

312 E. 30th LLC v BLK Empire Holdings, LLC

2026 NY Slip Op 31714(U)

April 17, 2026

Supreme Court, New York County

Docket Number: Index No. 653135/2024

Judge: Kathleen Waterman-Marshall

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. KATHLEEN WATERMAN-MARSHALL PART 31

Justice

-----X

312 EAST 30TH LLC,

Plaintiff,

- v -

BLK EMPIRE HOLDINGS, LLC, HAKEEM AFUWAPE,
ASHLEY SIMELA, NYC COMMUNITY MEDICAL CARE
P.C., ATAUL CHOWDHURY, NORMAN FIELDS

Defendant.

-----X

INDEX NO. 653135/2024

MOTION DATE 10/29/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 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, 40, 41, 42, 43

were read on this motion to/for JUDGMENT - SUMMARY.

This matter was administratively transferred to Part 31 in January 2025. Upon the foregoing documents, plaintiff’s motion for an order: (1) granting summary judgment on its complaint against defendants; (2) dismissing the affirmative defenses asserted by defendants BLK Empire Holdings, LLC (“BLK Empire”), Hakeem Afuwape (“Afuwape”), and Ashley Simel (“Simel”); and (3) dismissing the affirmative defenses and counterclaim for rescission asserted by defendants NYC Community Medical Care, P.C. (“NYC Community Medical”) and Ataul Chowdhury (“Chowdhury”), is granted.

Background

This is an action to recover amounts due under a commercial lease for a medical office (“the Lease”) brought against the original tenant, its assignee, and the guarantors on the original lease and on the assignment. The Lease covered a portion of the basement level of the building located at 312-316 East 30th Street in Manhattan (“the Premises”). During the course of the tenancy, plaintiff 312 East 30th LLC (“the Landlord”) purchased the Premises from its former owner, 312-316 East 30th Street, LLC (“the Former Owner”).

The Lease

On November 30, 2018, the Former Owner and BLK Empire entered into the Lease, for a five-year term, expiring on November 23, 2023. The Lease states that

Tenant has inspected the premises and accepts them as is, subject to the riders annexed hereto with respect to Owner’s work, if any...Owner makes no representation as to the condition of the premises and Tenant agrees to accept the same subject to violations, whether or not of record.

The Lease also provides that tenant's possession of the Premises is "conclusive evidence" that it is in good and satisfactory condition, except for latent defects.

Several provisions in the Lease set forth the Former Owners' entitlement to rent and additional rent (including real estate taxes and interest calculated at 15% per annum), late fees (5 cents for each dollar due as rent or additional rent), and costs relating to tenant's default such as the failure pay rent (including attorneys' fees).

The Lease also permits assignment, but provides that in the event BLK Empire seeks an assignment, the Former Owner "may, at its option exercised within thirty (30) days of receipt of Tenant's notice [of its intention to assign the Lease]... terminate th[e] Lease..." The Lease further states that if the Former Owner terminates the Lease:

Tenant will have ten (10) days from the receipt of Owner's termination notice in which to notify Owner in writing of its intention to withdraw its offer of assignment or sublet and, upon such notification this Lease will continue in effect in accordance with its terms. This clause will be self-operative if Tenant fails to notify Owner...

If Owner terminates this Lease [due to an assignment] Tenant will be relieved of its liabilities and obligations under this Lease for the period after the effective date of termination (except under the provisions of this Lease that, by their express terms, survive termination) [emphasis added].

(NYSCEF Doc. No. 20).

Defendants Afuwape and Simela executed an "absolute, unconditional, irrevocable" joint personal guaranty ("the Joint Guaranty"), guaranteeing BLK Empire's obligations under the Lease, including the obligation to pay rent, additional rent, and reasonable attorneys' fees. Under the Joint Guaranty, Afuwape's and Simela's obligations "***will not be impaired, abated, deferred, diminished, modified or otherwise affected by... any assignment***, conveyance, mortgage, extinguishment, merger or other transfer... of all or any part of Tenant's interest in the Lease except as specifically set forth in the Lease" [emphasis added] and will survive the date BLK Empire vacates the Premises in accordance with the Lease (NYSCEF Doc. No. 22).

Pursuant to an amendment of the Lease (due to COVID-19), the base monthly rent from December 1, 2021 through November 30, 2022, was reduced to \$13,500.00 (NYSCEF Doc. No. 21). From December 1, 2022 through the expiration of the Lease, the base monthly rent was \$15,194.37.

The Assignment

On March 19, 2021, BLK Empire, with the Former Owner's consent, assigned the Lease to NYC Community Medical (the "Assignment"). The Assignment provides that:

Assignee agrees to pay the rent promptly and perform all of the terms of the Lease as of the date of this Assignment. Assignee assumes full responsibility for the Lease as if Assignee signed the Lease originally as Tenant.

(NYSCEF Doc. No. 23).

The Assignment does not contain any language terminating the Lease, the Joint Guaranty, or the parties' respective obligations thereunder. The Assignment also provides that NYC Community Medical agrees to indemnify and hold BLK Empire harmless from any legal actions, damages and expenses, including legal fees it may incur arising from the Lease.

Chowdhury executed an absolute, unconditional, irrevocable personal guaranty (the "Chowdhury Guaranty"), guaranteeing NYC Community Medical's obligations, as an assignee, under the Lease (NYSCEF Doc. No. 24).

As noted, in February 2022, the Landlord purchased the building from the Former Owner.

On July 15, 2022, the Landlord commenced a summary non-payment proceeding against NYC Community Medical (Index No. LT-310686-22/NY). On October 19, 2022, the court issued a judgment of possession only, and did not set a monetary amount, against NYC Community Medical on default (NYSCEF Doc. No. 26). NYC Community Medical was evicted from the Premises the following month. According to the Landlord, NYC Community Medical failed to leave the Premises in "broom clean condition" as required under the Lease.

The Instant Action

On June 21, 2024, the Landlord commenced this action for unpaid rent, additional rent, late fees, and attorneys' fees allegedly due as of November 30, 2023 from the original tenant, BLK Empire, the assignee, NYC Community Medical, and the guarantors. The complaint alleges causes of action for breach of the Lease, breach of the Joint Guaranty, breach of the Chowdhury Guaranty, and attorneys' fees.

BLK Empire, Afuwape, and Simel filed a joint answer to the complaint, asserting six affirmative defenses and a crossclaim against NYC Community Medical, Chowdhury, and defendant Norman Fields for indemnification and contribution (NYSCEF Doc. No. 7).

NYC Community Medical and Chowdhury also filed a joint answer to the complaint, asserting twelve affirmative defenses, crossclaims, and a counterclaim for rescission/cancellation of the Lease (NYSCEF Doc. No. 11). In their joint answer, NYC Community Medical and Chowdhury allege that the Premises was "covered in mold, leaks, and filled with non-operable medical machines left by the previous occupants." Further, NYC Community Medical and Chowdhury contend that they neither occupied nor received the keys for the Premises after inspection.

In the main, the affirmative defenses include: failure to state a cause of action; the Landlord's alleged damages, if any, were caused or contributed by the Landlord's own conduct;

the Landlord failed to mitigate or otherwise take adequate and reasonable measures to minimize its alleged damages, which were caused or contributed by the Landlord's own fault, culpable conduct, and assumption of risk; the Landlord's claims are barred by the doctrines of statute of frauds, statute of limitations, laches, unclean hands, comparative negligence, usury, collateral estoppel, and judicial estoppel; the Landlord's claims are barred because the Landlord's alleged injuries and damages, if any, are too speculative and uncertain; NYC Community Medical and Chowdhury were deprived of the intended use of the Premises because continued use thereof was impracticable and, as a result, the purpose and object of the Lease was frustrated, impossible, and commercially impracticable; and the Premises contains conditions which violate the covenant of quiet enjoyment.

The Instant Motion

The Landlord now moves: (1) for summary judgment on its complaint, pursuant to CPLR 3212, against defendants; (2) to dismiss the affirmative defenses asserted by BLK Empire, Afuwape, and Simel in their joint answer, pursuant to CPLR 3212 and/or 3211(b); and (3) to dismiss the affirmative defenses and counterclaim for rescission asserted by NYC Community Medical and Chowdhury in their joint answer, pursuant to CPLR 3212 and/or 3211(b). In support, the Landlord submits, *inter alia*, the affirmation of Lee J. Brodsky, manager of the sole member of the Landlord, and the exhibits thereto, including the Lease, the Joint Guaranty, the Assignment, the Chowdhury Guaranty; a rent ledger; and an attorney affirmation.

All answering defendants oppose and argue that the motion is premature because there are questions of fact precluding summary judgment, and the parties have not yet engaged in discovery in this matter. All defendants contend that there is an issue of fact regarding the amounts allegedly due to the Landlord.

BLK Empire, Afuwape, and Simela assert that there is an issue of fact regarding their liability to the Landlord as their rent payments were up-to-date at the time of the Assignment, and BLK promptly vacated the Premises, removed their belongings, and delivered their keys to NYC Community Medical once the parties entered into the Assignment, which "extinguished" BLK Empire's obligations to the Landlord and terminated the Joint Guaranty.

NYC Community Medical and Chowdhury argue that there is an issue of fact regarding whether the Landlord was permitted to relet the premises, and assert that BLK Empire's breach of the Lease has yet to be litigated as the non-payment proceeding was "merely a recovery of monies and possession." They also claim that their counterclaim for rescission should withstand dismissal as they did not delay in refusing possession of the Premises, and the Premises remained in the same condition it was in when they entered into the Assignment.

Discussion

On a motion for summary judgment, the moving party must make a prima facie showing that they are entitled to judgment as a matter of law, and demonstrate the absence of any material issues of fact (*Friends of Thayer Lake, LLC v Brown*, 27 NY3d 1039, 1043 [2016]). Once the burden is met, it shifts to the opposing party to submit admissible evidence to create a question of fact requiring trial (*Kershaw v Hospital for Special Surgery*, 114 AD3d 75 [1st Dept 2013]). However, a "feigned issue of fact" will not defeat summary judgment (*Red Zone LLC v*

Cadwalader, Wickersham & Taft LLP, 27 NY3d 1048 [2016]). The Court must deny the motion, regardless of the sufficiency of the opposing papers, if the movant fails to make a *prima facie* showing (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *see also JMD Holding Corp. v Congress Financial Corp.*, 4 NY3d 373 [2005]).

The Landlord has satisfied its burden of making a *prima facie* showing that: there are no material issues of fact; and it is entitled to judgment as a matter of law (*Friends of Thayer Lake, LLC*, 27 NY3d at 1043) by submitting affirmation of Lee J. Brodsky, together with the Lease, the amendment to the Lease, the Joint Guaranty, the Assignment, the Chowdhury Guaranty, and the account ledger. The defendants, however, failed to submit admissible evidence sufficient to create a question of fact requiring trial (*Kershaw*, 114 AD3d at 81).

At the outset, defendants rely solely on affirmations of attorneys, which are insufficient as they have no personal knowledge (*see generally Sutton v E. River Sav. Bank*, 55 NY2d 550, 553 [1982]; *Simpson v. Term Indus., Inc.*, 126 AD2d 484, 485 [1st Dept 1987] [affidavits and affirmations of attorneys without requisite knowledge of facts are without probative value]). Thus, defendants do not raise factual issues warranting denial of the motion.

As to BLK Empire, Afuwape, and Simel, their argument that the Assignment released BLK Empire from its obligations to the Landlord under the Lease and terminated the Joint Guaranty, is unsupported by any admissible evidence demonstrating that they were in fact released from their obligations. The clear and plain language of the Lease provides that the Former Owner serve BLK Empire with a notice of termination, in the event it opts to do so – no such notice of termination is provided in the record – and the Joint Guaranty expressly states that the obligations of Afuwape and Simel “will not be impaired, abated, deferred, diminished, modified or otherwise affected by...any assignment.”

In support of their argument that they were released by way of the Assignment, BLK Empire, Afuwape, and Simel offer one trial court case, *Bank of Am. v 57-63 Wadsworth Terrace Holding, LLC*, 2009 NYMisc LEXIS 4911 [2009], addressing the impact of an assignment in the context of the recordation of a mortgage. Therein, the court cites to the Restatement (Second) Contracts, for the proposition that an assignment of a right constitutes “a manifestation of the assignor’s intention to transfer it by virtue of which the assignor’s right to performance by the obligor is extinguished in whole or in part and the assignee acquires a right to such performance” (*id.* [internal quotation marks omitted]; Restatement [Second] of Contracts § 317). While that general proposition may be true, the express terms of the Lease and Joint Guaranty control here and provide that Afuwape’s and Simel’s obligations under the Lease survive any assignment.

Moreover, the Assignment itself does not contain language expressly releasing BLK Empire, Afuwape, or Simel from their obligations, and the record does not contain any evidence in support of such a position. The Formal Owner merely consented to the Assignment. Without an express agreement “or one that can be implied from facts ***other than the other contracting party’s mere consent to the assignment***,” [emphasis added] an assignment does not release a party from its contractual obligations (*Mandel v Fischer*, 205 AD2d 375, 376 [1st Dept 1994] [tenant who assigned lease was not relieved of obligations to pay rent]).

Though not addressed in the motion papers, the Assignment requires NYC Community Medical to indemnify and hold BLK Empire harmless from any legal actions, damages and expenses, including legal fees incurred arising from the Lease. BLK Empire's indemnification/contribution cross-claim may have merit and, thus, is severed (*see generally C.I.T. Leasing Corp. v Pitney Bowes Credit Corp.*, 221 AD2d 211, 211-12 [1st Dept 1995] [lower court properly denied dismissal of claim seeking costs and expenses, including attorneys' fees, incurred while enforcing alleged indemnity obligation]; *see generally Allerand, LLC v 233 E. 18th St. Co.*, 19 AD3d 275, 276 [1st Dept 2005] [defendants entitled to attorney's fees based upon attorney fee indemnity and reimbursement in lease]).

NYC Community Medical and Chowdhury also failed to dispute the Landlord's showing that they breached the Lease. Indeed, the Commercial L&T Part granted the Landlord's non-payment petition to the extent of awarding it a judgment of eviction. It is axiomatic that an eviction is granted only if there is a breach of lease (*172 Van Duzer Realty Corp. v Globe Alumni Student Assistance Ass'n, Inc.*, 102 AD3d 543, 544 [1st Dept 2013], *aff'd as modified sub nom. 172 Van Duzer Realty Corp. v Globe Alumni Student Assistance Assn, Inc.*, 24 NY3d 528 [2014]; *151-155 Atl. Ave., Inc. v Pendry*, 308 AD2d 543, 543 [2d Dept 2003]).

That the Commercial L&T Part did not award the Landlord any monetary damages does not collaterally estop it from seeking those damages – unpaid rent, additional rent, interest and fees – here. The preclusive effect of a collateral estoppel defense “will only be given to matters actually litigated and determined in a prior action” (*Singleton Mgmt., Inc. v Compere*, 243 AD2d 213, 217 [1st Dept 1998] [internal quotation marks and citations omitted]). Thus, because NYC Community Medical and Chowdhury defaulted in the non-payment proceeding the issue of the Landlord's monetary damages has not been “actually litigated” (*id.*).

Moreover, though they assert that the issue of the amount due to the Landlord is unclear, neither NYC Community Medical nor Chowdhury provided any evidence to rebut the Landlord's claim that amounts are due (such as proof of payments). Bare allegations that discovery is needed on this issue is insufficient (*Moran v Regency Sav. Bank, F.S.B.*, 20 AD3d 305, 306 [1st Dept 2005] [claimed unsupported need for discovery is “an ineffectual ‘mere hope,’ insufficient to forestall summary judgment”]).

Consequently, the Landlord is entitled to summary judgment on its breach of the Lease, the Joint Guaranty, the Assignment, and the Chowdhury Guaranty (*Thor Gallery at S. Dekalb, LLC v Reliance Mediaworks (USA) Inc.*, 143 AD3d 498 [1st Dept 2016] [plaintiff entitled to summary judgment because plaintiff established existence of lease, guaranty, and tenant's failure to pay rent through affidavit of plaintiffs' employees and “defendant offered no evidence in opposition”]).

The affirmative defenses are stricken and dismissed as a matter of law. The defenses by BLK Empire, Afuwape, and Simel, as well as those raised by NYC Community Medical and Chowdhury – for instance, *inter alia*, failure to state a cause of action; the Landlord's own culpable conduct; failure to mitigate damages; statute of frauds, statute of limitations, laches, unclean hands, comparative negligence, usury, collateral estoppel, and judicial estoppel; and speculative damages – comprise boilerplate conclusions of law without any factual support (*see*

e.g. Robbins v Grownney, 229 AD2d 356 [1st Dept 1996] [bare legal conclusions are insufficient to raise an affirmative defense and should be dismissed]).

NYC Community Medical's and Chowdhury's counterclaim for rescission is also dismissed. Though NYC Community Medical and Chowdhury assert that the Premises contained mold, leaks, and non-operable medical machines allegedly left by BLK Empire, the Lease – pursuant to which NYC Community Medical assumed full responsibility of and Chowdhury unconditionally guaranteed NYC Community Medical's obligations thereunder – provides that NYC Community Medical inspected the Premises and accepted it “as is” at the time it entered into the Assignment in 2021 (*see generally R & A Food Servs., Inc. v Halmar Equities, Inc.*, 278 AD2d 398, 399 [2d Dept 2000] [failure to “promptly seek rescission after learning of the alleged fraud” waives claim] [internal citations omitted]).

The Lease and guarantees provide for attorneys' fees occasioned by a breach of the Lease. The Landlord has established that the Lease was breached and, therefore, it is entitled to attorneys' fees. As Afuwape and Simela unconditionally guaranteed BLK Empire's obligations under the Lease, and Chowdhury unconditionally guaranteed NYC Community Medical's obligations, the Landlord may look to Afuwape, Simela, and Chowdhury to recover its attorneys' fees (*1140 LLC v Meis Studio Inc.*, 225 AD3d 516, 517 [1st Dept 2024]).

However, the amount of fees requires an inquest. Where attorney fees are authorized, either by statute or agreement, the fee sought must be reasonable; where the fee is unreasonable, inflated, or needlessly incurred, the Court may dismiss the claim for attorneys' fees (*American Motorists Ins. Co. v Napco Sec. Sys.*, 244 AD2d 197 [1st Dept 1997]). Thus, the amount of attorneys' fees due to the Landlord is severed and shall proceed to inquest.

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment on its complaint and dismissing defendants' affirmative defenses, is granted; and it is further

ORDERED that the counterclaim for rescission asserted by defendants NYC Community Medical Care, P.C. and Ataul Chowdhury is dismissed; and it is further

ORDERED, DECLARED, and ADJUDGED that plaintiff 312 East 30th LLC shall have judgment and does recover from defendants BLK Empire Holdings, LLC, Hakeem Afuwape, Ashley Simel, NYC Community Medical Care, P.C. and Ataul Chowdhury, jointly and severally, in the amount of \$447,685.59 (\$373,071.32 in rent and real estate taxes plus \$18,653.57 in late fees plus \$55,960.70 in interest), plus interest at the statutory rate from June 23, 2023 (CPLR § 5001[b]), as calculated by the Clerk of the Court, plus costs and disbursements upon presentation of proper papers therefor; and it is further

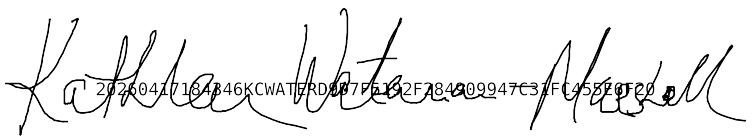
ORDERED that judgment shall be submitted to the Clerk of the Court, and not chambers or the Part, unless directed otherwise by the Clerk of the Court.

ORDERED that the issue of reasonable attorneys' fees due to 312 East 30th LLC is severed and shall proceed at an **inquest on paper submissions only on June 25, 2026**; and it is further

ORDERED that papers in support of attorneys' fees, including exhibits thereto, shall be filed via NYSCEF, no later than June 18, 2026; and it is further

ORDERED that papers in opposition to attorneys' fees, including exhibits thereto, shall be filed via NYSCEF, no later than June 24, 2026; and it is further

ORDERED that the cross-claims of defendants BLK Empire Holdings, LLC, Hakeem Afuwape, Ashley Simel, are severed and set down for a **Preliminary Conference on June 17, 2026**.



20250417164846KCWATERMANMARSHALL2F784209947C31F052020

4/17/2026

DATE

KATHLEEN WATERMAN-MARSHALL,
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