

98 Metro IK LLC v Deck Utica-610, LLC

2025 NY Slip Op 34663(U)

December 2, 2025

Supreme Court, Kings County

Docket Number: Index No. 515270/2025

Judge: Reginald A. Boddie

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At an IAS Commercial Part 12 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 2nd day of December 2025.

PRESENT:
Honorable Reginald A. Boddie
Justice, Supreme Court

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98 METRO IK LLC and 98 METRO SA LLC,

Plaintiffs,

Index No. 515270/2025

-against-

MS 2

DECK UTICA-610, LLC, et al.,

Decision and Order

Defendants.

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The following e-filed papers read herein:

NYSCEF Doc Nos.

MS 2

31-35, 37-42

Plaintiffs’ motion for summary judgment is decided as follows:

Background

This action arises out of an alleged wrongful attempt by the tenant, Deck Utica-610, LLC (“Deck”), and its guarantors to rescind their prior agreements to surrender possession of the commercial premises at 610–622 Utica Avenue, Brooklyn (the “Premises”), despite having executed a Surrender Declaration dated April 29, 2024 (the “Surrender Declaration”) and a Non-Renewal Agreement dated April 25, 2024 (the “Non-Renewal Agreement”) that extinguished all rights under the Lease dated December 17, 2009 (the “Lease”), effective April 30, 2025. Plaintiffs 98 Metro IK LLC and 98 Metro SA LLC allege they purchased the Premises in reliance on those agreements, but defendants now claim a continuing right to occupy the Premises. Plaintiffs seek

declaratory relief confirming defendants have no further rights or option terms under the Lease, a permanent injunction and ejectment restoring possession to plaintiffs, and money damages, including attorneys' fees, for defendants' breaches and continued wrongful possession.

Plaintiffs move for summary judgment under CPLR 3212 seeking declarations that Deck has no remaining right, title, interest, or possession in the Premises after April 30, 2025; that Deck has no renewal or option rights; and that Deck's unilateral Tenant Estoppel Certificate dated February 3, 2025 (the "Tenant Estoppel Certificate") is legally void. Plaintiffs further seek enforcement of the Surrender Declaration and Non-Renewal Agreement, a permanent injunction and judgment of possession with a warrant of eviction, dismissal of all counterclaims and affirmative defenses, an award of attorneys' fees under the Lease, and a money judgment for use and occupancy at the contractual holdover rate. Plaintiffs argue that the Lease, Surrender Declaration, and Non-Renewal Agreement are binding contracts that extinguished all of tenant's rights as of April 30, 2025, that the attempted rescission is legally ineffective, and that defendants' holdover and counterclaims are contradicted by documentary evidence and fail as a matter of law.

In opposition, defendants rely on the Tenant Estoppel Certificate and argue that the Lease does not prohibit withdrawing a prior non-renewal, and the tenant validly exercised its renewal option under the Lease through its Tenant Estoppel Certificate. Defendants contend the predecessor landlord accepted the revocation and confirmed the Lease remained in effect through 2027 with two additional options by (i) accepting rent payments, and (ii) not responding to the Tenant Estoppel Certificate. Defendants assert this constitutes waiver and estoppel binding on plaintiffs as successors, negates any surrender, and eliminates guarantor liability. Defendants further argue that triable issues of fact exist regarding plaintiffs' knowledge of and reliance on the Tenant Estoppel Certificate when purchasing the Premises from the predecessor landlord, that their affirmative defenses remain viable, and that their counterclaims for declaratory relief and business

torts require discovery because plaintiffs' attempted termination allegedly caused reputational and economic harm with the franchisor.

In reply, plaintiffs argue defendants raised no triable issues of fact because the Surrender Declaration and Non-Renewal Agreement were binding bilateral agreements that irrevocably terminated all leasehold rights and could not be unilaterally rescinded months later via the alleged Tenant Estoppel Certificate. Plaintiff contends the unilateral letter from defendants had no legal effect absent a new written mutual agreement, and that the Tenant Estoppel Certificate cannot revive rights already extinguished by a separate surrender contract or bind the landlord. Plaintiffs argue that the predecessor landlord's silence or acceptance of rent does not constitute waiver under the Lease's no-waiver clause, and that defendants' request for discovery is irrelevant because the dispute turns solely on unambiguous written agreements. Plaintiffs reassert that all affirmative defenses and counterclaims fail as a matter of law and summary judgment should be granted in full.

Discussion

It is well established that summary judgment is granted when "the proponent makes a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact, and the opponent fails to rebut that showing" (*Brandy B. v Eden Cent. School Dist.*, 15 NY3d 297, 302 [2010] [citation omitted]). Once the proponent has made a prima facie showing, the burden then shifts to the motion's opponent to present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]). Upon a motion for summary judgment, the court's function is one of issue finding rather than issue determination (*Sillman v Twentieth Century-Fox Film*

Corp., 3 NY2d 395, 404 [1957]). “It is not the function of a court . . . to make credibility determinations or findings of fact, but rather to identify material triable issues of fact (or point to the lack thereof)” (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505 [2012] [citation omitted]).

The New York Court of Appeals has “repeatedly held that one opposing a motion for summary judgment must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim or must demonstrate acceptable excuse for his failure to meet the requirement of tender in admissible form; mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient” (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980] [citations omitted]). Although “the facts must be viewed in the light most favorable to the non-moving party . . . bald, conclusory assertions or speculation and [a] shadowy semblance of an issue are insufficient to defeat summary judgment” (*Stonehill Capital Mgt., LLC v Bank of the W.*, 28 NY3d 439, 448 [2016] [citations and internal quotation marks omitted]).

Declaratory Judgment (The First Cause of Action)

Here, plaintiffs have made a prima facie showing of entitlement to judgment as a matter of law by submitting the Lease, the Surrender Declaration, and the Non-Renewal Agreement, each of which is executed by defendants and expressly provides that all leasehold rights terminate as of April 30, 2025. In those binding bilateral contracts, defendants unambiguously agreed that they “surrender[ed] to Landlord all of Tenant’s right, title and interest in and to the Premises and the Lease, together with all alterations, installations, additions and improvements in and to the Premises, to the intent and purpose that the estate of Tenant in and to the Premises shall be wholly extinguished as of the Delivery Date” (NYSCEF Doc No. 3), that Deck “is not exercising its renewal of its Third Option Term, effective December 17, 2027” (NYSCEF Doc No. 4), and that “effective April 30, 2025, Tenant [Deck] shall cease the operations in, and surrender to Landlord

its possession of the Premises, all of its right, title and interest in and to the Premises and the Lease.” Plaintiffs’ documentary evidence therefore establishes that Deck knowingly relinquished its tenancy and all future renewal options.

As the Court of Appeals has recognized, “as is commonly understood of these arrangements, the Surrender Agreement constituted a new contract between the parties that terminated the lease and all prospective obligations flowing from the tenancy” (*Trustees of Columbia Univ. in City of New York v D’Agostino Supermarkets, Inc.*, 36 NY3d 69, 74 [2020] [citations omitted]). In the instant proceeding, once the Surrender Declaration and the Non-Renewal Agreement are executed, the Lease cannot be unilaterally revived by any subsequent unilateral letter or certificate. Plaintiffs’ documentary evidence therefore satisfies their burden under CPLR 3212 and shifts the burden to defendants to raise a triable issue of fact.

Defendants fail to meet that burden. Their reliance on the Tenant Estoppel Certificate does not raise a material factual dispute because the estoppel was executed months after the Surrender Declaration and Non-Renewal Agreement and, as a matter of law, cannot resurrect rights already extinguished by prior binding contracts. Moreover, the Tenant Estoppel Certificate, by its plain terms, binds the tenant, not the landlord, and cannot alter or expand the predecessor landlord’s rights absent a new bilateral written agreement, which defendants fail to provide. Nor does the predecessor landlord’s alleged silence or acceptance of rent create a triable issue: the Lease contains an explicit “no waiver of rights” clause, and defendants identify no conduct constituting a written waiver or written rescission of the surrender agreements. Defendants fail to cite to any case law or statute supporting their theory that the prior landlord somehow “accepted” a rescission by not responding to their unilateral letter attempting to revise contract terms agreed upon by all parties.

Defendants' argument that discovery might reveal facts about plaintiffs' knowledge or reliance on the Tenant Estoppel Certificate is likewise unavailing. It is well settled that a party is not entitled to denial of summary judgment with leave to renew after further discovery where the party "has failed to show the existence of evidence to which such disclosure might lead and ... failed to take reasonable steps to obtain disclosure earlier" (*Scappaticci v Willet*, 173 AD2d 533, 534 [2d Dept 1991] [citations omitted]). Here, the dispute turns entirely on unambiguous written agreements executed months before the unilateral certificate, and defendants identify no document or category of information that could alter the plain legal language of the Surrender Declaration or the Non-Renewal Agreement.

Because plaintiffs' submissions establish entitlement to judgment as a matter of law, and defendants fail to raise any material factual dispute in opposition, summary judgment on plaintiffs' first cause of action for declaratory judgment is warranted. The Court hereby declares that the Surrender Declaration and Non-Renewal Agreement are in full force and effect; that defendants' unilateral attempt at rescission is a nullity; that Deck's right, title, and interest in the Premises terminated on April 30, 2025; and that Deck holds no further renewal option rights under the Lease.

Permanent Injunction (The Second Cause of Action)

"[I]t is well settled that in order to obtain a permanent injunction in New York, there must be a showing (1) that irreparable injury will result if the injunction is not granted; (2) that other remedies are inadequate; and (3) that a balancing of the equities favors the applicant" (*A & G Research, Inc. v GC Metrics, Inc.*, 19 Misc 3d 1136(A) [Sup Ct 2008] [citations omitted]). "Additionally, a permanent injunction should be awarded only where the right to such relief [is] clear and where the plaintiff has made out a strong case for such relief; injunctive relief should be denied in doubtful cases" (*id.*).

Here, plaintiffs fail to make the requisite showing of irreparable injury, nor have they demonstrated that monetary or other legal remedies are inadequate. The alleged harm of defendants' continued occupation of the Premises after April 30, 2025, can be fully addressed through the declaratory and possessory relief already sought, together with money damages. Accordingly, the branch of plaintiffs' motion for summary judgment on its second cause of action for a permanent injunction is denied.

Ejectment (The Third Cause of Action)

Under the terms of the Lease, the Surrender Declaration, and the Non-Renewal Agreement, defendants' tenancy expired as of April 30, 2025, on which date Deck was obligated to "cease operations in, and surrender to Landlord possession of, the Premises" (NYSCEF Doc No. 4). Moreover, the parties' so-ordered stipulation (NYSCEF Doc No. 30), under which plaintiffs accepted rent payments after April 30, 2025, does not, by its terms or effect, create a holdover tenancy. Accordingly, the branch of plaintiffs' motion for summary judgment on the third cause of action for ejectment is granted (*see 2955 Shell Assoc., L.P. v Kayani*, 234 AD2d 287, 287 [2d Dept 1996] [citations omitted] [holding that "the plaintiff can properly eject the appellants from the subject apartments [when] [t]he appellants' written leases, by their terms, had expired ... [and when] no holdover tenancy was created"]).

Breach of Contract (The Fourth Cause of Action)

"The essential elements of a cause of action to recover damages for breach of contract are (1) the existence of a contract, (2) the plaintiff's performance pursuant to the contract, (3) the defendant's breach of its contractual obligations, and (4) damages resulting from the breach" (*Junger v John V. Dinan Assoc., Inc.*, 164 AD3d 1428, 1430 [2d Dept 2018] [citations omitted]).

As detailed in the foregoing analysis, the parties entered into binding agreements requiring Deck to vacate the Premises on or before April 30, 2025, yet Deck failed to do so after attempting

to unilaterally rescind those duly executed bilateral contracts, thereby preventing plaintiffs from recovering possession and causing monetary damages. Accordingly, the branch of plaintiffs' motion for summary judgment on their fourth cause of action for breach of contract is granted as to liability only, with the amount of damages to be determined at inquest or trial.

Attorneys' Fees (The Fifth Cause of Action)

Paragraph 16.3 of the Lease unambiguously provides that "TENANT agrees to pay all reasonable attorneys' fees and disbursements incurred by LANDLORD at any time during the terms of this Lease in enforcing TENANT'S performance and observance of the terms and conditions hereof" (NYSCEF Doc No. 2). Accordingly, the branch of plaintiffs' motion for summary judgment on their fifth cause of action for attorneys' fees is granted.

Defendants' Affirmative Defenses

In light of the foregoing analysis, defendants' nine affirmative defenses fail as a matter of law. The affirmative defenses rest on the premise that Deck successfully rescinded the Surrender Declaration and Non-Renewal Agreement, or that the predecessor landlord implicitly accepted such rescission through silence, acceptance of rent, or receipt of the Tenant Estoppel Certificate, all of which the Court has already considered and rejected. Accordingly, the branch of plaintiffs' motion for summary judgment dismissing defendants' affirmative defenses is granted.

Defendants' Counterclaims

In accordance with the foregoing analysis, defendants' first counterclaim seeking a judicial declaration that Deck validly exercised the renewal option and extended the Lease for an additional five-year term is dismissed. The binding Surrender Declaration and Non-Renewal Agreement extinguished all renewal rights as of April 30, 2025, and defendants' unilateral attempt at rescission cannot revive those rights as a matter of law.

Defendants' second counterclaim, which alleges that "[t]he allegations in the Complaint constitute public statements made maliciously or recklessly by Plaintiffs to injure Defendants," also fails. It is well settled that "the institution of a civil action by summons and complaint is not legally considered process capable of being abused" (*Kaufman v Kaufman*, 206 AD3d 805, 807 [2d Dept 2022] [citations omitted]). Plaintiffs' filing of the instant action to enforce written contracts which defendants themselves executed cannot, as a matter of law, constitute a wrongful act supporting such a tort claim.

Defendants' third counterclaim, alleging tortious interference with business relations, likewise fails. To state such a claim, defendants must show that plaintiffs used "wrongful means" or acted "for the sole purpose of harming the other party" (*see Influx Capital, LLC v Pershin*, 186 AD3d 1622, 1624 [2d Dept 2020] [citation omitted]). "[A]s a general rule, the defendant's conduct must amount to a crime or an independent tort" (*Carvel Corp. v Noonan*, 3 NY3d 182, 191 [2004]). "Conduct that is not criminal or tortious will generally be lawful and thus insufficiently culpable to create liability for interference with prospective contracts or other nonbinding economic relations" (*id.*). Here, plaintiffs' alleged conduct consisted solely of enforcing contractual rights under unambiguous agreements by commencing the instant action. Such conduct is neither criminal nor tortious and therefore cannot support a claim for tortious interference.

Accordingly, the branch of plaintiff's motion for summary judgment dismissing defendants' counterclaims is granted.

Conclusion

Based on the foregoing, plaintiff's motion for summary judgment is granted on (1) the first cause of action to the extent of the judicial declarations set forth above; (2) the third cause of action for ejectment, the fourth cause of action alleging breach of contract, and fifth cause of action for

attorneys' fees; and (3) all of defendants' affirmative defenses and counterclaims are dismissed.

The remainder of plaintiffs' motion is denied.

It is further ORDERED that the parties shall appear for a preliminary conference on Tuesday, February 10, 2026, at 2:30 p.m., in Courtroom 956, Kings County Supreme Court, to schedule discovery deadlines on the issue of damages.

Any argument not explicitly addressed herein was considered and deemed to be without merit or unnecessary to address given the court's determination.

ENTER:



Honorable Reginald A. Boddie
Justice, Supreme Court

HON. REGINALD A. BODDIE
J.S.C.