

410 W. LLC v Chen

2026 NY Slip Op 30151(U)

January 13, 2026

Supreme Court, New York County

Docket Number: Index No. 159863/2025

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

410 WEST LLC

Plaintiff,

- v -

DAVID CHEN,

Defendant.

-----X

INDEX NO. 159863/2025

MOTION DATE 12/17/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22

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

Upon the foregoing documents, the motion is granted in part.

Background

In December of 2020, Plaintiff leased storefront premises to 165 St. Wine & Spirits Inc. (“Tenant”). In connection with that lease, Defendant signed an unconditional personal guaranty. Plaintiff alleges that as of July 2025, According to Plaintiff’s complaint, Tenant has accrued rental arrears of \$494,943.66. To date, Tenant has not vacated the premises, nor has full rent been paid since June 2021. They filed this underlying proceeding against Defendant as guarantor. Defendant has answered, pleading defenses including lack of jurisdiction due to allegedly improper service and failure to join a necessary party. In September of 2025, a non-payment action was brought by Plaintiff against the Tenant in Civil Court. Plaintiff now moves here for summary judgment.

Discussion

Plaintiff moves to amend the pleadings to conform with the evidence reflecting a new total arrears amount of \$633,583.55 and for summary judgment in their favor in that amount.

Defendant opposes, arguing that 1) there were multiple problems with the premises that justified the withholding of partial rent and that Plaintiff has permitted partial payment since June 2021 without objection; 2) he was not personally served; and 3) the Tenant is a necessary and appropriate party. For the reasons that follow, the motion is granted as to the amendment of the pleadings and summary judgment on liability.

Standard of Review

Under CPLR § 3212, a party may move for summary judgment and the motion “shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party.” CPLR § 3212(b). Once the movant makes a showing of a prima facie entitlement to judgment as a matter of law, 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]. The facts must be viewed in the light most favorable to the non-moving party, but conclusory statements are insufficient to defeat summary judgment. *Id.*

Defendant Has Waived Jurisdictional Defenses

Defendant was served via nail and mail, and he argues here in opposition that failure to personally serve him defeats jurisdiction. Under CPLR § 3211(e), when a party raises improper service/lack of jurisdiction in their answer but fails to move to dismiss the action within sixty days, such an objection to service is deemed waived. Here, Defendant clearly raised the issue of improper service in his answer, which was filed September 03, 2025. Defendant has failed to move to dismiss this proceeding based on jurisdictional grounds and therefore has waived any objection to service.

The Tenant Is Not a Necessary Party

Defendant argues that Tenant is a necessary party to this action, and a failure to join them thus defeats the motion for summary judgment. But by the plain terms of the guaranty agreement, the guaranty may be enforced without “the necessity at any time of having recourse to Tenant.” Therefore, failure to join the Tenant to this action does not remove Plaintiff’s ability to seek to enforce the guaranty against Defendant.

Plaintiff Has Established Entitlement as To Liability


As stated above, as movant Plaintiff bears the burden of establishing a *prima facie* entitlement to summary judgment. In the context of summary judgment on a guaranty, “the creditor need prove no more than an absolute and unconditional guaranty, the underlying debt, and the guarantor’s failure to perform under the guarantee.” *Kensington House Co. v. Oram*, 293 A.D.2d 304, 305 [1st Dept. 2002]. Here, Plaintiff has provided a copy of the guaranty, an affidavit from their principal, and the rent ledgers showing unpaid rent amounts and late fees. In opposition, Defendant’s affidavit states that the Tenant had been paying a reduced rent amount for years due to building closures that impacted the business, and that the Tenant and their counsel had been in communication with Plaintiff who accepted those partial payments as they were tendered. In essence, while Defendant does not raise a material fact going to liability under the lease on the part of Tenant, he does raise issues going to the determination of the specific amount owed by Tenant that he is liable for under the guaranty. In such a situation, granting summary judgment as to liability and then conducting an inquest on the calculation of damages is proper. Accordingly, it is hereby

ADJUDGED that motion is granted as to the amendment of the pleadings to conform and liability; and it is further

ORDERED that an assessment as to damages and attorney’s fees is directed; and it is further

ORDERED that a copy of this order with notice of entry be served by the movant upon the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who is directed, upon the filing of a note of issue and a certificate of readiness and the payment of proper fees, if any, to place this action on the appropriate trial calendar for the assessment hereinabove directed; and it is further

ORDERED that such service upon 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 at the address www.nycourts.gov/supctmanh).

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LYLE E. FRANK, J.S.C.

1/13/2026
DATE

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