

875 Third Ave., LLC v LTRB Tenant LLC

2026 NY Slip Op 30090(U)

January 12, 2026

Supreme Court, New York County

Docket Number: Index No. 650197/2025

Judge: Paul A. Goetz

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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. PAUL A. GOETZ PART 47

Justice

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875 THIRD AVENUE, LLC,

Plaintiff,

- v -

LTRB TENANT LLC, LEECH TISHMAN FUSCALDO & LAMPL, LLC,

Defendants.

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INDEX NO. 650197/2025

MOTION DATE 03/14/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 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

were read on this motion to/for DISMISS

Upon the foregoing documents, it is

ORDERED that defendants' motion pursuant to CPLR §§ 3211 (a)(1) and (7) and CPLR § 3016(b) to dismiss plaintiff's (the landlord) complaint¹ in its entirety as against defendant Leech Tishman Fuscaldo & Lampl LLC (the guarantor) and to dismiss plaintiff's fifth cause of action for unjust enrichment² as against defendant LTRB Tenant LLC (the tenant) is granted because:

- (i) The landlord's second cause of action for breach of contract as against the guarantor fails because the guaranty agreement limits the guarantor's liability to payment of "60 days' Fixed Rent and Escalation Rent . . . from the date when Tenant delivers the Vacation Notice to Landlord" (NYSCEF Doc No 14 § 2.1), and the tenant delivered its notice of vacatur on May 1, 2024 (NSYCEF Doc No 20) and the guarantor paid rent for the following 60 days (NYSCEF Doc No 1 ¶ 26 [the landlord seeks to recover rent accruing from July 1, 2024]); and "while tenant was required to obtain written consent of the surrender from plaintiff under the lease," the guaranty does

¹ The complaint states causes of action for: (1) breach of contract as against the tenant, (2) breach of contract as against the guarantor, (3) breach of contract and alter ego liability as against the guarantor, (4) fraud as against the guarantor, and (5) unjust enrichment as against both defendants.

² Plaintiff incorrectly refers to this as its fourth cause of action (NYSCEF Doc No 1 [two "fourth" causes of action]). For the purposes of this decision and order, the final cause of action for unjust enrichment is referred to and treated as plaintiff's fifth cause of action.

“not incorporate the terms of the underlying lease by reference or expressly require that tenant’s surrender of the premises be performed pursuant to the terms of the lease” (*Roc-Lafayette Assocs., LLC v Sturm*, 233 AD3d 418, 420 [1st Dept 2024] [internal citation omitted]; NYSCEF Doc No 13, Lease § 24.1 [“No act or thing done by Landlord or Landlord’s agents during the Term shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such surrender shall be valid unless in writing signed by Landlord”]; NYSCEF Doc No 14, Guaranty [no provision incorporating the lease]), and in such circumstances, “the tenant’s obligation to obtain the landlord’s consent under the lease cannot be imputed to the guarantor under the guaranty” (*213 W. 23rd St. LLC v Crunch Holdings LLC*, 238 AD3d 652, 653 [1st Dept 2025], compare *122 E. 42nd St., LLC v Scharf*, 211 AD3d 517, 518 [1st Dept 2022] [guaranty included a “whereas” clause which “incorporate[d] the terms of the lease”]);³

- (ii) The landlord’s third cause of action for breach of contract and alter ego liability as against the guarantor by piercing the tenant’s corporate veil fails because “[w]hile plaintiff emphasizes that the [guarantor] dominate[s] and control[s] the [tenant], such evidence alone does not suffice” to pierce the corporate veil “without an additional showing that it led to inequity, fraud or malfeasance” (*2497 Realty Corp. v Fuertes*, 232 AD3d 451, 452 [1st Dept 2024]), and here: the landlord only asserts that the guarantor’s “dominion over Tenant . . . allowed Tenant to breach the Lease and rendered Tenant judgment-proof in doing so” (NYSCEF Doc No 29, p. 17; NYSCEF Doc No 1 ¶ 29; *2497 Realty Corp.*, 232 AD3d at 452 [plaintiff’s “complain[t] that the [] Defendants, using their entities, [] deprive plaintiff of the funds it is entitled to [does] not suffice to pierce the corporate veil”]; *Edward Tyler Nahem Fine Art, L.L.C. v Barral*, 136 AD3d 477, 478 [1st Dept 2016] [“the evidence does not compel a finding that defendant [took any action] for the purpose of leaving the corporation judgment proof or to perpetrate a wrong against plaintiff”]); plaintiff “concede[s] that the [lease] was the product of substantial negotiations” and “[a]lthough these negotiations were with [defendant Leech Tishman Fuscaldo & Lampl LLC], plaintiff[] cannot now complain that [it] did not know what [it was] agreeing to in executing the agreement with” defendant LTRB Tenant LLC instead (*TNS Holdings Inc v MKI Sec Corp*, 92 NY2d 335, 340 [1998]; *Brunswick Corp v Waxman*, 599 F2d 34, 36 [2nd Cir 1979] [“Brunswick was aware or should have known that the dummy corporation was created for the limited purpose of” entering into the lease]); and “permitting the plaintiff to pierce the corporate veil in this case would be inconsistent with the provision of the [guaranty] which limited [the guarantor’s] liability” (*Treeline Mineola LLC v Berg*, 21 AD3d 1028, 1029 [2nd Dept 2005]);
- (iii) The landlord’s fourth cause of action for fraud as against the guarantor fails because it merely alleges that the landlord “relinquished [the prior lease] based upon knowingly false statements made by Guarantor that it would sign and adhere to the terms of a new Lease” (NYSCEF Doc No 1 ¶ 51) and, as defendants note: “[a] fraud-based cause of action is duplicative of a breach of contract claim when the only fraud

³ The guarantor’s obligations depend on the *tenant’s notice* of vacatur, not on the *landlord’s acceptance* of the vacatur (NYSCEF Doc No 14 § 2.1).

alleged is that the defendant was not sincere when it promised to perform under the contract” (*Manas v VMS Assoc., LLC*, 53 AD3d 451,453 [1st Dept 2008] [internal quotation marks omitted]); “general allegations that defendant entered into a contract lacking the intent to perform are insufficient” to form the basis of a fraud claim (*Laura Corio, M.D., PLLC v R. Lewin Interior Design, Inc.*, 49 AD3d 411, 412 [1st Dept 2008]); “[a] complaint based upon a statement of future intention must allege facts to show that the defendant, at the time the promissory representation was made, never intended to honor or act on his statement” (*id.* [internal quotation marks omitted]); and the claim is “not pleaded with the requisite particularity under CPLR 3016 (b), because the words used by defendants and the date of the alleged false representations are not set forth” (*Gregor v Rossi*, 120 AD3d 447, 447 [1st Dept 2014])

- (iv) The landlord’s fifth cause of action for unjust enrichment fails as against both defendants because here, “the parties executed [] valid and enforceable written contract[s] governing a particular subject matter,” and therefore “recovery on a theory of unjust enrichment for events arising out of that subject matter is [] precluded” (*IDT Corp. v Morgan Stanley Dean Witter & Co.*, 12 NY3d 132 [2009])

And therefore, it is

ORDERED that the action shall bear the following caption:

875 THIRD AVENUE, LLC,

Plaintiff,

LTRB TENANT LLC,

Defendant.

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And it is further

ORDERED that defendants’ counsel shall serve a copy of this order with notice of entry upon the County Clerk and the Clerk of the General Clerk’s Office, who are directed to mark the court’s records to reflect the party being removed pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk’s Office 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); and it is further

ORDERED that the parties are directed to appear for a preliminary conference on March 5, 2026 at 9:30 a.m.


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<u>1/12/2026</u> DATE					<hr/> PAUL A. GOETZ, J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
				OTHER	<input type="checkbox"/>
				REFERENCE	<input type="checkbox"/>