

Premier Enter. Co., Inc. v Liffey Van Lines, Inc.

2025 NY Slip Op 34581(U)

December 1, 2025

Supreme Court, New York County

Docket Number: Index No. 155714/2023

Judge: Richard G. Latin

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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. RICHARD G. LATIN **PART** **46M**

Justice

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PREMIER ENTERPRISE CO., INC.,FRANKLIN CAPITAL GROUP, LLC,

Plaintiff,

INDEX NO. 155714/2023

MOTION DATE 11/25/2024

MOTION SEQ. NO. 002

- v -

LIFFEY VAN LINES, INC.,RUSCOE PROPERTIES, INC.,DORF ASSOCIATES, INC.,WINSTON WARNER

Defendant.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 26, 27, 28, 29 were read on this motion to/for DISMISSAL.

Upon the foregoing documents, counterclaim defendants Premier Enterprise Co. Inc. (“Premier”), Franklin Capital Group, LLC (“Franklin”), Winston Warner’s (“Warner”) motion to dismiss counterclaim plaintiff Ruscoe Properties, Inc.’s (“Ruscoe”) counterclaims of trespass and breach of guarantee (NYSCEF # 26) are determined as follows:

Procedural History

On June 26, 2023, plaintiffs Premier Enterprise Co. Inc. (“Premier”) and Franklin Capital Group, LLC (“Franklin”) commenced this action against defendants Liffey Van Lines, Inc. (“Liffey”), Ruscoe Properties, Inc. (“Ruscoe”), Dorf Associates, Inc. (“Dorf”), and Winston Warner (NSYCEF # 1). On August 9, 2023, defendants Ruscoe and Dorf filed an answer and counterclaims (NYSCEF # 5). On August 17, 2023, Liffey filed an answer and cross-claims against Ruscoe and Dorf (NYSCEF # 9). On the same day, Ruscoe and Dorf filed a consent to change attorney (NYSCEF # 13). On August 29, 2023, Ruscoe and Dorf filed a first amended answer, cross-claim against Liffey, and counterclaims against plaintiffs (NYSCEF # 14). On October 18,

2023, plaintiffs Premier and Franklin moved to dismiss the first amended counterclaims, which the court granted in its entirety (NYSCEF # 23). The court further ordered that defendant/plaintiff on the counterclaim, Ruscoe to

“serve and file an amended answer with counterclaims setting forth plain and concise statements in consecutively numbered paragraphs, each of which shall contain, as far as practicable, a single allegation” (*id.*).

On November 5, 2024, Ruscoe filed its second amended answer, cross claim, and counterclaims (NYSCEF # 25). On November 25, 2024, counterclaim defendants Premier, Franklin, and Winston Warner filed a motion to dismiss Ruscoe’s second amended counterclaims (NYSCEF # 26).

Discussion

On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction (*see Leon v Martinez*, 84 NY2d 83, 87 [1994]). The court will accept the facts as alleged in the complaint as true and provide plaintiffs the “benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*id.* at 87-88, citing *Morone v Morone*, 50 NY2d 481, 484 [1980]).

In assessing a motion under CPLR 3211(a)(7), the “criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one” (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]). In contrast, “allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not entitled to any such consideration” (*Maas v Cornell Univ.*, 94 NY2d 87, 91 [1999], quoting *Gertler v Goodgold*, 107 AD2d 481, 485 [1st Dept 1985]).

Ruscoe's Trespass Counterclaim

Counterclaim defendants Franklin, Premier, and Warner move to dismiss counterclaim plaintiff Ruscoe's second amended counterclaims pursuant to CPLR (a)(7) due to Ruscoe's failure to state a claim regarding its trespass counterclaim against Franklin, Premier, and Warner (NYSCEF # 27 at 2).

“Trespass involves an interference with a person's right to possession of real property either by an unlawful act or a lawful act performed in an unlawful manner” (*Kurzner v Sutton Owners Corp.*, 245 AD2d 101, 101 [1st Dept 1997], citing *New York State Nat. Org. for Women v Terry*, 886 F2d 1339, 1361 [2d Cir 1989]).

For the trespasser to be liable, “need not intend or expect the damaging consequence of his intrusion, he must intend the act which amounts to or produces the unlawful invasion, and the intrusion must at least be the immediate or inevitable consequence of what he willfully does, or which he does so negligently as to amount to willfulness” (*Phillips v Sun Oil Co.*, 307 NY 328, 331 [1954]; *Terry*, 886 F2d at 1361).

Here, under the “alterations” provision in the lease agreement between Ruscoe and tenant Premier, it provides:

“All property permitted or required to be removed by Tenant at the end of the term remaining in the demised premises after Tenant's removal **shall be deemed abandoned** and may, at the election of Owner, either be retained as Owner's property or removed from the demised premises by Owner, at tenant's expense” (NYSCEF # 6 at 1).

As such, counterclaim defendants do not have a “possessory rights to the personal property left at the premises after the eviction” because the property is deemed abandoned in accordance with the lease (NYSCEF # at 9; NYSCEF # 6 at 1). Accordingly, Ruscoe's assertion of trespass is inapplicable and is therefore dismissed.

Breach of Guarantee Counterclaim

In its counterclaim, Ruscoe asserted in its third counter claim with respect to Warner that:

“71. Warner breached the Guaranty by failing to pay all amounts owed by Premier to Ruscoe despite due demand therefor.

72. As a result of the foregoing, Warner is liable to Ruscoe in the total amount of \$567,826.25, plus interest and Ruscoe’s reasonable attorneys’ fees and costs” (NYSCEF # 25 at 10).

Counterclaim defendants aver that “[a]ny damages under the Third Counterclaim should therefore be capped at a maximum of \$295,169.76” (NYSCEF # 27 at 5).

The “GOOD GUY GUARANTEE OF LEASE” under section 1 provides:

“Guarantor does hereby unconditionally guarantee, as a primary obligor and not as a surety, and be liable for, the payment of (i) all of the monetary terms of the Lease up to the Surrender Date (as hereinafter defined) and (ii) notwithstanding if and when the Surrender Date may occur, payment of all of the base rent by Tenant for a period of twelve (12) months commencing on the Commencement Date of the Lease (as defined therein) (the “Guaranteed Obligations”). Notwithstanding anything to the contrary contained in this Guaranty, in no event shall the Guarantor be liable for any other obligations under the Lease except for the Guaranteed Obligations” (NYSCEF # 7 at 1).

Counterclaim defendants aver that “[s]ub-section (ii) acts as a limitation on sub-section (i), capping the Guarantor’s exposure to the dollar value of twelve months of rent, and if that were in doubt, the second sentence makes clear that the Guarantor will have no other obligations” (NYSCEF # 27 at 4). In response, counterclaim plaintiff Ruscoe argues that counterclaim defendants’ “interpretation reads out the word “and,” and an impermissible result” (NYSCEF # 28 at 4). In essence, both parties argue different interpretations of this provision (*see id.*).

A contract is unambiguous if on its face it is reasonably susceptible to only one meaning (*see LDIR, LLC v DB Structured Products, Inc.*, 172 AD3d 1, 4 [1st Dept 2019], citing *Greenfield v Philles Records, Inc.*, 98 NY2d 562, 570 [2002]). Conversely, a contract is considered ambiguous

if the provisions at issue are “reasonably or fairly susceptible of different interpretations or may have two or more different meanings” (*id.*, quoting *Feldman v Natl. Westminster Bank, N.A.*, 303 AD2d 271, 271 [1st Dept 2003]).

The parties set forth two reasonable interpretations that would give meaning to the disputed provision (*see id.* at 5). Thus, the court will not at the pleading stage of this litigation decide between the parties’ reasonable competing interpretations (*see id.*).

Here, because the disputed provision is reasonably susceptible to more than one interpretation, dismissal is inappropriate (*see Telerep, LLC v U.S. Intern. Media, LLC*, 74 AD3d 401, 402 [1st Dept 2010]). Instead, the matter should proceed to discovery (*see LDIR, LLC*, 172 AD3d at 6; *see also Foot Locker, Inc. v Omni Funding Corp. of Am.*, 78 AD3d 513, 515 [1st Dept 2010] [finding that where a notice provision in a contract was ambiguous, parol evidence was necessary to interpret the provision]; *see also 330 W. 86th St., LLC v City of New York*, 68 AD3d 562, 563-564 [1st Dept 2009] [holding that resolution of ambiguities in a deed must wait for the parties to conduct discovery]; *see also Fed. Ins. Co. v Americas Ins. Co.*, 258 AD2d 39, 43 [1st Dept 1999] [holding that extrinsic evidence will be admissible to determine the parties’ intent when ambiguity and inconsistency exists in a contract]).

Accordingly, dismissal of Ruscoe’s third counterclaim for breach of guarantee is denied.

Conclusion


WHEREFORE, it is hereby:

ORDERED that counterclaim defendants Franklin, Premier, and Warner’s motion to dismiss counterclaim plaintiff Ruscoe’s second counterclaim of trespass is granted, and the motion to dismiss Ruscoe’s third counterclaim against Warner for breach of guarantee is denied; and it is further

ORDERED that, within 20 days from entry of this order, counterclaim defendants shall serve a copy of this order with notice of entry upon the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the court.

<p><u>12/1/2025</u> DATE</p>			 <hr/> RICHARD G. LATIN, 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 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