

78/79 York Assoc. LLC v Scott

2026 NY Slip Op 30026(U)

January 5, 2026

Supreme Court, New York County

Docket Number: Index No. 655128/2024

Judge: Phaedra F. Perry-Bond

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PHAEDRA PERRY-BOND PART 35
Justice
INDEX NO. 655128/2024
78/79 YORK ASSOCIATES LLC, MOTION DATE 09/27/2024
Plaintiff, MOTION SEQ. NO. 001
- v -
BART E. SCOTT, DECISION + ORDER ON MOTION
Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 10, 12, 13, 14, 15, 16, 17, 18, 19 were read on this motion to/for JUDGMENT - SUMMARY IN LIEU OF COMPLAINT .

Plaintiff 78/79 York Associates LLC moves, pursuant to CPLR § 3213, for summary judgment in lieu of complaint on the ground the action is based upon an instrument for payment of only money, which is now due and payable and no triable issues of fact exists. Plaintiff seeks an order directing entry of judgment against defendant-guarantor, Bart E. Scott, in the amount of \$41,724.29, along with interest, costs, expenses, and disbursements. Defendant opposes the motion and cross-moves for an order granting summary judgment dismissing the complaint.1 For the reasons set forth below, plaintiff’s motion is denied and defendant’s cross-motion is granted.

Pertinent background

Plaintiff is the owner of a building located at 504 East 79th Street in Manhattan (the building) (see NYSCEF Doc No. 5, plaintiff’s deed). In 2021, plaintiff and Mojeh K. Adams (tenant) entered into a written lease for apartment 4H in the building, with a lease term beginning

1 Defendant filed a reply on his cross-motion (NYSCEF Doc No. 19). The court does not consider defendant’s reply as a cross-movant is not entitled to a reply without leave of the court (see CPLR §§ 2214, 2215).

on December 1, 2021, and ending on November 30, 2022 (NYSCEF Doc No. 6 at 1-6). Defendant signed the guaranty in the lease, the relevant portion of which provides as follows:

“The undersigned Guarantor guarantees to Owner the strict performance of and observance by Tenant of all the agreements, provisions and rules *in the attached Lease*. Guarantor agrees to waive all notices when Tenant is not paying rent or not observing and complying with all of the provisions of the attached Lease....*The Guarantor further agrees that his guaranty shall remain in full effect even if the Lease is renewed, changed or extended in any way and even if Owner has to make a claim against Guarantor....*”

(NYSCEF Doc No. 7 [emphasis added]).²

On November 7, 2023, almost a year after the original lease term ended, tenant signed another written lease for the apartment (NYSCEF Doc No. 6 at 7). Thereafter, on November 13, 2023, an individual signed the lease on plaintiff’s behalf.³ The purported renewal lease is dated July 19, 2023, and states that owner is notifying tenant his lease will expire on November 30, 2023. The new lease term commenced on December 1, 2023, and terminated on November 30, 2024.

Legal Standard

Under CPLR § 3213, when an action is “based upon an instrument for the payment of money only,” a plaintiff may file a summary judgment motion in lieu of complaint (*Banco Popular N. Am. v Victory Taxi Mgt.*, 1 NY3d 381, 383 [2004]). A guaranty to a lease is a qualifying instrument under CPLR § 3213 where there are no conditions precedent for the guarantor’s obligation to pay (*see 45-47-49 Eighth Ave. LLC v Conti*, 220 AD3d 473, 473 [1st Dept 2023] [holding that when a guaranty contains performance and payment obligations, “this does not preclude summary judgment in lieu of complaint where...performance is not a condition precedent

² NYSCEF Doc No. 7 is page 5 of the lease and bears defendant’s signature to the guaranty.

³ The name of the person who signed the lease on plaintiff’s behalf is not printed below the person’s signature.

to payment”)).⁴

A plaintiff satisfies its prima facie burden on its claim for breach of guaranty by proving “the existence of the guaranty, the underlying debt and the guarantor’s failure to perform under the guaranty” (*Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A., “Rabobank Intl.,” N.Y. Branch v Navarro*, 25 NY3d 485, 492 [2015] [citation omitted]). That said, the “guaranty is to be interpreted in the strictest manner, particularly in favor of a private guarantor, and cannot be altered without the guarantor’s consent” (*Lo-Ho LLC v Batista*, 62 AD3d 558, 559 [1st Dept 2009] [internal quotation marks and citations omitted]). In other words, the “guarantor should not be bound beyond the express terms of his guarant[y]” (*ROC-Lafayette Assoc., LLC v Sturm*, 233 AD3d 418, 419 [1st Dept 2024] [citation omitted]).

Discussion

Plaintiff’s evidence includes the building’s deed, six pages of the original lease, the guaranty, the lease dated July 19, 2023, and a rent ledger reflecting unpaid rent from February 2023 to June 2024 (NYSCEF Doc Nos. 5-8). The guaranty at issue is a qualifying instrument under CPLR § 3213 as it does not require additional performance on the part of plaintiff or tenant as a condition precedent to defendant’s obligation to pay. Therefore, the question before the court is whether defendant’s guaranty of the original lease applies to the lease dated July 19, 2023. To answer this question, the court considers the guaranty, the original lease, the lease dated July 19, 2023, and applicable case law.

The guaranty in the instant action is akin to the guaranty at issue in *Lo-Ho LLC*. In that action, the original lease and the guaranty were signed in April 2000 (62 AD3d at 558). The

⁴ “A condition precedent is an act or event, other than a lapse of time, which, unless the condition is excused, must occur before a duty to perform a promise in the agreement arises” (*Parlux Fragrances, LLC v S. Carter Enters., LLC*, 204 AD3d 72, 85 [1st Dept 2022] [citation omitted]).

pertinent portion of that guaranty provided as follows:

“The undersigned Guarantor guarantees to Owner...the full performance and observance of all the agreements to be performed and observed by Tenant *in the attached Lease*...without requiring any notice to the Guarantor of nonpayment, or nonperformance, or proof, or notice of demand to hold the [Guarantor] responsible under this guaranty, all of which the [Guarantor] hereby expressly waives and expressly agrees...*The Guarantor further agrees that this guaranty shall remain and continue in full force and effect as to any renewal, change or extension of the Lease*”

(*id.*).

The original lease expired on March 31, 2005, and subsequently, on or around April 25, 2005, plaintiff and tenant signed a second lease titled “Extension of Lease” (*id.* at 558-559). The question before the court was whether the second lease constituted an “extension of the [original] lease under the terms of the guaranty” (*id.* at 560). “Interpreting the guaranty in the strictest manner, [the First Department] agree[d] with the trial court that the lease signed in April 2005 was not an extension of the [original] lease as would permit plaintiff to recover from defendant guarantor” (*id.*). In holding that the second lease was a new lease, the First Department noted that “[a]n expired lease cannot be extended” and that “the second lease states unequivocally, ‘Lease dated April 1, 2000...expired on March 31, 2005’ ” (*id.*).

In the instant action, the original lease unequivocally states it ends on November 30, 2022, and the lease dated July 19, 2023, reflects it was fully executed as of November 13, 2023. Critically, plaintiff did not submit proof a lease was in effect on December 1, 2022, immediately after the original lease expired. Given the same and interpreting the guaranty in the strictest manner in favor of the private guarantor, the court holds the guaranty expired before the new lease was signed. Therefore, the new lease and the guaranty cannot form a basis for plaintiff to recover rent arrears from defendant (*see Elite Gold, Inc. v TT Jewelry Outlet Corp.*, 31 AD3d 338, 340 [1st Dept 2006]) [“Because the guaranty clause created an obligation on the part of the individual

defendant guarantor only as to ‘any renewal, change or extension of the Lease,’ upon the expiration of the lease it lapsed and cannot be a vehicle to bind the individual defendant”). Thus, plaintiff’s motion must be denied.

The court now turns to defendant’s cross-motion for summary judgment. When a court denies a motion for summary judgment in lieu of complaint, “the moving and answering papers shall be deemed the complaint and answer, respectively, unless the court orders otherwise” (CPLR § 3213). As such, conversion is discretionary, and the court has the authority to grant summary judgment in a defendant’s favor (*Schulz v Barrows*, 94 NY2d 624, 626, 628 [2000]). Here, given the court’s holding above with respect to the guaranty, the court does not deem conversion appropriate. Therefore, the court finds summary judgment appropriate in defendant’s favor.

Conclusion and Order

The court considered the parties’ other arguments and finds them unavailing and/or non-dispositive. Accordingly, it is:

ORDERED that plaintiff’s motion for summary judgment in lieu of complaint is denied; and it is further


ORDERED that defendant’s cross-motion for summary judgment dismissing plaintiff’s action is granted; and it is further

ORDERED that within 30 days of entry, defendant shall serve a copy of this decision and order with notice of entry on plaintiff and on the office of the County Clerk, which shall enter judgment accordingly; and it is further

ORDERED that the Clerk of the Court mark the action disposed.

This constitutes the decision and order of the court.

01/05/2026
DATE


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

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