter of Dora P.*, 68 AD2d 719, 729-730 [1st Dept 1979]), and plaintiff would have no excuse for waiting two years to assert such a claim. However, plaintiff is not expressly advancing this theory, and defendants contend that plaintiff acknowledges that the Guaranty Law applies by stating that plaintiff “purposefully avoided seeking damages for unpaid rent, additional rent, taxes and other charges due during NYC’s Guaranty Law [in its initial complaint because], defendants’ guarantees during this period of time were, at the time of the complaint, specifically unenforceable under the Guaranty Law” (NYSCEF Doc. No. 50 at ¶ 12).

Plaintiff is expressly proceeding only under the theory that there has been “a change in the law” which eliminated the protections imposed by the Guaranty Law as unconstitutional. However, as of the date of this writing, there has been no binding change in the law. The law cited by plaintiff in support of its motion indicates that there is a colorable argument to be made in this regard, but it is not binding on this court (*see Sue/Perior Concrete & Paving, Inc. v Lewiston Golf Course Corp.*, 24 NY3d 538, 551 [2014]; *Matter of East Riv. Realty Co., LLC v New York State Dept. of Env’tl. Conservation*, 22 Misc 3d 404, 418 [Sup Ct, NY County 2008] [Stone, J.], *aff’d* 68 AD3d 564 [1st Dept 2009]). Ostensibly, plaintiff’s excuse for waiting two years to raise the theory is that no support for it existed prior to plaintiff making this motion. However, that is not the case. Plaintiff made this motion to amend on July 25, 2023. Over a year prior, in April 2022, the Appellate Division, First Department, citing *Melendez II*, indicated that there was a colorable constitutional argument to be made (*see 721 Borrower LLC v Moha*,

204 AD3d 510, 511 [1st Dept 2022] [citing *Melendez II*]) and the decision in *Melendez II*, rendered in October 2021, made evident the Second Circuit's "serious concerns" in this regard.<sup>3</sup>

As to the merits of the proposed amendment, as already stated, there is currently no binding case law holding the Guaranty Law unconstitutional. Our state trial level courts have reached differing conclusions on the issue, which has yet to be decided by any New York State appellate level court (*see e.g. 513 W. 26th Realty, LLC v George Billis Galleries, Inc.*, 2024 NY Slip Op 34531 [U], \*21 [Sup Ct, NY County 2024] [Goetz,J.], and cases cited therein; *7955 AE Company Inc. v Nasax Inc.*, 2025 NY Slip Op 31465 [U] [Sup Ct, NY County 2025] [Frank, JJ]). Since 2022, the Appellate Division, First Department has remanded a number of cases for further development of the record and to apply the Contracts Clause test for constitutionality (*see 558 Seventh Ave. Corp. v E&B Barbers Inc.*, 237 AD3d 635, 636 [1st Dept 2025]; *45-47-49 Eighth Ave. LLC v Conti*, 220 AD3d 473, 474 [1st Dept 2023]; *513 W. 26th Realty LLC v George Billis Galleries, Inc.*, 220 AD3d 525, 525 [1st Dept 2023]; *721 Borrower LLC v Moha*, 204 AD3d at 511; *see also Panasia Estate, Inc. v Glazer*, 231 AD3d 550, 551 [1st Dept 2024]). However, that Court has yet to decide any of the appeals pending before it which raise this constitutional question (*see e.g. App. Div. Index No. 2025-00996 [513 W. 26th Realty LLC v George Billis Galleries, Inc.]*; *App. Div. Index No. 2024-05604 [128 Second Realty LLC v Toscana Pizza, Inc.]*).

Under these circumstances, plaintiff's request for leave to amend is denied without prejudice to renew (*see 652 Hudson Retail Partners LLC v Nonoo LLC*, 2025 WL 1914214 [Sup Ct, NY County 2025] [Lebovits, J.] [denying motion for leave to amend without prejudice, noting that "absent a decision from the Appellate Division holding § 22-1005 unconstitutional,

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<sup>3</sup> The court notes that plaintiff offers no explanation for its delay in seeking to reinstate the cause of action for attorney's fees two years after it commenced the action and after judgment was entered in this case.

this court declines to treat the statute as lacking effect, so as to permit plaintiff to pursue new damages claims against guarantor”]; *Mansion Realty LLC v 656 6th Ave Gym LLC*, 79 Misc 3d 372, 380 [Sup Ct, NY County 2023][Lebovits, J.][denying landlord’s request for leave to assert a claim against the guarantor for the rent/additional rent that accrued during the Guaranty Law’s protection period “denied, without prejudice to its renewal should the First Department hold section 22-1005 unconstitutional”)]. And accordingly, plaintiff’s request for summary judgment on the proposed amended complaint is denied as moot.

**CONCLUSION**

Accordingly, it is

ORDERED that the branch of plaintiff’s motion which is for leave to file an amended complaint is denied without prejudice; and it is further

ORDERED that the branch of plaintiff’s motion which is for summary judgment on the proposed amended complaint is denied as moot.

This constitutes the Decision and Order of the court.

*Denis Reo*

11/14/2025

DATE

DENIS REO, A.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