

120-120 1/2 First LLC v Raiz NYC, LLC

2025 NY Slip Op 34908(U)

December 15, 2025

Supreme Court, New York County

Docket Number: Index No. 650876/2024

Judge: Leslie A. Stroth

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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. LESLIE A. STROTH PART 12M

Justice

-----X

120-120 1/2 FIRST LLC,

Plaintiff,

- v -

RAIZ NYC, LLC, CLINTON JOHNSON

Defendant.

-----X

INDEX NO. 650876/2024

MOTION DATE 02/03/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21

were read on this motion to/for DISMISS

FACTUAL BACKGROUND

This action arises out of an alleged breach of a commercial lease for the ground-floor and basement premises located at 120–120 ½ First Avenue in Manhattan. Plaintiff, 120–120 ½ First LLC, is the landlord of the building. Defendant Raiz NYC, LLC entered into a twelve-year lease beginning in 2021, and defendant Clinton Johnson executed a written guaranty of the tenant’s monetary obligations. Plaintiff alleges that the tenant stopped paying rent and additional rent, surrendered possession of the premises in September 2023 prior to the lease expiration date, and left outstanding arrears totaling approximately \$132,796 after crediting the security deposit.

Plaintiff commenced the action by summons with notice filed on February 17, 2024. Defendants were served later that month and in March, and on March 18, 2024 they appeared by counsel and served a demand for the complaint under CPLR 3012(b). Plaintiff did not serve a complaint within 20 days of that demand and ultimately filed the complaint on January 15, 2025. Defendants, in Motion Sequence 001, move to dismiss, asserting both the untimely service of the

complaint under CPLR 3012(b) and CPLR 3211(a)(1), (7), and (8) grounds. Plaintiff opposes and requests that the Court excuse the delay and permit the action to proceed.

LEGAL STANDARD

Pursuant to CPLR 3211 (a)(1) “dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law.” (*Leon v Martinez*, 84 NY2d 83, 88 [1994]).

Pursuant to CPLR 3211 (a)(7), a party may move to dismiss a claim on the ground that the pleading fails to state a cause of action. Upon such a motion, the Court must accept the facts alleged as true and determine simply whether plaintiff’s facts fit within any cognizable legal theory. (*See* CPLR 3026; *Morone v Morone*, 50 NY2d 481 (1980)). The complaint shall be liberally construed, and the allegations are given the benefit of every possible favorable inference. (*See Leon v Martinez*, 84 NY2d 83, 87 (1994)).

Pursuant to CPLR 3211 (a)(8), plaintiffs must demonstrate the basis for personal jurisdiction over defendants. (*Hopstein v. Cohen*, 143 AD3d 859, 860, [2d Dept. 2016]). If a defendant sufficiently challenges personal jurisdiction through the presentation of competent evidence, the plaintiff must then present facts which sufficiently demonstrate that personal jurisdiction is proper pursuant to CPLR 301 or 302. (*see Fischbarg v. Doucet*, 9 NY3d 375, 381, [2007]).

CPLR 3012(b) provides that “[i]f the complaint is not served with the summons, the defendant may serve a written demand for the complaint within the time provided in subdivision (a) of rule 320 for an appearance. Service of the complaint shall be made within twenty days after service of the demand ... The court upon motion may dismiss the action if service of the complaint is not made as provided in this subdivision.” To avoid dismissal of an action for

failure to serve a complaint after a demand for the complaint has been made pursuant to CPLR 3012(b), a plaintiff must demonstrate both a reasonable excuse for the delay in serving the complaint and a potentially meritorious cause of action. (*See Khamis v Corporate Transp. Group, Ltd.*, 135 AD3d 825, 825-826 (2nd Dept 2016); *Telian v Freund*, 129 AD3d 828, 828 (2nd Dept 2015); *Rose v Our Lady of Mercy Med. Ctr.*, 268 AD2d 225, 226 (1st Dept 2000)).

DISCUSSION

Turning first to CPLR 3012(b). Defendants served a demand for the complaint on March 18, 2024. Plaintiff did not serve a complaint within twenty days, as required, and did not file a complaint until January 15, 2025, approximately ten months later and without seeking leave of court. A plaintiff seeking to avoid dismissal must show both a reasonable excuse for the delay and a potentially meritorious claim. (*Citibank, N.A. v K.L.P. Sportswear, Inc.*, 144 AD3d 475, 476 [1st Dept 2016]).

Here, plaintiff has demonstrated that it possesses a meritorious claim: the lease, guaranty, arrears ledger, and supporting affidavit establish a viable commercial breach-of-contract action. The issue is whether plaintiff has shown a reasonable excuse.

Plaintiff attributes the delay to a combination of paralegal error, counsel's travel and illness, case-management software issues, an office relocation, and a subsequent lockout. These are detailed circumstances; however, they are not accompanied by any documentary corroboration, and the delay spans nearly an entire year. "Although a formal notice of motion or cross-motion should be used to request the relief sought...in her opposition papers, courts have the discretion, in the interest of justice, to entertain affirmative relief that does not meet the requirements of CPLR 2215." (*Trevino v Pray*, 217 AD3d 592, 593 [1st Dept 2023]).

However, the “interest of justice” standard does not override the substantive requirement that a plaintiff demonstrate a reasonable excuse for noncompliance with CPLR 3012(b). Here, plaintiff’s explanation is unsupported by any affidavits from staff, system records, correspondence logs, or documentation relating to the office move or lockout. As such, the court does not find that Plaintiff has established a credible, articulable law-office-failure basis for the prolonged period of inaction. The absence of any contemporaneous evidence, combined with the length and nature of the delay. As such, even assuming the Court were to reach the merits of plaintiff’s embedded request under *Trevino*, the submission does not demonstrate good cause or a reasonable excuse warranting relief.

Accordingly, after reviewing the submissions and the controlling authority, the Court finds that plaintiff has not met its burden under CPLR 3012(b), and its failure to formally and substantively establish grounds for an extension under CPLR 3012(d) is fatal. Defendants’ motion to dismiss pursuant to CPLR 3012(b) is therefore granted, and the complaint is dismissed without prejudice, consistent with CPLR 3012(b). Defendants’ remaining arguments under CPLR 3211 are denied as moot.

The court has considered the remaining arguments of the parties and finds such unavailing. Accordingly; it is hereby

ORDERED that defendants’ motion (Motion Sequence 001) to dismiss the complaint pursuant to CPLR 3012(b) is granted; and it is further

ORDERED that the complaint is dismissed without prejudice to refile with sufficient documentation within 30 days, pursuant to CPLR 3012(b); and it is further

ORDERED that defendants' remaining arguments for dismissal pursuant to CPLR 3211(a)(1), (7), and (8) are denied as moot.

The foregoing constitutes the decision and order of the Court.

12/15/2025
DATE



LESLIE A. STROTH, J.S.C.

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|-----------------------|-------------------------------------|----------------------------|---------------------------------|---|
| CHECK ONE: | <input checked="" type="checkbox"/> | CASE DISPOSED | <input type="checkbox"/> | NON-FINAL DISPOSITION |
| | <input type="checkbox"/> | GRANTED | <input type="checkbox"/> DENIED | <input checked="" type="checkbox"/> GRANTED IN PART |
| APPLICATION: | <input type="checkbox"/> | SETTLE ORDER | | <input type="checkbox"/> OTHER |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/> | FIDUCIARY APPOINTMENT |
| | | | | <input type="checkbox"/> REFERENCE |