

2461 Eighth LLC v Obaid

2025 NY Slip Op 34825(U)

December 15, 2025

Supreme Court, New York County

Docket Number: Index No. 654259/2025

Judge: Phaedra F. Perry-Bond

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PHAEDRA F. PERRY-BOND PART 35

Justice

-----X

2461 Eighth LLC

Plaintiff,

- v -

Gamal Mohamed Obaid

Defendant.

-----X

INDEX NO. 654259/2025

MOTION DATE 11/15/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1 through 14 were read on this motion to/for SUMMARY JUDGMENT IN LIEU OF COMPLAINT .

Upon the foregoing documents, Plaintiff 2461 Eighth LLC's ("Plaintiff") motion for summary judgment in lieu of complaint against Defendant Gamal Mohamed Obaid ("Defendant") is denied, without prejudice, with leave to renew within thirty days upon the proper supporting papers.

Plaintiff owns the building at 2461 Eighth Avenue (the "Premises") and leased the Premises' ground floor retail space to non-party J & N Convenience & Organic Corporation ("Tenant") (see NYSCEF Doc. 6). Defendant executed a guaranty (the "Guaranty") to induce Plaintiff to enter a lease with Tenant (see NYSCEF Doc. 7). Tenant defaulted on the lease and on September 20, 2024, Plaintiff commenced an action in Housing Court (the "Landlord Tenant Action") seeking a judgment of possession and rental arrears (see 2461 Eighth LLC v. J & N Convenience & Organic Corp., Index No. LT-316754-24/NY). Tenant did not appear in that action. On October 22, 2024, Hon. Ilana J. Marcus granted Plaintiff a judgment of possession, dismissed Plaintiff's request for a money judgment without prejudice, and directed Plaintiff to seek rent owed in a plenary action. The docket in the Landlord Tenant Action reflects two notices

of eviction were issued, one on November 29, 2024, requiring Tenant to vacate by December 16, 2024, and another on January 31, 2025 requiring the Tenant to vacate by February 18, 2025.¹

This action was commenced on July 17, 2025, via summons and the instant motion for summary judgment in lieu of complaint. Plaintiff seeks to enforce the Guaranty executed by Defendant to collect \$55,630.00 in rental arrears owed by Tenant, which allegedly accrued from October 15, 2024, through July 15, 2025 (NYSCEF Doc. 8). Plaintiff also seeks “anticipated” legal fees and provides no contemporaneous billing records or invoices for fees already incurred.

As with a CPLR 3212 motion, a movant seeking summary judgment pursuant to CPLR 3213 bears the burden of proving, *prima facie*, the absence of any material issues of fact (*see, e.g. Sea Trade Maritime Corp. v Coutsodontis*, 111 AD3d 483, 485 [1st Dept 2013]). A guaranty that requires absolute and unconditional payment, such as the one executed by Defendant, qualifies as a financial instrument which may be enforced on a motion for summary judgment in lieu of complaint pursuant to CPLR 3213 (*see 122 East 42nd Street, LLC v Scharf*, 211 AD3d 517, 517 [1st Dept 2022]). To meet its *prima facie* burden on summary judgment, Plaintiff is required to demonstrate the existence of a valid and enforceable guaranty, an underlying debt, and Defendant’s failure to perform under the Guaranty by satisfying the underlying debt (*DB 232 Seigel Mezz LLC v Moskovits*, 223 AD3d 610, 611 [1st Dept 2024]). Plaintiff has failed to demonstrate, *prima facie*, the absence of material issues of fact because the affidavit of Karla Guillen, Plaintiff’s authorized representative, is silent as to whether Tenant remains in possession or has been dispossessed of the Premises by virtue of Housing Court’s warrant of eviction (NYSCEF Doc. 3).

Plaintiff and Tenant’s lease states “[i]n case of any such default, re-entry, expiration and/or dispossession by summary proceedings or otherwise (a) the rent shall become due thereupon and be

¹ The Court may take judicial notice of the NYSCEF record in the Landlord Tenant Action (*see Kazantzis v Cascade Funding RMI Acquisitions Grantor Trust*, 217 AD3d 410, 411 [1st Dept 2023]).

paid up to the time of such re-entry, dispossess and/or expiration” (NYSCEF Doc. 6 at ¶18[a]). Plaintiff and Tenant further agreed that upon Plaintiff’s reentry or Tenant’s dispossession by summary proceeding, that Plaintiff must pay as liquidated damages any deficiency between the rent reserved under the parties’ lease and the net amount, if any, of the rents collected on any subsequent lease or leases of the Premises “for each month of the period which would otherwise have constituted the balance of the term of this lease.” (*id.* at ¶18[c]). The lease goes on to provide that “the failure of [Plaintiff] to re-let the demised premises or any part or parts thereof shall not release or affect Tenant’s liability for damages.”

The Guaranty does not contain a promise to pay liquidated damages as described in paragraph 18(c) of the lease, it only promises to pay Plaintiff all “Monthly Installment of Annual Rent (“Base Rent”) and Additional Rent (as those terms are defined by the Lease) that has accrued under the Lease and the satisfaction of all liens affecting the Premises, that have accrued or may accrue under the terms of the Lease (hereinafter referred to as “Accrued Rent”) (NYSCEF Doc. 7). Construing the Guaranty strictly, as this Court must (*see (404 Park Partners, L.P. v Lerner, 75 AD3d 481, 482 [1st Dept 2010]*), Defendant agreed to pay accrued rent, but did not agree to pay liquidated damages that may be owed by Tenant upon Tenant’s dispossession of the Premises. Plaintiff’s failure to submit admissible evidence to establish whether Tenant remains in possession of the Premises, and thus rent is still accruing, or whether and when Tenant was dispossessed from the Premises and thus owes liquidated damages, requires denying this motion because without this information the Court cannot summarily determine whether Plaintiff is seeking to collect liquidated damages which are not covered under the guaranty, or is seeking to collect rent which is covered under the guaranty.

Because the motion is denied based on a single omission from Ms. Guillen’s affidavit, the Court denies the motion, without prejudice, with leave to renew within 30 days with supplemented papers addressing the deficiencies identified herein (see *Clover Private Credit Opportunities Origination (Levered) II LP v AlHusseini*, 226 AD3d 472 [1st Dept 2024] citing *Sea Trade Mar. Corp v Coutsodontis*, 111 AD3 483, 486 [1st Dept 2013] [CPLR 3213 motion may be denied with leave to renew on proper papers if supplementation of additional papers would cure defects on original motion]). On its renewed motion, Plaintiff’s counsel shall also submit contemporaneous invoices and billing records to support its request for attorneys’ fees.

Accordingly, it is hereby,

ORDERED that Plaintiff’s motion for summary judgment in lieu of complaint is denied, without prejudice, with leave to renew upon proper supporting papers remedying the deficiencies identified by the Court; and it is further

ORDERED that Plaintiff shall file its renewed motion for summary judgment within thirty days or this matter may be dismissed, without prejudice; 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 Defendant via first-class mail at his last known residential address and shall upload to NYSCEF an affidavit of service reflecting compliance with this directive.

This constitutes the Decision and Order of the Court.

12/15/25
DATE


HON. PHAEDRA F. PERRY-BOND, J.S.C..

CHECK ONE:

- CASE DISPOSED
- GRANTED
- DENIED
- SETTLE ORDER
- INCLUDES TRANSFER/REASSIGN

- NON-FINAL DISPOSITION
- GRANTED IN PART
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT
- OTHER
- REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: