

**NR 79th St. LLC v Musovic**

2025 NY Slip Op 34385(U)

November 13, 2025

Supreme Court, New York County

Docket Number: Index No. 659211/2024

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M**  
*Justice*

-----X

NR 79TH STREET LLC

Plaintiff,

- v -

SAMMY MUSOVIC,

Defendant.

-----X

INDEX NO. 659211/2024  
MOTION DATE 08/18/2025  
MOTION SEQ. NO. 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70 were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, and after a final submission date of October 2, 2025, Plaintiff NR 79<sup>th</sup> Street LLC’s (“Landlord”) motion for summary judgment against Defendant Sammy Musovic (“Guarantor”) is granted as to liability but denied as to damages. The branch of the motion which seeks dismissal of Guarantor’s affirmative defenses and counterclaims is granted in part and denied in part. Guarantor’s cross motion seeking to have the issue of damages owed referred to a special referee is granted.

There is no dispute that Guarantor is liable for rent not paid by the non-party tenant, Sams NY LLC (“Tenant”), nor is there any dispute that Landlord obtained a money judgment against Tenant in the amount of \$230,688.12 (*see* NYSCEF Doc. 55). However, the parties dispute the total amount owed. On its motion in chief, Landlord relied on the affirmation of Ashley M. Proctor, who claims that since judgment was entered against Tenant, there has been no payment of “any arrears including the Judgment Amount or the Current Amount Owed to Landlord” (NYSCEF Doc. 43 at ¶ 24). But according to the sworn affirmation of Guarantor, he claims there have been payments, Tenant’s bank account was garnished, and the security deposit was seized, all of which

should have been credited towards the judgment (NYSCEF Docs. 64-66). Plaintiff itself alludes to an issue of fact as to the total damages owed, requesting a money judgment “in the amount of \$284,337.11, but in no event less than \$230,688.12” (*see* NYSCEF Doc. 61). Plaintiff only submitted a corrected ledger crediting the alleged payments on reply, which this Court cannot consider (*see* NYSCEF Doc. 69; *see Migdol v City of New York*, 291 AD3d 201 [1st Dept 2002]). And if the Court were to consider it, it would only raise further issues of fact, including why Landlord only credited the security deposit in its possession until the issue was raised by Guarantor in opposition to the motion. The failure of Landlord to properly credit Guarantor the security deposit raises issues of fact as to whether there are other credits missing, lending credence to Guarantor’s opposition and necessitating denial of summary judgment on the issue of damages.

The branch of Landlord’s motion which seeks dismissal of Guarantor’s counterclaims/affirmative defenses is granted in part and denied in part. Landlord is not under an obligation to mitigate its claimed damages as this is a commercial lease and there is nothing in the lease which foists that obligation on the Landlord (*see, e.g. Center for Specialty Care, Inc. v CSC Acquisition I, LLC*, 187 AD3d 46, 55 [1st Dept 2020] citing *Holy Prop. V Kenneth Cole Prods.*, 87 NY2d 130, 133 [1995]). Therefore, the counterclaim/affirmative defense for failure to mitigate is dismissed. However, since there remain issues of fact as to whether there has been a proper accounting of the total amounts owed, Guarantor’s counterclaim/affirmative defense seeking an accounting remains viable. Because the Court agrees there are issues of fact as to the total damages owed, Guarantor’s cross motion for a referral to a special referee to determine the damages owed and/or to facilitate settlement is granted.

Accordingly, it is hereby,

ORDERED that Plaintiff NR 79<sup>th</sup> Street LLC's motion for summary judgment is granted to the extent that Plaintiff is granted summary judgment on the issue of liability with respect to its breach of guaranty cause of action, and its motion is granted to the extent that Defendant Sammy Musovic's affirmative defense/counterclaim alleging a failure to mitigate damages is dismissed, but the remainder of the motion is denied; and it is further

ORDERED that Defendant Sammy Musovic's cross motion seeking referral of the issue of damages to a special referee is granted; and a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to determine the following individual issues of fact, which are hereby submitted to the JHO/Special Referee to determine the total amount of damages owed Plaintiff pursuant to the parties' guaranty; and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh) at the "References" link ), shall assign this matter at the initial appearance to an available JHO/Special Referee to determine as specified above; and it is further

ORDERED that counsel shall immediately consult one another and counsel for plaintiff/petitioner shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by e-mail an Information Sheet (accessible at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special

Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that on the initial appearance in the Special Referees<sup>1</sup> Part the parties shall appear for a pre-hearing conference before the assigned JHO/Special Referee and the date for the hearing shall be fixed at that conference; the parties need not appear at the conference with all witnesses and evidence; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue(s) specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses; and it is further

ORDERED that counsel shall file memoranda or other documents directed to the assigned JHO/Special Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and the Special Referees (available at the "References" link on the court's website) by filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules); and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

<u>11/13/2025</u> DATE			<u>Mary V Rosado Jdc</u> HON. MARY V. ROSADO, J.S.C.	
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input checked="" type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE