

Randolph Assoc. v Munn

2026 NY Slip Op 30036(U)

January 8, 2026

Supreme Court, New York County

Docket Number: Index No. 156080/2025

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

Justice

-----X

RANDOLPH ASSOCIATES
Plaintiff,

- v -

MAX MUNN,
Defendant.

-----X

INDEX NO. 156080/2025
MOTION DATE 09/26/2025
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 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 were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, the motion is denied as premature, and the cross-motion is granted.

Background

Plaintiff owns a building in Brooklyn that was leased to non-party Mega Vision, Inc (the “Tenant”) in 2008. Mega Vision later assigned its lease interest to nonparty VisionMark, LLC, although Plaintiff was apparently unaware of the assignment. In 2022, VisionMark subleased the premises to Munn Works, LLC. In connection with this sublease, in 2025 Defendant executed a personal Guaranty. In this agreement, Defendant guaranteed the payment and performance obligations of Munn Works to Plaintiff. At that time, there was past due rents of \$1,017,154.04. In May of 2025, Plaintiff filed this proceeding against the guarantor Defendant, seeking to enforce the sublease guaranty. Plaintiff also filed a separate action against the Tenant and other entities (the “Tenant Action”), seeking to recover the past due amounts and other amounts alleged to be due under the lease and sublease. There have been several affirmative defenses asserted in that action.

Discussion

In this motion, Plaintiff moves for partial summary judgment on a sum certain as to the amounts set forth in the complaint and for an evidentiary hearing to determine additional sums due, such as further legal fees. Defendant opposes, and cross-moves to consolidate this action with the Mega Vision Action. For the reasons that follow, the motion is denied as premature with leave to refile, and the cross-motion is granted.

Summary Judgment is Premature Given the Related Action Concerning Tenant Liability

In support of their motion for summary judgment, Plaintiff argues that they have established that there are past due rent and legal fees arrears under the lease and sublease of \$1,297,339.03, and therefore Defendant's liability under the guaranty has been established. Defendant argues that granting summary judgment would be premature, as the Tenant's liability and the outstanding amounts due have not been established and are currently undecided matters in the Tenant Action. Once a party has moved for summary judgment and made a showing of prima facie entitlement, the burden then shifts to the opponent to "produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action." *Stonehill Capital Mgt. LLC v. Bank of the W.*, 28 N.Y.3d 439, 448 [2016].

Here, the issue of Tenant's liability regarding arrears is a necessary predicate to finding liability under a guaranty. Plaintiff is correct in saying that the terms of the guaranty that allow suit to be brought against the guarantor without having to bring in the tenant. But, as with all guarantees, the Tenant's liability must first be established in order for liability to be triggered under the guaranty. And as the liability of the Tenant is currently unresolved in the Tenant Action (which was brought by Plaintiff), there is the risk of inconsistent verdicts should summary judgment be granted here at this time. Therefore, summary judgment is premature. *See*

TPZ Corp. v. Dabbs, 25 A.D.3d 787, 790 [2nd Dept. 2006] (holding that triable issues of fact as to payment offsets defeats a prima facie entitlement to summary judgment on a note).

Consolidation Is Proper Here

Defendant has cross-moved for consolidation, which Plaintiff opposes. Under CPLR § 602(a), consolidation of two matters may be ordered when the actions concern a common question of law or fact. Generally, “there is a preference for consolidation in the interest of judicial economy and ease of decision-making where there are common questions of law and fact, unless the party opposing the motion demonstrates that consolidation will prejudice a substantial right.” *Progressive Ins. Co. v. Countrywide Ins. Co.*, 10 A.D.3d 518, 519 [1st Dept. 2004]. Consolidation should also be denied if “the actions are at markedly different procedural stages and consolidation would result in undue delay in the resolution of either matter.” *Abrams v. Port Auth. Trans-Hudson Corp.*, 1 A.D.3d 118, 119 [1st Dept. 2003]. Here, the factors weighing in favor of consolidation are easily met. The two cases are deeply linked, in that they both involve the issue of an allegedly breached lease and sublease and concern the same set of facts. While Plaintiff argues that the two cases are at different procedural stages, the Court does not consider any difference to result in undue delay or prejudice. The cases were filed a few months apart, and there does not appear to have been any discovery done on either matter. Furthermore, as addressed above, the matter of the Tenant’s liability and any offsets must be established before the Defendant here can be held liable. Accordingly, it is hereby

ADJUDGED that the motion is denied as premature with leave to refile under a different motion sequence number; and it is further

ADJUDGED that the cross-motion is granted; and it is further

ORDERED that the above-captioned action is consolidated in this Court with *Randolph Associates v. Mega Vision, Inc., Michael Chiriac, VisionMark, LLC, and Munn Works LLC*, Index No. 161290/2025; and it is further

ORDERED that the consolidation shall take place under Index No. 156080/2025 and the consolidated action shall bear the following caption:

RANDOLPH ASSOCIATES,

Plaintiff,

-against-

MEGA VISION, INC., MICHAEL CHIRIAC, VISIONMARK, LLC, and MUNN WORKS, LLC A/K/A MUNNWORKS, LLC, and MAX MUNN.

Defendants.

And it is further

ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

ORDERED that, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the Court (60 Centre Street, Room 141 B), who shall consolidate the documents in the actions hereby consolidated and shall mark his records to reflect the consolidation; and it is further

ORDERED that counsel for the movant shall contact the staff of the Clerk of the Court to arrange for the effectuation of the consolidation hereby directed; and it is further

ORDERED that service of this order upon the Clerk of the Court shall be made in hard-copy format if this action is a hard-copy matter or, if it is an e-filed case, shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that, as applicable and insofar as is practical, the Clerk of this Court shall file the documents being consolidated in the consolidated case file under the index number of the consolidated action in the New York State Courts Electronic Filing System or make appropriate notations of such documents in the e-filing records of the court so as to ensure access to the documents in the consolidated action; and it is further

ORDERED that, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who is hereby directed to reflect the consolidation by appropriately marking the court's records; and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office shall be made in hard-copy format if this action is a hard-copy matter or, if it is an e-filed case, shall be made in accordance with the procedures set forth in the aforesaid Protocol.

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1/8/2026
DATE

LYLE E. FRANK, 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