

151 Eighth Stone LP v Bareburger Group LLC

2025 NY Slip Op 34911(U)

December 15, 2025

Supreme Court, New York County

Docket Number: Index No. 652909/2023

Judge: Nicholas W. Moyne

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 41M

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151EIGHTH STONE LP,

Plaintiff,

- v -

BAREBURGER GROUP LLC,NGM MANAGEMENT
GROUP LLC,GEORGE HADJIPANAYI, MICHAEL
PITSINOS, NICK KARAIKOS

Defendant.

INDEX NO. 652909/2023

MOTION DATE 08/06/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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HON. NICHOLAS W. MOYNE:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

Upon the foregoing documents, it is

The plaintiff, 151 Eighth Stone LP, moves, pursuant to CPLR § 3212, for an order granting it summary judgment against the defendant NGM Management Group LLC f/k/a Bareburger Chelsea LLC (“Tenant”) on its first cause of action for breach of lease, and against the defendants George Hadjipanayi and Michael Pitsinos (“Guarantors”) on its second cause of action for breach of guaranty. The plaintiff seeks a money judgment against both the Tenant and the Guarantors in the amount of \$878,319.18, plus interest. The motion also seeks to dismiss the defendants’ twenty-one affirmative defenses.

The underlying claims arise from a commercial lease commencing June 1, 2011, and scheduled to expire on May 31, 2023. The plaintiff is the current landlord/owner of the premises. The Tenant ceased making full rent payments beginning in June 2018, filed for bankruptcy in January 2019, and physically vacated the premises on or about November 22, 2019.

The plaintiff asserts that the Tenant’s default and vacating of the premises constituted a breach of the lease. Pursuant to paragraph 18 of the lease, the Tenant remains liable for all fixed rent and additional rent through the May 2023 lease expiration date, plus liquidated damages

encompassing the deficiency between the rent reserved and the net rents collected from a subsequent tenant, and all re-letting expenses, including attorneys' fees.¹ The Guarantors executed an unconditional guaranty of the Tenant's obligations, including fixed rent, additional rent, and legal fees. The guaranty limited liability to amounts in arrears up to the date the landlord obtained legal possession or the date the Tenant surrendered possession, provided that Guarantors supplied four (4) months' notice of the intention to surrender the premises to the landlord.

After reviewing the record, the Court finds that there are material issues of fact related to standing, liability, the scope of the guaranty and damages which preclude the granting of summary judgment. With regards to standing, the defendants cite to a March 7, 2018 assignment of the lease wherein the plaintiff assigned all of its right, title, and interest to the leases and tenancies of the premises, as well as the guaranties thereof, to Savelli Girls LLC to secure a mortgage. Defendants argue that this act divested the plaintiff of its right to sue for breach of the lease or guaranty. The plaintiff maintains that the assignment was solely a security interest related to the mortgage indebtedness and that the plaintiff retained a license to collect rents and pursue rights under the lease unless an event of default occurred under the mortgage. The plaintiff asserts it is the entity with the primary interest. The conflicting interpretations of the assignment, and whether it constitutes an outright transfer of the right to sue or merely a security interest retaining licensing rights in the plaintiff, cannot be resolved as a matter of law based on the record alone. Therefore, a material, triable issue of fact exists regarding the validity of the plaintiff's standing to maintain the action.

Additionally, there is an issue of fact as whether the lease terminated prior to its expiration due to a valid surrender and acceptance. The Guarantors attest that oral notice of intent to surrender was given in May of 2019 to Jeff Kaye, a representative of the plaintiff, who allegedly consented, citing the Tenant's financial troubles and the intent to re-let the premises. The Tenant subsequently vacated the premises in broom-clean condition in the fall of 2019. The subsequent acts of the Landlord in re-letting the premises to a new tenant (Chicken Chelsea LLC) and allegedly failing to send notices, bills, or tax demands to the Tenant for four years are

¹ The subsequent tenant (Chicken Chelsea LLC) leased the premises starting August 9, 2021, at a lower rent and with concessions.

cited as evidence of acceptance of the surrender by operation of law. The plaintiff argues that the alleged oral acceptance is insufficient because the lease contains a no oral modification clause and required all surrenders to be executed in a writing signed by the landlord. The plaintiff further contends that the surrender provision of the lease referenced in the guaranty mandates written notice, which was not provided. The conflicting evidence regarding the intent of the parties, specifically the effect of the alleged oral communication and the subsequent four-year lapse in billing balanced against the lease's no oral modification clause and written notice requirements, raises a genuine issue of material fact regarding whether a surrender and acceptance by operation of law occurred.

Whether a surrender occurred due to operation of law is a fact intensive question that usually requires discovery (*see 27th Street Property Owner LLC v Karpanti*, _NY3d_; 2025 WL 3274617 [1st Dept 2025]). The Guarantors' liability under the "Good-Guy Guaranty" is expressly limited if a mandatory condition is met: the Tenant surrenders possession in accordance with the lease terms, and the Guarantors provide four (4) months' notice of intent to surrender. The lease required notices to be in writing. Since the alleged notice was indisputably oral, a finding that the strict condition precedent for limiting liability was never met would render the Guarantors liable for the full amount through May 31, 2023. Conversely, if the trier of fact credits the Guarantors' testimony that the landlord's agent accepted the surrender and waived the written notice requirement or finds that the landlord's actions constituted acceptance by operation of law, the Guarantors' liability may be restricted to the arrears accrued only up to the surrender date. Because the validity of the surrender and the effectiveness of the notice intended to trigger the liability limitation are material facts in dispute, summary judgment against the Guarantors is not warranted.

The defendants also challenge the calculation of the claimed \$51,093.87 in late charges, asserting the rate is criminally usurious. The plaintiff correctly argues that the Tenant, a corporation (NGM Management Group LLC), is statutorily barred from interposing the defense of usury pursuant to General Obligations Law § 5-521(1). Furthermore, late payment fees are generally considered liquidated damages intended to compel prompt payment, not usurious loans. The defense is without merit as a matter of law.

Finally, the defendants allege that the landlord's construction in 2018, coupled with numerous DOB violations, breached the covenant of quiet enjoyment, potentially barring recovery or entitling the Tenant to a rent abatement. This claim is supported by documentary evidence (17 violations between April and November 2018) and sworn testimony. This creates a triable issue of fact concerning the offset of damages prior to the Tenant's vacatur.

Because triable issues of fact exist regarding the defenses of Lack of Standing (Twelfth), Surrender (Fifteenth), and Material Breach (Tenth), the Court cannot dismiss these defenses as baseless. The general motion to strike all 21 defenses as boilerplate is denied as premature with respect to the core defenses implicated by the factual disputes addressed above. No discovery has taken place in this action. The defendants assert that essential facts needed to oppose summary judgment, including proof regarding the legal effect of the Assignment of Leases and Rents (Standing) and access to critical financial records held by the prior management company, the Franchisor (Bareburger Group LLC), and former email accounts, are exclusively in the possession of the plaintiff or third parties. Discovery is necessary to meaningfully challenge the plaintiff's calculations and the factual predicates underlying the defenses asserted. Accordingly, summary judgment is denied pursuant to CPLR 3212(f) as premature. Given the existence of numerous material, triable issues of fact regarding standing, the validity of the surrender and the termination date of liability, the scope of the guaranty, and the effect of the alleged breach of the covenant of quiet enjoyment, the plaintiff has failed to meet its burden of establishing a prima facie entitlement to judgment as a matter of law.

Therefore, it is hereby

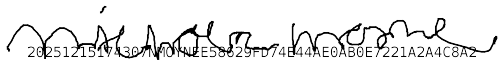
ORDERED that the plaintiff's motion for summary judgment against the Tenant NGM Management Group LLC (First Cause of Action) is denied; and it is further

ORDERED that the plaintiff's motion for summary judgment against the Guarantors George Hadjipanayi and Michael Pitsinos (Second Cause of Action) is denied; and it is further

ORDERED that the plaintiff's motion pursuant to CPLR 3211(b) to strike the defendants' affirmative defenses is denied as premature, pending the completion of discovery; and it is further

ORDERED that the parties shall appear for a Preliminary Conference on Tuesday February 24, 2026, at 2:15 pm to schedule discovery on the outstanding issues.

This constitutes the Decision and Order of the Court.



12/15/2025
DATE

NICHOLAS W. MOYNE, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE