

**Goldberger v Kwong**

2026 NY Slip Op 31504(U)

April 9, 2026

Supreme Court, New York County

Docket Number: Index No. 655850/2025

Judge: Brendan T. Lantry

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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. BRENDAN T. LANTRY PART 46M

Justice

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MAX GOLDBERGER,

Plaintiff,

- v -

BRADFORD KWONG, 277 WATER, LLC,

Defendants.

-----X

INDEX NO. 655850/2025

MOTION DATE 11/14/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, the motion by defendants Bradford Kwong ("Kwong") and 277 Water, LLC ("277 Water") (collectively, "Defendants") for an Order dismissing plaintiff Max Goldberger's ("Plaintiff") claims in this action in their entirety pursuant to CPLR 3211(a)(1), a(2), (a)(7), and Limited Liability Company Law § 610 is GRANTED.

Background and Procedural History

This action arises from an alleged contractual dispute regarding a lease for the ground floor and basement of 277 Water Street, New York, New York ("the Premises"). On September 18, 2020, 277 Water (as Landlord) and Hookey LLC ("Hookey") (as Tenant) entered into a Lease Agreement ("the Agreement") for the Premises, which was set to terminate on August 31, 2025 (see NYSCEF Doc. No. 6). Hookey and 277 Water further executed a Rider, Schedule A, an unnamed document containing rules and regulations ("Rules and Regulations"), and a Guaranty along with the Agreement (see Id). The Rider, Schedule A, and Rules and Regulations were signed

by plaintiff on behalf of Hookey (*see Id.*).<sup>1</sup> The Guaranty was signed by Ari L. Goldberger (*see Id.*). The Agreement stated, “[t]enant intends to use and shall use and occupy demised premises for the purpose of recording studio/music production facility only” (*see Id.*).

Defendants assert that prior to and shortly after the Agreement termination date, 277 Water and Hookey negotiated the terms of an extension of the Agreement (“the Extension Agreement”), during which time 277 Water learned that Hookey planned to operate a “cookie pop-up” at the Premises, an alleged violation of the Agreement (*see* NYSCEF Doc. No. 11). 277 Water thereafter ceased negotiations and ultimately commenced a holdover proceeding against Hookey in Civil Court of the City of New York, County of New York (*see* NYSCEF Doc. No. 9). On September 17, 2025, Plaintiff, as a member of Hookey, signed the Extension Agreement (*see* NYSCEF Doc. No. 8). The Extension Agreement was not signed on behalf of 277 Water (*see Id.*).

On September 30, 2025, Plaintiff commenced this action alleging, *inter alia*, breach of contract, fraudulent misrepresentation, retaliatory eviction, and tortious interference in relation to the Agreement and the Extension Agreement (*see* NYSCEF Doc. No. 2). Plaintiff alleges that Defendants “seek to eject a tenant after [five] years of loyal tenancy, hundreds of thousands of dollars in improvements, and clear renewal rights – all to re-rent the space for more money after substantial improvements were made” (*see Id.*).

Defendants now argue, in support of their motion to dismiss the complaint, that Plaintiff lacks standing to bring these causes of action as he is not the named tenant in either the Agreement or Extension Agreement. The court agrees.

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<sup>1</sup> While Defendants assert that plaintiff signed the Agreement on behalf of Hookey, the signatures depicted on the Agreement do not contain printed names alongside them and are otherwise illegible.

### Discussion

“Standing is a threshold determination, resting in part on policy considerations, that a person should be allowed access to the courts to adjudicate the merits of a particular dispute that satisfies the other justiciability criteria” (*Society of Plastics Industry, Inc. v County of Suffolk*, 77 NY2d 761 [1991] [citations omitted]). “Standing requires ‘an interest in the claim at issue in the lawsuit that the law will recognize as a sufficient predicate for determining the issue at the litigant’s request’” (*Fossella v Adams*, 225 AD3d 98 [2nd Dept 2024] [citations omitted]). “The various tests that have been devised to determine standing are designed to ensure that the party seeking relief has a sufficiently cognizable stake in the outcome so as to ‘cast[] the dispute in a form traditionally capable of judicial resolution’” (*Community Bd. 7 of Borough of Manhattan v Schaffer*, 84 NY2d 148 [1994] [citations omitted]). “In more pedestrian terms, it is an answer to the very first question that is sometimes rudely asked when one person complains of another’s actions: ‘What’s it to you?’” (A. Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, Suffolk L Rev 881, 882 [1983]).

Regarding limited liability companies (“LLC”), “[a] member of a limited liability company is not a proper party to proceedings by or against a limited liability company, except where the object is to enforce a member’s right against or liability to the limited liability company” (Limited Liability Company Law § 610).

“On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction (*see* CPLR 3026)” (*Leon v Martinez*, 84 NY2d 83 [1994] [citations omitted]). “We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*see Id.*). “Under CPLR 3211(a)(1), a dismissal is warranted only if the documentary

evidence submitted conclusively establishes a defense to the asserted claims as a matter of law” (*see Id* at 88 [citations omitted]). “In particular, where a written agreement [such as a lease] unambiguously contradicts the allegations supporting a litigant's cause of action for breach of contract, the contract itself constitutes documentary evidence warranting the dismissal of the complaint pursuant to CPLR 3211(a)(1), regardless of any extrinsic evidence or self-serving allegations offered by the proponent of the claim” (*150 Broadway N.Y. Assoc., L.P. v Bodner*, 14 AD3d 1 [1st Dept 2004] [citations omitted]). “Courts are obliged to interpret a contract so as to give meaning to all of its terms” (*see Id* at 4 [internal quotations and citations omitted]).

Here, Plaintiff, a member of Hookey, seeks damages for ten causes of action that each arise from Plaintiff's assertion of rights pursuant to the Agreement and Extension Agreement. The complaint demonstrates that the entirety of this action relies upon allegations regarding the formation and breach of the Agreement and Extension Agreement, misrepresentation and promises made regarding the Agreement, Plaintiff's eviction from the Premises, and improvements made to the Premises during Plaintiff's tenancy. Even affording the pleadings a liberal construction, a plain text reading of the complaint, the Agreement, and the statutory language, *supra*, necessitates a finding that Plaintiff is not the proper party to bring forth this action and that Plaintiff therefore has failed to state a claim.

The Agreement states in no ambiguous terms that the Agreement was made and agreed upon between 277 Water and Hookey, not Plaintiff. The Agreement further clearly demonstrates that the intended tenant of the Premises was Hookey, that the Premises was to be used for commercial purposes, and that Hookey was the party bound to the terms of the Agreement. Further, the signature blocks on the Rider, Schedule A, and Rules and Regulations identify the tenant as “Hookey LLC,” each which was signed by Plaintiff. In reviewing these signatures in context of

the instruments as a whole, the court finds that Plaintiff signed said documents on behalf of Hookey, rather than in his individual capacity, and that Hookey was clearly the intended tenant (*see 150 Broadway N.Y. Assoc., L.P.* at 5 [citations omitted]). The fact that the Agreement itself does not contain a printed name alongside the signature line for “tenant” even further supports the finding that Plaintiff is the improper party to bring this action for the alleged breach of same.

The court finds that, as merely a member of Hookey, Plaintiff simply does not have the right to recover damages in his individual capacity with regard to the Agreement or the alleged breach of same (*see Katz v Katz*, 55 AD3d 680 [2nd Dept 2008]; Limited Liability Company Law § 610). To find otherwise and to credit Plaintiff’s argument that he has standing because he “personally negotiated, signed, guaranteed, and performed the renewal,” and that he “suffered direct personal harm” would be in direct contradiction to the plain text of Limited Liability Company Law § 610 (*see* NYSCEF Doc. 17). In other words, Plaintiff, in his individual capacity, cannot, as a matter of law, seek to recover damages for an alleged wrongdoing against a limited liability company to which he is a member.

#### Conclusion and Order

The court finds that the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law. As the court determines Defendants’ motion on the basis of lack of standing, the court declines to address the parties’ remaining contentions.

Accordingly, it is hereby

ORDERED that Defendants’ motion to dismiss Plaintiff’s complaint in its entirety is granted; and it is further

ORDERED that the complaint is dismissed with costs and disbursements to Defendants as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk’s Office, who are directed to mark the court’s records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court 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 Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the court.

4/9/2026  
DATE

  
BRENDAN T. LANTRY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE