

32 Gramercy Park Owners Corp. v First Century Real Estate Group Corp.

2026 NY Slip Op 31730(U)

April 21, 2026

Supreme Court, New York County

Docket Number: Index No. 160218/2023

Judge: Ashlee Crawford

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 38

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32 GRAMERCY PARK OWNERS CORP.,	INDEX NO.	160218/2023
Plaintiff,		
- v -	MOTION DATE	02/02/2024, 05/08/2025, 06/23/2025
FIRST CENTURY REAL ESTATE GROUP CORP. d/b/a FIRST CENTURY REAL ESTATE GROUP, ARTHUR KOMISSAR, and XYZ CORP.,	MOTION SEQ. NO.	001 002 003
Defendants.		

**DECISION + ORDER ON
MOTION**

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HON. ASHLEE CRAWFORD:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 27, 28, 29, 30, 31, 32, 33, 55, 58, 59
were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER)

The following e-filed documents, listed by NYSCEF document number (Motion 002) 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 56
were read on this motion to/for MISCELLANEOUS

The following e-filed documents, listed by NYSCEF document number (Motion 003) 45, 46, 47, 48, 49, 50, 51, 52, 53, 57
were read on this motion to/for EVICTION/WRIT OF ASSISTANCE

In this action seeking ejection and damages under a commercial lease and guaranty, plaintiff 32 Gramercy Park Owners Corp. moves to amend its complaint pursuant to CPLR 3025 (c); for summary judgment against defendants First Century Real Estate Group Corp. d/b/a First Century Real Estate Group (“Tenant”) and Arthur Komissar (“Guarantor”) (collectively “Defendants”) on the first, second, and third causes of action in the Complaint; and for dismissal of Defendants’ affirmative defenses pursuant to CPLR 3211 (b), 3212, and 3013 (motion seq. 001). Defendants oppose the motion.

Plaintiff also moves by two separate orders to show cause for use and occupancy *pendente lite* and for use and occupancy charges that have accrued since October 3, 2023 (motion seq. 002); and for a money judgment against Defendants for use and occupancy and for a judgment of possession (motion seq. 003). Defendants have not submitted opposition to motion seqs. 002 or 003.

Background

In October 2020, Tenant executed a three-year lease with Plaintiff's predecessor-in-interest for premises consisting of a ground floor store ("Premises") in the building located at 230 Third Avenue in Manhattan ("Building") (Lease [NYSCEF Doc. 14]). The Lease term ran from October 21, 2020 through October 3, 2023. On November 6, 2020, Tenant's owner, Komissar, executed a guaranty in which he "jointly and severally guarantee[d], absolutely and unconditionally" Tenant's obligations under the Lease (Guaranty § 1 [NYSCEF Doc. 15]). The original landlord assigned its rights under the Lease to Plaintiff on June 29, 2022 (Assignment [NYSCEF Doc. 17]).

Plaintiff alleges that Tenant and its putative, unidentified undertenant, defendant XYZ Corp., failed to vacate the premises at the expiration of the Lease and remain in possession; and that Tenant owes arrears of rent, real estate taxes, security deposit replenishment, bounced check and late fees, and holdover occupancy charges totaling \$171,614.60 as of February 2024 (Axelrod Affirm. ¶¶ 5-8 [NYSCEF Doc. 11]). Plaintiff commenced this action on October 18, 2023, asserting causes of action for, *inter alia*, ejectment, breach of the Lease, and breach of the Guaranty.

Motion to Amend Complaint (Mot. Seq. 001)

Plaintiff first moves to amend the Complaint pursuant to CPLR 3025 (c) to update the amount of rent arrears it seeks to recover, from the \$112,329.70 initially sought in the Complaint to the \$171,614.60 set forth in the Axelrod Affirmation. It maintains that this amount reflects the rent, additional rent, and use and occupancy that has accrued to date. CPLR 3025 (c) provides the “court may permit pleadings to be amended before or after judgment to conform them to the evidence, upon such terms as may be just . . .” and leave to amend should be freely given where the opposing party suffers no prejudice by the proposed amendment (*see Kimso Apts., LLC v Gandhi*, 24 NY3d 403, 411-412 [2014]).

The Court finds no prejudice to Defendants, as they do not oppose that part of Plaintiff’s motion seeking to amend the Complaint and, therefore, fail to satisfy their burden of establishing prejudice (*see id.* at 411 [“The burden of establishing prejudice is on the party opposing the amendment”]). In any event, there is no prejudice: Defendants would not be hindered in the preparation of their case given that the Axelrod Affirmation sets forth the basis on which Plaintiff claims the additional arrears of rent, additional rent, and use and occupancy owed (*id.*, quoting *Loomis v Civetta Corinno Constr. Corp.*, 54 NY2d 18, 23 [1981]). Accordingly, that part of Plaintiff’s motion seeking to amend the Complaint is granted without opposition.

Summary Judgment (Mot. Seq. 001)

Plaintiff moves for summary judgment on its first through third causes of action, seeking a final judgment of possession and issuance of a judgment of ejectment and issuance of a writ and order of assistance (first cause of action), and a money judgment (second and third causes of action).

On a motion for summary judgment, the movant “must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (*Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 853 [1985], citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). “Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers” (*Winegrad*, 64 NY2d at 853). Should the movant make its prima facie showing, the burden shifts to the opposing party, who must then produce admissible evidentiary proof to establish that material issues of fact exist (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

First Cause of Action: Ejectment

A plaintiff establishes its entitlement to summary judgment on an ejectment cause of action by showing “(1) it is the owner of an estate in tangible real property, (2) with a present or immediate right to possession thereof, and (3) the defendant is in present possession of the estate” (*302 W. 87th St. LLC v SHS Upper City NY II LLC*, 241 AD3d 1114, 1114 [1st Dept 2025]). Here, Plaintiff makes its prima facie showing of entitlement to summary judgment on its ejectment claim by submitting proof of its ownership interest in the Premises (*see* Lease and Assignment)¹, proof of its right to immediate possession by way of the Lease whose term ended on October 3, 2023, and proof of Tenant’s continued possession of the Premises beyond the Lease’s expiration (Axelrod Affirmation ¶ 5). Defendants do not demonstrate the existence of material issues of fact with respect to these elements. The Court therefore grants summary judgment on Plaintiff’s first cause of action for ejectment.

¹ The Court also took judicial notice of the filings available via ACRIS.

First and Second Causes of Action: Breach of Lease & Guaranty

Plaintiff establishes its prima facie entitlement to summary judgment on its second and third causes of action alleging breach of the Lease and Guaranty. The existence of the Lease and Guaranty is not disputed. Plaintiff submits a copy of the Premises' rent ledger, which is authenticated by the affirmation of its Board President, Michael Axelrod, showing arrears totaling \$171,614.60 as of February 2024 (Ledger [NYSCEF Doc. 16]; *see Thor Gallery at S. Dekalb, LLC v Reliance Mediaworks (USA) Inc.*, 143 AD3d 498, 498 [1st Dept 2016]; *Reliance Constr. Ltd. v Kennelly*, 70 AD3d 418, 419 [1st Dept 2010], *lv dismissed* 15 NY3d 848 [2010]).

In opposition, Defendants simply produce an attorney affirmation unsupported by a statement from a person with knowledge, which is insufficient to raise an issue of fact regarding their breach of the Lease and Guaranty (*Schwartz v 170 West End Owners Corp.*, 161 AD3d 693, 693 [1st Dept 2018][“the attorney’s affirmation was insufficient to raise a triable issue of fact, as he lacked personal knowledge of the operative facts”]; *see Forcina Affirm.* [NYSCEF Doc. 29]). To the extent that Defendants assert constructive eviction as a defense, this claim must fail because their opposition papers do not even allege that Tenant abandoned the Premises (*see Gallery at Fulton St., LLC v Wendnew LLC*, 30 AD3d 221, 221 [1st Dept 2006][“in order to assert a defense of constructive eviction, the tenant must abandon the premises”]). The Lease also bars as a defense to nonpayment Defendants’ claims that construction work and noise interfered with their use of the Premises (*see Lease § 13*). As such, that part of Plaintiff’s motion seeking summary judgment on its second and third causes of action for breach of the Lease and Guaranty is granted.

Dismissal of Affirmative Defenses (Mot. Seq. 001)

Plaintiff next moves to dismiss Defendants' five affirmative defenses. CPLR 3211(b) allows a party to "move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no merit." A plaintiff has a "heavy burden of showing that [a] defense is without merit as a matter of law" (*Emigrant Bank v Rosabianca*, 210 AD3d 527, 527 [1st Dept 2022]). The "allegations in the answer must be viewed in the light most favorable to the defendant . . . and the defendant is entitled to the benefit of every reasonable intendment of the pleading, which is to be liberally construed" (*id.*, citing *Pugh v New York City Hous. Auth.*, 159 AD3d 643, 643 [1st Dept 2018]). "Further, the court should not dismiss a defense where there remain questions of fact requiring a trial" (*Granite State Ins. Co. v Transatlantic Reins. Co.*, 132 AD3d 479, 481 [1st Dept 2015]). Nevertheless, "bare legal conclusions are insufficient to raise an affirmative defense" (*Chelsea 8th Ave. LLC v Chelseamilk LLC*, 220 AD3d 565, 566 [1st Dept 2023] [internal citations and quotations omitted]).

In their Verified Answer, Tenant and Guarantor interpose five affirmative defenses: failure to state a claim, statute of limitations, failure to mitigate damages, lack of damages, and a reservation of rights to assert additional defenses (Answer ¶¶ 3-7 [NYSCEF Doc. 8]). The Court dismisses the affirmative defenses as asserted by Guarantor because they Guaranty is absolute and unconditional and contains an express waiver of defenses (Guaranty §§ 1, 7; *see Sterling Natl. Bank v Biaggi*, 47 AD3d 436, 436-437 [1st Dept 2008]; *see also Citibank, N.A. v Plapinger*, 66 NY2d 90, 93 [1985]).

As asserted by Tenant, the Court finds the affirmative defenses to be without merit. The first defense asserting failure to state a cause of action fails because Plaintiff prevailed on its claims, as discussed hereinabove. The second affirmative defense of statute of limitations is

without merit as this action was commenced within six years of the alleged breach (*see* CPLR 213 [2]). The third through fifth affirmative defenses are dismissed as they are merely one-sentence legal conclusions for which Defendant provides no factual basis and are therefore insufficient (*Chelsea 8th Ave. LLC v Chelseamilk LLC*, 220 AD3d at 566).

That part of Plaintiff's motion seeking to dismiss Defendants' affirmative defenses is therefore granted.

Use & Occupancy (Mot. Seqs. 002 & 003)

Under motion sequence 002, Plaintiff moves by order to show cause for an order directing Defendants to pay (1) interim use and occupancy at a rate of \$12,730.80 per month *pendente lite* and (2) use and occupancy charges accrued from October 3, 2023 through the motion date in the sum of \$252,944.96. The Court granted a temporary restraining order directing Defendants to pay Plaintiff interim use and occupancy at the rate of \$6,365.40 per month under section 41(a)(v) of the Lease Rider (NYSCEF Doc. 43).

Defendants purportedly failed to pay use and occupancy as directed in the foregoing TRO, and Plaintiff thereafter moved by order to show cause under motion sequence 003, seeking (1) a money judgment in the sum of \$6,365.40 for use and occupancy owed during the month in which Defendants failed to comply with the Court's prior order; (2) a money judgment in the sum of \$252,944.96, representing holdover use and occupancy owed prior to the Court's TRO; and (3) a judgment of possession and issuance of a writ of assistance putting Plaintiff in possession of the Premises. Defendants have not submitted opposition to either motion.

The Court finds that Plaintiff has met its burden on motion sequences 002 and 003, as limited below.

Accordingly, it is hereby

ORDERED that the motion by Plaintiff 32 Gramercy Park Owners Corp. to amend its Complaint to conform with the proof; for summary judgment on the first cause, second, and third causes of action; and to dismiss all affirmative defenses of Defendants First Century Real Estate Group Corp. d/b/a First Century Real Estate Group and Arthur Komissar is **GRANTED** in its entirety, and the affirmative defenses are **DISMISSED** (mot. seq. 001); and it is further

ADJUDGED that Plaintiff 32 Gramercy Park Owners Corp. is entitled to possession of the premises consisting of the ground floor store known as 232 Third Avenue in the building located at 230 Third Avenue, New York, New York 10003 as against Defendant First Century Real Estate Group Corp. d/b/a First Century Real Estate Group, and the Sheriff of the City of New York, County of New York, upon receipt of a certified copy of this Order and Judgment and payment of proper fees, is directed to place plaintiff in possession accordingly; and it is further

ADJUDGED that immediately upon entry of this Order and Judgment, plaintiff may exercise all acts of ownership and possession of the premises consisting of the ground floor store known as 232 Third Avenue in the building located at 230 Third Avenue, New York, New York 10003, including entry thereto, as against Defendant First Century Real Estate Group Corp. d/b/a First Century Real Estate Group; and it is further

ORDERED and ADJUDGED that Plaintiff 32 Gramercy Park Owners Corp. is awarded a money judgment in the sum of \$385,707.40 in its favor and against Defendants First Century Real Estate Group Corp. d/b/a First Century Real Estate Group and Arthur Komissar, with statutory interest from October 3, 2023, and the Clerk of the General Clerk's Office is directed to enter judgment accordingly; and it is further

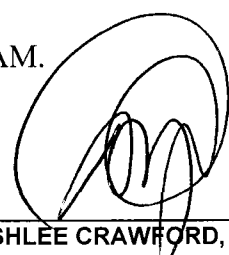
ORDERED that Plaintiff’s motion for use and occupancy *pendente lite* and for an order that Defendants pay outstanding use and occupancy is DENIED AS MOOT (mot. seq. 002); and it is further

ORDERED that Plaintiff’s motion for a money judgment and judgment of possession is GRANTED only to the extent set forth herein and is otherwise DENIED AS MOOT (mot. seq. 003); and it is further

ORDERED that plaintiff shall, within 20 days of entry of this order, serve a copy of this order with notice of entry upon all parties hereto and upon the Clerk of the General Clerk’s Office. Service upon 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 Plaintiff’s remaining claims are severed and continued; and it is further

ORDERED that the parties shall appear for a preliminary conference in Room 1166, 111 Centre Street, New York, New York, on June 10, 2026 , at 10:00 AM.



4/21/26
DATE

ASHLEE CRAWFORD, J.S.C.

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