156-166 Bowery L.P. v REEC 156 Bowery, LLC
2026 NY Slip Op 30332(U)
January 27, 2026
Supreme Court, New York County
Docket Number: Index No. 651492/2025
Judge: Paul A. Goetz
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. PAUL A. GOETZ** **PART** **47**

Justice

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156-166 BOWERY L.P.,

Plaintiff,

- v -

REEC 156 BOWERY, LLC,MARK SEIGEL, CANDICE LEVY MILLER

Defendants.

---X

INDEX NO. 651492/2025

MOTION DATE 09/22/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 28, 29, 30, 31, 32, 33, 34

were read on this motion to/for DISMISS.

In this breach of a ground lease action, defendant, Mark Seigel, moves pursuant to CPLR § 3211(a)(1) and CPLR § 3211(a)(7) to dismiss the causes of action asserted against him. Plaintiff asserts five causes of action as against Seigel as a guarantor to the ground lease between plaintiff and defendant, REEC 156 Bower, LLC ("REEC") including, three claims of Breach of Contract for Demolition Costs & Expenses (Fourth Cause of Action); Liens (Fifth Cause of Action); Construction of Initial Building (Sixth Cause of Action); a Declaration that the Guarantors are liable for the value of the Building (Seventh Cause of Action); and for Attorney's Fees (Eight Cause of Action).

BACKGROUND

Plaintiff is the owner of the premises located at 156-166 Bowery, New York, New York (the "Premises") (NYSCEF Doc No 1 ¶ 8). REEC took possession of the Premises pursuant to a 99 year Ground Lease (*id*. at ¶ 9; *see also* NYSCEF Doc No 2). Pursuant to the Lease, in addition to rent and tax obligations, REEC was required to demolish existing structures on the

property, excavate the land, and construct a new mixed use office building on the site (NYSCEF Doc No 1 ¶ 11). Mark Seigel and Brandon Miller[1], signed a Guaranty of Completion in connection with the lease and the development of the Premises (*id*. at ¶¶ 35 – 37; *see also* NYSCEF Doc No 13 ¶ 4). Pursuant to the Lease, REEC was required to "demolish the Existing Improvements within 18 months following the Commencement Date" which was August 26, 2022 (NYSCEF Doc No 1 ¶ 20) and construct a new building on the site by February 26, 2026 (*id*. at ¶ 24).

REEC failed to pay plaintiff monthly installments of the Base Rent in March, July, and August 2024, and plaintiff served REEC with a Notice of Default on August 5, 2024 (*id*. at ¶ 14). REEC additionally failed to fully demolish the structures on the Premises and failed to commence construction on the new building (*id*. at ¶¶ 20 – 23). On January 3, 2025 plaintiff served REEC with a Notice of Termination of the Lease (*id*. ¶ 32). On January 23, 2025 REEC signed a Surrender Notice and Termination of Memorandum of Lease, and surrendered the Premises the next day (*id*. at ¶ 34). Plaintiff alleges that following the termination of REEC's lease it spent $1,746,261.62 demolishing the existing structures (NYSCEF Doc No 1 ¶ 29). Plaintiff demanded payment for its demolition costs and for outstanding liens on the Premises from the Guarantors, who failed to make any payments or respond to the demand (*id*. at ¶¶ 38 – 39).

DISCUSSION

Failure to State a Claim

When reviewing a "motion to dismiss for failure to state a cause of action pursuant to CPLR 3211(a)(7), [courts] must accept the facts as alleged in the complaint as true, accord the

[1] Miller is recently deceased, and defendant Candice Levy Miller has been sued here as the Administrator of his Estate (NYSCEF Doc No 1 at ¶ 7).

plaintiff the benefit of every reasonable inference, and determine only whether the facts, as alleged fit within any cognizable legal theory" (*Bangladesh Bank v Rizal Commercial Banking Corp.*, 226 AD3d 60, 85-86 [1st Dept 2024] [internal quotations omitted]). "In making this determination, [a court is] not authorized to assess the merits of the complaint or any of its factual allegations" (*id.* at 86 [internal quotations omitted]). Further "[i]n assessing a motion under CPLR 3211(a)(7), ... the criterion is whether the proponent of the pleading has a cause of action, not whether [they have] stated one" (*Eccles v Shamrock Capital Advisors, LLC*, 42 NY3d 321, 343 [2024] [internal quotations marks omitted]).

Enforceability of the Guarantee

Seigel first argues that the guarantee should not be enforced because it would create an impermissible windfall for plaintiff. Seigel argues that REEC invested over $4 million towards the improvement of the Premises, a substantial portion of which was transferred to the plaintiff upon termination of the lease. Seigel further notes that plaintiff will further benefit from new developer-friendly zoning ordinances which greatly increase the value of the Premises. Seigel argues that finding liability against him as a guarantor will ultimately place plaintiff in a better situation than it would have been than if REEC had fully performed under the ground lease.

Seigel cites to *Chase Manhattan Bank, N.A. v Am. Nat. Bank and Tr. Co. of Chicago*, in support of his argument that a guarantee should not be enforced where there is no circumstance that the plaintiff would actually incur completion costs (93 F3d 1064 [2d Cir 1996]). In *Chase*, the plaintiff bank entered into a loan agreement with the defendant to finance improvements on the defendant borrower's property which included a completion guarantee (*id.*). Following a default, Chase obtained the property at a foreclosure proceeding and then sold the property. However, Chase conceded that "it neither incurred expenses related to making the renovations

prior to the sale of the property ..., nor is obligated to pay for, nor make, any such improvements now that the property has been sold" (*id.* at 1071). The Court held that because Chase did not incur any actual damages, it could not recover monetary damages from the borrower under the alleged breached guarantee (*id.*).

In contrast, here plaintiff alleges that it incurred actual damages as a result of REEC's failure to fully demolish the building because it spent $1,746,261.62 in out-of-pocket costs demolishing the structures on the property (NYSCEF Doc No 1 ¶ 29). Further, while Seigel argues that plaintiff's claim arising out of the obligation to construct the new building must be dismissed because at this juncture, plaintiff has not incurred damages regarding this breach, at this juncture of the litigation it cannot be said "that plaintiff's damages are so speculative as to warrant dismissal of the breach of contract claim" (*Morris v Putnam Berkley, Inc.*, 259 AD2d 425, 426 [1st Dept 1999]). While, Seigel may ultimately prove that plaintiff did not suffer damages because of the tenant's failure to perform under the ground lease, this factual inquiry is inappropriate at this pre-answer motion to dismiss juncture (*Litvinoff v Wright*, 150 AD3d 714 [2d Dept 2017]).

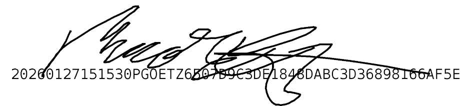
As for Seigel's argument that the guarantee is unenforceable because it contains a liquidated damages clause, "a liquidated damage provision is an estimate, made by the parties at the time they enter into their agreement, of the extent of the injury that would be sustained as a result of breach of the agreement" which is not present in the guarantee here (*Truck Rent-A-Ctr., Inc. v Puritan Farms 2nd, Inc.*, 41 NY2d 420, 424 [1977]). Instead, plaintiff may only recover its actual damages as a result of the breach and as stated above those damages need not be proven at this state of the litigation.

Similarly, Seigel's argument that the claim is not yet ripe for adjudication because Seigel alleges that plaintiff has engaged a new party to develop the Premises and thus cannot prove ascertainable damages is unavailing. Seigel has failed to provide any documentary evidence regarding this venture, and as stated above, plaintiff may still be entitled to recover actual damages suffered from defendants' breach which will be adjudicated following discovery in this action[2].

Accordingly it is,

ORDERED that defendant Seigel's motion to dismiss the complaint as asserted against him is denied; and it is further

ORDERED that Seigel is directed to file an answer to the complaint within 20 days of this order.



1/27/2026
DATE

PAUL A. GOETZ, J.S.C.

CHECK ONE:	☐	**CASE DISPOSED**			X	**NON-FINAL DISPOSITION**	
	☐	**GRANTED**	X	**DENIED**	☐	**GRANTED IN PART**	☐ **OTHER**
APPLICATION:	☐	**SETTLE ORDER**			☐	**SUBMIT ORDER**	
CHECK IF APPROPRIATE:	☐	**INCLUDES TRANSFER/REASSIGN**			☐	**FIDUCIARY APPOINTMENT**	☐ **REFERENCE**

[2] While Seigel argues in his reply, that plaintiff has abrogated the guaranty of completion via novation, (*see Deco Towers Assoc., LLC v Fisch*, 219 AD3d 1245, 1246 [1st Dept 2023] ["A novation of a contract requires a previously valid obligation, agreement of all parties to a new contract, extinguishment of the old contract, and a valid new contract"]), he raised this argument for the first time on reply and "[t]he function of reply papers is to address arguments made in opposition to the position taken by the movant, and not to permit the movant to introduce new arguments in support of, or new grounds for the motion" and therefore this argument need not be addressed (*EPF Intl. Ltd. v Lacey Fashions Inc.*, 170 AD3d 575, 575 [1st Dept 2019]).