Manhattan Realty Co. 1, LP v YSI Inc.
2026 NY Slip Op 31775(U)
April 20, 2026
Supreme Court, New York County
Docket Number: Index No. 650800/2020
Judge: Ashlee Crawford
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ASHLEE CRAWFORD** **PART** **38**

Justice

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MANHATTAN REALTY COMPANY 1, LP,

Plaintiff,

- v -

YSI INC. and SHU IKEDA,

Defendants.

----------X

INDEX NO. 650800/2020

MOTION DATE 11/22/2024

MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 167, 168, 169, 170

were read on this motion to/for SUMMARY JUDGMENT.

Plaintiff Manhattan Realty Company 1, LP commenced this breach of contract action against defendants YSI, Inc. (YSI) and Shu Ikeda (Ikeda) to recover unpaid rent defendants allegedly owe pursuant to a commercial lease (lease). Plaintiff is the owner of the premises located at 94 Reade Street, New York, New York (premises). YSI was the tenant of the premises, and Ikeda was the personal guarantor of the lease. YSI failed to pay its monthly rent and vacated the premises. Plaintiff seeks to recover outstanding rent under the lease and the guaranty agreement.

BACKGROUND

Plaintiff, as owner, and YSI, as tenant, entered into a lease dated August 25, 2018 for the premises located at 94 Reade Street, in Tribeca (Lease [NYSCEF Doc. 135]). Pursuant thereto, plaintiff leased to YSI the portions of the building identified as the store, basement, and sub-basement at the monthly rate of $14,000 for the first year and $14,420 for the second year (*id.*; Complaint at 3 [NYSCEF Doc. 136]). The lease also obligated defendants to pay reasonable

attorneys' fees incurred in the enforcement of the lease (Lease at ¶¶ 19, 4, & guaranty [NYSCEF Doc. 135]).

YSI leased the premises for the purpose of opening a Japanese yakitori restaurant (Ikeda Affirm. at ¶ 4 [NYSCEF Doc. 149]; Lease). To this end, YSI had to build out the premises to make it suitable for restaurant operations (Ikeda Affirm. at ¶ 5). After the lease commenced, YSI began working on the necessary alterations in the premises (Ikeda Affirm. at ¶ 7).

The lease required YSI to obtain plaintiff's written consent for any alteration that required filing an application and obtaining a permit from the Department of Buildings (DOB), the Landmarks Preservation Commission (LPC), and other governmental agencies (Moskowitz Affirm. at ¶ 22 [NYSCEF Doc. 133]). According to defendants, plaintiff "consistently imposed unreasonable conditions, delayed approvals, and withheld consent for essential alterations" in violation of the lease (Ikeda Affirm. at ¶ 7).

Defendants allege that after it became evident that YSI would not be able to comply with plaintiff's requirements and conditions for the restaurant buildout, it returned the keys to plaintiff in December 2019 and removed its remaining property in March 2020 (Ikeda Affirm. at ¶¶ 23-25). It is undisputed that the parties did not execute a surrender agreement and, according to plaintiff, tenant never surrendered the keys (Ikeda Affirm. at ¶ 25; Moskowitz Affirm. at ¶ 9). Plaintiff claims it regained possession of the premises on November 24, 2021, when the DOB approved plaintiff's architect's alteration plan to supersede YSI's alteration plan, which YSI never withdrew (Moskowitz Affirm. at ¶ 10). It is undisputed that YSI ceased paying rent beginning December 2019 (Complaint at ¶ 11 [NYSCEF Doc. 136]).

The complaint asserts causes of action for: (1) breach of contract; (2) specific

performance; (3) legal fees; (4) breach of guaranty; and (5) specific performance on the guaranty. In response, defendants asserts affirmative defenses for: (1) failure to state a claim; (2) unclean hands; (3) frustration of purpose; (4) unjust enrichment; (5) lack of meeting of the minds; (6) unconscionability; (7) inadequate consideration; (8) prior material breach; and (9) mutual mistake of fact. Defendants also interpose counterclaims for (1) rescission and restitution and (2) breach of contract (Answer with Counterclaims [NYSCEF Doc. 137]).

Plaintiff now moves for (1) summary judgment on its first, third, and fourth causes of action, seeking judgment in the sum of $351,920.00 through November 24, 2021; (2) an order dismissing defendants' affirmative defenses and counterclaims pursuant to CPLR 3211; (3) for a hearing on reasonable attorneys' fees; and (4) to conform the complaint to the evidence pursuant to CPLR 3025 (c). Defendants oppose the motion. For the reasons set forth below, plaintiff's motion is granted in part and denied in part.

Summary Judgment

A party seeking summary judgment "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. Ctr.*, 64 NY2d 851, 853 [1985]). Once this showing is made, the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of triable issues of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). "[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" to defeat summary judgment (*id.*). Summary judgment is a drastic remedy and must be denied if there is any doubt as to the existence of a triable issue of material fact (*Rotuba Extruders, Inc. v Ceppos*, 46 NY2d 223, 231 [1978]).

In the first instance, the Court will consider defendants' opposition papers, which were filed about a week after the stipulated deadline, because there is no showing of prejudice and plaintiff was able to submit reply (*Serradilla v Lords Corp.*, 117 AD3d 648, 649 [1st Dept 2014]; *see also Lauren v Hotel Pennsylvania*, 232 AD3d 473, 474 [1st Dept 2024][public policy favors resolving disputes on the merits]). The Court will also consider plaintiff's reply, although it exceeds the permitted word count limits under NYCRR § 202.8-b (a) and omits counsel's certification in violation of section 202.8-b (c) (*see* CPLR 2001; *Taveras v Inc. Vil. of Freeport*, 225 AD3d 822, 823 [2d Dept 2024]; *see also Anuchina v Mar. Transp. Logistics, Inc.*, 216 AD3d 1126, 1127 [2d Dept 2023]).

First Cause of Action: Breach of Contract

Plaintiff alleges that YSI breached the lease by failing to pay rent as agreed (Complaint ¶¶ 21-25). Plaintiff argues that YSI's obligation to pay rent under the lease is an enforceable independent covenant irrespective of whether plaintiff breached the terms of the lease, and that defendants' remedy for claims arising out of plaintiff's alleged breach is limited to bringing an action for damages.

Defendants counter that plaintiff breached paragraphs 44 and 69 of the lease, which provide that plaintiff's consent to YSI's alterations of the premises "shall not be unreasonably withheld, conditioned or delayed" (Lease at ¶¶ 44[e], 69 [NYSCEF Doc. 135]), thereby relieving defendants of their obligation to pay rent. Defendants argue that plaintiff "unreasonably withheld, conditioned or delayed" approvals for various portions of defendants' restaurant buildout in violation of the lease (Ikeda Affirm. ¶¶ 7-18). Further, defendants contend that plaintiff failed to address a gas shutoff to the building beginning in March 2019 and lasting at least 19 months, which additionally motivated plaintiff to obstruct and delay defendants'

buildout to avoid greater scrutiny had the restaurant opened on schedule (*id.* ¶¶ 19-22). According to defendants, plaintiff's breach prevented them from opening the restaurant, thereby depriving them of the lease's core benefit.

The Court of Appeals has consistently held that when parties set down their agreement in a clear, complete document, their writing should be enforced according to its terms (*159 MP Corp. v Redbridge Bedford, LLC*, 33 NY3d 353, 359 [2019]; *Vermont Teddy Bear Co., Inc. v 538 Madison Realty Co.*, 1 NY3d 470, 475 [2004]). This rule has "special import in the context of real property transactions, where commercial certainty is a paramount concern, and where … the instrument was negotiated between sophisticated, counseled business people negotiating at arm's length" (*id.*).

It is well-settled that "the obligation to pay rent pursuant to a commercial lease is an independent covenant, and thus, cannot be relieved by allegations of a landlord's breach, absent an express provision to the contrary" (*Universal Communications Network, Inc. v 229 W. 28th Owner, LLC*, 85 AD3d 668, 669 [1st Dept 2011]; *see Port Morris Distillery, Inc. v Glob. Estate LLC*, 223 AD3d 483, 484 [1st Dept 2024] [finding plaintiff's "contention that defendants frustrated its ability to use and enjoy its lease" unavailing because plaintiff's obligation to pay rent was an independent covenant]; *345 Park Ave. S. Partners LLC v Barbounia NYC, LLC*, 2007 NY Slip Op 32112[U], *2 [Sup Ct, NY Co 2007] [holding that "breach by a landlord of particular covenants - including covenants to approve building plans - is not a defense to an action for rent by the landlord against the tenant, and does not excuse the tenant from its obligation to pay rent"].)

Here, defendants do not identify any lease provision that would relieve them of the obligation to pay rent. To the contrary, paragraph 4 of the lease provides that "Tenant shall not

be entitled to any set off or reduction of rent by reason of any failure of Owner to comply with the covenants of this or any other article of this lease" (Lease ¶ 4 [NYSCEF Doc. 135]; *see Harlington Realty Co., LLC v Lawrence Plumbing Supply Inc.*, 201 AD3d 435, 436 [1st Dept 2022]). Further, paragraph 4 expressly limits defendants' remedy for plaintiff's breach to an action for damages for breach of contract (Lease ¶ 4; *see Harlington* 201 AD3d at 436). For the foregoing reasons, plaintiff is entitled to summary judgment as to liability on its breach of contract claim.

With respect to damages, the parties dispute when defendants surrendered the premises. Plaintiff claims it regained possession of the premises on November 24, 2021, when the DOB approved its architect's plan to supersede defendants' abandoned alteration plans. Plaintiff further claims that defendants left their construction materials in the premises, which plaintiff removed at its own expense (Moskowitz Affirm ¶¶ 9-10 [NYSCEF Doc. 133]).

Defendants contend that by the end of 2019, over fifteen months after the lease commenced and after they invested over $900,000.00 in construction at the premises, their efforts to complete the restaurant were thwarted by plaintiff's obstructive behavior (Ikeda Affirm ¶ 23 [NYSCEF Doc. 149]). Defendants concede that the parties did not execute a formal surrender agreement but represent that their counsel communicated with plaintiff as early as December 2019 regarding surrendering possession, and defendants claim they returned the key to the landlord in late 2019, resulting in a surrender by operation of law. Defendants maintain they surrendered possession, at the very latest, in March 2020, when their contractor retrieved the remaining items from the space (Ikeda Affirm ¶¶ 24-26; Memo in Opp at 12-13).

In reply, plaintiff refutes that a surrender by operation of law occurred and points to paragraph 24 of the lease, titled "No Waiver," which provides in relevant part:

> "No act or thing done by Owner or Owner's agents during the term hereby demised shall be deemed in acceptance of a surrender of the demised premises and no agreement to accept such surrender shall be valid unless in writing signed by Owner. No employee of Owner or Owner's agent shall have any power to accept the keys of the demised premises prior to the termination of the lease, and the delivery of keys to any such agent or employee shall not operate as a termination of the lease or a surrender of the demised premises" [Lease ¶ 24 (NYSCEF Doc. 135)].

According to plaintiff, this provision precludes any issue of fact regarding the surrender because it specifically requires that any surrender agreement must be in writing and signed by the landlord.

The doctrine of surrender by operation of law applies "when the parties to a lease both do some act so inconsistent with the landlord-tenant relationship that it indicates their intent to deem the lease terminated" (*Riverside Research Inst. v KMGA, Inc.*, 68 NY2d 689, 691 [1986] [citations omitted]). "As distinguished from an express surrender, a surrender by operation of law is inferred from the conduct of the parties" (*id.*). "Whether a surrender by operation of law has occurred is a determination to be made on the facts" (*id.*).

In light of the lease provision requiring a writing signed by the landlord to effectuate a surrender, and the lack of such a writing, defendants have failed to raise an issue of fact concerning their liability for post-surrender rent through a surrender by operation of law based on a purported return of the key (*see 1140 LLC v Meis Studio Inc.*, 225 AD3d 516, 517 [1st Dept 2024]; *Hudson Towers Hous. Co., Inc. v Vip Yacht Cruises, Inc.*, 63 AD3d 413, 413 [1st Dept 2009]; *see also 99 Realty Co. v Eikenberry*, 242 AD2d 215, 216 [1st Dept 1997]; *cf. Riverside Research Inst.*, 68 NY2d at 691; *176 PM, LLC v Hgts. Stor. Garage, Inc.*, 157 AD3d 490, 494 [1st Dept 2018]). While defendants question plaintiff's selection of the DOB plan approval date as the date through which to calculate damages, the Court views this as a concession by plaintiff that it accepts defendants' surrender as of that date.

Accordingly, the Court grants plaintiff's request for leave to amend the complaint to conform the pleadings to the proof, and further grants summary judgment for plaintiff on its breach of contract claim for nonpayment of rent through November 2021.

Fourth Cause of Action: Breach of Guaranty

Defendants oppose plaintiff's motion on the additional ground that plaintiff's enforcement of the guaranty is barred by the Administrative Code of City of NY § 22- 1005 (Guaranty Law). In reply, plaintiff argues that the courts have stricken down the Guaranty Law as unconstitutional and that, in any case, the facts here do not satisfy the elements set forth in the Guaranty Law.

Regarding defendant Ikeda's liability under the guaranty, "a landlord seeking summary judgment against a guarantor satisfies its initial evidentiary burden by proving the existence of an absolute and unconditional guaranty, a debt owed by tenant to landlord, and guarantor's failure to pay under the agreement" (*1140 LLC v Meis Studio Inc.*, 225 AD3d at 516 [citation omitted]). The New York City Council enacted the Guaranty Law to provide relief to small business owners from financial burdens resulting from the COVID-19 pandemic (*see Melendez v City of New York*, 668 F Supp 3d 184, 188-191 [SD NY 2023], *vacated and remanded, Bochner v City of New York*, 118 F4th 505 [2d Cir. 2024]). The Guaranty Law excuses a guarantor's liability for the payment of rent under a commercial lease during the period between March 7, 2020 and June 30, 2021, if the guarantor meets certain criteria (NYC Admin. Code § 22- 1005).

Here, defendants do not dispute the existence of an absolute and unconditional guaranty. They simply argue that the Guaranty Law precludes plaintiff from collecting rental arrears accruing between March 7, 2020 and June 30, 2021 from defendant Ikeda under the guaranty.

The Court need not reach the question of the constitutionality of the Guaranty Law (*see 513 W. 26th Realty, LLC v George Billis Galleries, Inc.*, 2024 N.Y. Slip Op. 34531[U] [Sup Ct, NY Co. 2024]; *see also 558 Seventh Ave. Corp. v E&B Barbers Inc.*, 237 AD3d 635 [1st Dept 2025]), because the statute does not apply here. According to defendant Ikeda, defendants vacated the premises some time in December 2019 and removed construction equipment in March 2020. The restaurant never opened; thus, no COVID-era executive order required defendants to cease serving patrons on-premises or to cease operations (*see* Admin. Code § 22-1005 [1] [a]). Further, since the restaurant never became operational, it was not subject to in-person limitations (*see* Admin. Code § 22- 1005 [1] [b]), and defendants were not required to close to the public under any executive order (*see* Admin. Code § 22- 1005 [1] [c]).

Plaintiff has established the existence of an absolute, unconditional guaranty, which defendants do not challenge. The Court has already determined that defendants are liable for the payment of rent, regardless of plaintiff's breach. The guaranty obligated the guarantor, Ikeda, to pay rent and other charges through the date defendants vacated, provided that defendants gave plaintiff 60 days' written notice of intent to surrender (Guaranty [NYSCEF Doc. 135]). It is undisputed that the parties did not execute a written surrender agreement. While defendant Ikeda affirmed that his attorneys communicated with plaintiff regarding surrendering the premises, he has not alleged that defendants gave plaintiff written notice of their intent to surrender to satisfy the guaranty. Thus, defendant Ikeda is liable under the guaranty (*1140 LLC v Meis Studio Inc.*, *supra* at 516).

Third Cause of Action: Attorneys' Fees

Plaintiff has established its entitlement to summary judgment as to liability on its claim for reasonable attorneys' fees against defendants under paragraphs 19 and 47 of the lease and the

guaranty (*see 558 Seventh Ave. Corp.*, 237 AD3d at 636). The issue of the amount of reasonable attorneys' fees plaintiff may recover is preserved for a hearing.

Dismissal of Affirmative Defenses

"When moving to dismiss an affirmative defense pursuant to CPLR 3211(b), the plaintiff bears the heavy burden of showing that the defense is without merit as a matter of law" (*Alpha Capital Anstalt v. General Biotechnology Corp.*, 191 AD3d 515, 516 [1st Dept 2021][internal quotation omitted]). "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.* [internal quotation and citations omitted]). An affirmative defense should not be dismissed where there remain triable issues of fact (*Granite State Ins. Co. v. Transatlantic Reins. Co.*, 132 AD3d 479, 481 [1st Dept 2015]; *534 E. 11th St. Hous. Dev. Fund Corp. v Hendrick*, 90 AD3d 541, 542 [1st Dept 2011]).

i. Failure to State a Claim

As to defendants' first affirmative defense, plaintiff established its cause of action for breach of contract by submitting a copy of the lease (NYSCEF Doc. 135) and the affirmation of Robert Moskowitz, a member of plaintiff's general partner, Cascal LLC, who managed the subject premises (NYSCEF Doc No. 133 at 1, ¶ 1). Moskowitz affirmed that defendants failed to pay rent under the terms of the lease (*id.* at 5-6, ¶¶ 11-14). Defendants do not dispute the validity of the lease or that they ceased making rent payments beginning in December 2019. Based on the foregoing, defendants' first affirmative defense is without merit and is dismissed.

ii. Unclean Hands

Without addressing the merits of defendants' second affirmative defense, defendants

expressed their willingness to withdraw the defense of unclean hands in the event that plaintiff withdraws its claims for specific performance (NYSCEF Doc No. 165 at 21, n 5). Since plaintiff represented that its second and fifth causes of action for specific performance are moot (NYSCEF Doc No. 144 at 1, n 1), the second and fifth causes of action, and the second affirmative defense are dismissed.

iii. Frustration of Purpose Defense

Defendants' frustration of purpose defense is without merit. To invoke a frustration of purpose defense, "the frustrated purpose must be so completely the basis of the contract that, as both parties understood, without it, the transaction would have made little sense" (*Jack Kelly Partners LLC v Zegelstein*, 140 AD3d 79, 85 [1st Dept 2016]; *see Two Catherine St. Mgt. Co., Inc. v Yam Keung Yeung*, 153 AD2d 678 [2d Dept 1989]). However, "the 'narrow' doctrine of frustration of purpose does not apply where . . . the circumstances were foreseeable by the parties and provided for under the contract" (*Empanada Fresca LLC v 1 BK St. Corp.*, 2025 NY Slip Op 03130, *1, *6 [1st Dept 2025] [citation omitted]; *Center for Specialty Care, Inc. v CSC Acquisition I, LLC*, 185 AD3d 34, 43 [1st Dept 2020]). To the extent defendants argue that plaintiff's alleged unreasonable delay or obstruction interfered with the necessary alterations, frustrating the intended purpose of the lease, the lease contemplated the possibility that plaintiff may do so in paragraphs 44 and 69 by providing that consent for the necessary alterations "shall not be unreasonably withheld, conditioned, or delayed" (NYSCEF Doc. 135). Defendants' remedy under the lease was to bring an action for damages for breach of contract (*id.* at ¶ 4). Since the circumstances were foreseeable by the parties and provided for in the lease, this affirmative defense is dismissed.

iv. Unjust Enrichment

Defendants' affirmative defense of unjust enrichment is not applicable here because there was a valid and enforceable agreement between the parties. "The existence of a valid and enforceable written contract governing a particular subject matter ordinarily precludes recovery in quasi contract for events arising out of the same subject matter" (*Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 388 [1987]; *see Accurate Copy Serv. of Am., Inc. v Fisk Bldg. Assoc. L.L.C.*, 72 AD3d 456, 456 [1st Dept 2010]).

v. Lack of Meeting of the Minds

Defendants' fifth affirmative defense for lack of meeting of the minds must be dismissed. It is uncontested that the parties executed a valid lease, and defendants took possession of the premises (*see Kowalchuk v Stroup*, 61 AD3d 118, 121 [1st Dept 2009]). It is also undisputed that, pursuant to the lease, defendants paid rent from March 2019 through November 2019 and remained in possession through at least December 2019. That defendants made eight months of payments and continued in possession of the premises belies defendants' claim that there was no meeting of the minds between the parties, notwithstanding plaintiff's alleged subsequent breach (*see 1912 Newbridge Rd., LLC v Liantonio*, 172 AD3d 962, 964 [2d Dept 2019]).

vi. Unconscionability

Addressing defendants' sixth affirmative defense, "the law has developed the concept of unconscionability so as to prevent the unjust enforcement of onerous contractual terms which one party is able to impose under the other because of a significant disparity in bargaining power" (*Rowe v Great Atl. & Pac. Tea Co., Inc.*, 46 NY2d 62, 68 [1978]). Here, the status of the parties is not so unbalanced that the doctrine of unconscionability would apply even if the contract was "unusually one-sided" (*id.*).

vii. Inadequate Consideration

Defendants' seventh affirmative defense, that plaintiff failed to provide adequate consideration, lacks merit. It has been held that "in the absence of fraud or unconscionability, the adequacy of consideration is not a proper subject for judicial scrutiny" (*Ancart v Crespo*, 242 AD3d 565, 566 [1st Dept 2025] [internal quotations and citation omitted]). This Court has already determined that the lease was not unconscionable and defendants have not alleged fraud or illegality; thus, tenants claim for lack of consideration must be dismissed.

viii. Prior Material Breach

The eighth affirmative defense is also dismissed. Absent a lease provision to the contrary, defendants' obligation to pay rent was not suspended by plaintiff's alleged breach. Even assuming for the sake of the argument that plaintiff breached the lease first, defendant's remedy under the lease was to commence an action for damages.

ix. Mutual Mistake

Defendants' ninth affirmative defense of mutual mistake lacks merit. It is well-settled that "courts will impose the equitable remedy of rescission to a contract which does not reflect the parties' intent because of their mutual mistake where it is warranted in the interest of justice and fairness" (*Symphony Space, Inc. v Pergola Properties, Inc.*, 214 AD2d 66, 80 [1st Dept 1995], *affd* 88 NY2d 466 [1996]). However, "[t]he mutual mistake must exist at the time the contract is entered into and must be substantial" (*Matter of Gould v Bd. of Educ. of Sewanhaka Cent. High School Dist.*, 81 NY2d 446, 453 [1993]; *Eisenberg v Hall*, 147 AD3d 602, 604 [1st Dept 2017]). Performance of a contract may be probative of the parties' state of mind at the time the contract is signed (*Gulf Ins. Co. v Transatlantic Reins. Co.*, 69 AD3d 71, 85-86 [1st Dept 2009]). Here, the parties' performance under the lease during the relevant time period evinces

that the parties communicated regarding the necessary approvals for opening a restaurant, which was the subject of the lease. The basis of defendants' mutual mistake defense is plaintiff's alleged breach. That plaintiff allegedly breached the terms of the lease does not lead to the conclusion that there was mutual mistake at the lease's inception or that the lease did not reflect the intent of the parties. Thus, the ninth affirmative defense is dismissed.

Dismissal of Counterclaims

i. ***Rescission***

Plaintiff argues that defendants' tenth affirmative defense and first counterclaim for rescission should be dismissed because defendants waived their right to seek recission by waiting over a year to assert it; defendants cannot be restored to the position as it existed before the lease; and their counterclaim for damages undermines their claim for this equitable remedy. Additionally, plaintiff argues that the guarantor has no standing to assert this counterclaim. In opposition, defendants only counter that they interposed the counterclaim promptly and that, in any case, promptness is an issue of fact.

Having considered the parties arguments, the court finds defendants' counterclaim for rescission without merit. The courts have held that "the equitable remedy is to be invoked only when there is lacking complete and adequate remedy at law and where the *status quo* may be substantially restored" (*Rudman v Cowles Communications,* 30 NY2d 1, 13 [1972]; *see Empanada Fresca LLC v 1 BK St. Corp.*, 238 AD3d 589, 596 [1st Dept 2025] ["claim for rescission based on a frustration of purpose was also properly dismissed, as the tenant's claim for a rent refund survived, rendering money damages available"]. In the instant matter, defendants interposed a counterclaim for damages stemming from plaintiff's alleged breach of the lease. Thus, defendants have an adequate remedy at law—the money damages they seek to recover in

their second counterclaim. Accordingly, the tenth affirmative defense and first counterclaim is dismissed.

ii. Breach of Contract

Plaintiff urges the Court to dismiss defendants' eleventh affirmative defense and second counterclaim for damages resulting from plaintiff's alleged breach of the lease. Plaintiff argues that defendants' failure to perform under the lease bars them from bringing a claim for breach of contract. In opposition, defendants assert that paragraph 4 of the lease allows them to maintain a claim for contract damages. As such, defendants argue they are entitled to recover for plaintiff's breach of the portions of the lease prohibiting it from unreasonably withholding, conditioning, or delaying approval of defendants' alterations, thereby causing defendants to expend an alleged $900,000 and obstructing them from opening a restaurant as contemplated by the lease.

Where a commercial lease provides that a landlord may not unreasonably withhold approval, the landlord may withhold approval when its decision is based on "legitimate, objective business considerations" (*see Wize Eyes of Syosset, Inc. v Turnpike Corp.*, 66 AD3d 884, 885 [2d Dept 2009]). In support of their counterclaim, defendants, among other things, submit a copy of an acoustical report, which plaintiff also references (Acoustical Report [NYSCEF Doc. 151]; Moskowitz Affirm. at ¶ 25 [NYSCEF Doc. 133]), which provides that "[w]hile the equipment being proposed by the tenant . . . will generate noise levels above NYC Code requirements, it is certain that noise levels will fall under the Code as long as the remedial measures . . . are implemented" (Acoustical Report at 2). The report also provides that the remedial measures "are readily accessible in the marketplace and are used regularly" (*id.*).

Additionally, regarding the "make-up air and exhaust plan," which plaintiff claims would have violated "various emissions standards set forth by the DEP" (Moskowitz Affirm. at ¶ 24

[NYSCEF Doc. 133]), defendants submit a copy of a letter from their engineer addressed to Moskowitz, with an attached operation manual, purporting to show that a second PCU was not required (PCU Letter [NYSCEF Doc. 150]). To the extent that plaintiff alleges that its denial of approvals for defendants' alteration plans was motivated by legitimate concerns regarding violations of various building and environmental codes (Moskowitz Affirm. at ¶¶ 23-26 [NYSCEF Doc. 133]), defendants have raised an issue of material fact regarding whether the lack of approval was reasonable or merely based on plaintiff's speculative belief that New York City's governmental agencies would not approve defendants' plans (*see 136 E. 64th St., L.P. v 136 E. 64th St. Corp.*, 2013 NY Slip Op 32245[U], *7 [Sup Ct, NY Co. 2013]).

The parties' remaining arguments have been considered and are either without merit or need not be addressed given the findings above. Accordingly, it is hereby

ORDERED that plaintiff's second and fifth causes of action, and defendants' second affirmative defense are DISMISSED on consent; and it is further

ORDERED that that part of the motion by plaintiff to amend the complaint to conform the pleadings to the proof is GRANTED; and it is further

ORDERED that that part of the motion by plaintiff for summary judgment is GRANTED IN PART, as follows:

(a) summary judgment on plaintiff's first and fourth causes of action for breach of contract and breach of guaranty is GRANTED in its entirety;

(b) summary judgment on plaintiff's third cause of action for legal fees is GRANTED as to liability only, and the issue of the amount of reasonable attorneys' fees to be awarded to plaintiff shall be determined at trial;

(c) summary judgment dismissing defendants' affirmative defenses and counterclaims is GRANTED only to the extent that defendants' first, third, fourth, fifth, sixth, seventh, eighth, ninth, and tenth affirmative defenses and first counterclaim are DISMISSED, and is otherwise DENIED; and it is further

ORDERED that defendants' remaining counterclaim for breach of contract is severed and continued; 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 it is further

ORDERED that plaintiff shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office, who shall enter judgment for plaintiff MANHATTAN REALTY COMPANY 1, LP, and against defendants YSI INC. and SHU IKEDA jointly and severally, in the sum of $351,930.00, together with post-judgment interest at the statutory rate, plus costs and disbursements upon presentation of proper papers therefor; and it is further

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

This constitutes the decision and order of the Court.

4/20/26
DATE

ASHLEE CRAWFORD, J.S.C.

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