

161 W. 106th St., LLC v Tuttolomondo

2026 NY Slip Op 31916(U)

May 4, 2026

Supreme Court, New York County

Docket Number: Index No. 653355/2025

Judge: Phaedra F. Perry-Bond

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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. PHAEDRA F. PERRY-BOND PART 35

Justice

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161 W. 106TH STREET, LLC,

Plaintiff,

- v -

GIUSEPPE TUTTOLOMONDO,

Defendant.

INDEX NO. 653355/2025

MOTION DATE 08/27/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 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 were read on this motion to/for STRIKE AFFIRMATIVE DEFENSE.

Upon the foregoing documents, Plaintiff's motion to strike Defendant's affirmative defenses and for summary judgment is denied, without prejudice, and with leave to renew upon further discovery. Defendant's cross motion seeking leave to amend is granted.

I. Background

Plaintiff owns the building at 161 W. 106th Street, New York, New York, and leased the building's storefront (the "Premises") to non-party Domizia Inc. ("Tenant") for a lease term of November 1, 2006 through October 31, 2016 (the "Lease"). The lease term was extended via an "Extension and Modification of Lease" form (the "Lease Extension") executed on March 31, 2016, with the lease term being extended to October 31, 2026. Defendant executed a guaranty (the "Guaranty") in connection with the Lease Extension. The Tenant allegedly fell into rent arrears, and those arrears were not satisfied by Defendant, leading to this action seeking to enforce the Guaranty.

Defendant filed his Answer while acting pro se and two months later Plaintiff moved for summary judgment. Defendant then retained counsel and opposes the motion and seeks leave to

amend his Answer to assert new affirmative defenses. Defendant argues that Plaintiff lacks standing and capacity to maintain this action because the named Plaintiff is different from the corporate entity that owns the deed of the property, and allegedly none of the corporate entities named on the deed or the lease are authorized to conduct business in the state of New York. Defendant further argues there is a discrepancy in Plaintiff's own papers regarding the amount allegedly owed, and that the guaranty does not provide for an award of attorneys' fees. Finally, Defendant argues that summary judgment is premature as no discovery has been conducted. In reply, Plaintiff proffers the Department of State's entity information for 161 West 106 Street, LLC to show that it is active and authorized to conduct business.¹ Plaintiff also argues that there is no merit to Defendant's proposed affirmative defenses.

II. Discussion

The Court first addresses Defendant's cross motion seeking leave to amend, some of the proposed affirmative defenses may raise issues of fact sufficient to deny summary judgment. Leave to amend is freely granted in the absence of prejudice if the proposed amendment is not palpably insufficient as a matter of law (*Mashinsky v Drescher*, 188 AD3d 465 [1st Dept 2020]). A party opposing a motion to amend must demonstrate that it would be substantially prejudiced by the amendment, or the amendments are patently devoid of merit (*Greenburgh Eleven Union Free School Dist. v National Union Fire Ins. Co.*, 298 AD2d 180, 181 [1st Dept 2002]).

Contrary to Plaintiff's contentions, the first, second, and third affirmative defenses are not devoid of merit. There is a discrepancy between the deed owner of the Premises, and the entity named on the Lease, Guaranty, and in this action. Although Plaintiff argues that these are minor typographical discrepancies which the Court should overlook, they raise an issue of fact as to the

¹ This is a similarly named, but different entity than the entity named in the Complaint and on the lease and guaranty.

relationship amongst the different named entities, or whether the lease, named plaintiff, and guaranty all contain errors. At a minimum, an explanation through an affidavit from someone with personal knowledge is required, and the caption should be amended to use the correct name of the real party in interest prior to entry of summary judgment.

The fourth affirmative defense, which states amounts paid have not been credited is not patently devoid of merit and requires discovery to confirm. Likewise, the fifth affirmative defense is not devoid of merit as guaranties are to be strictly construed (*see ROC-Lafayette Associates, LLC v Sturm*, 233 AD3d 418 [1st Dept 2024]). The only mention of legal fees in the Guaranty is in connection with legal fees associated with the placement of liens, violations, or encumbrances on the Premises. There remains, at a minimum, an issue of fact as to whether the Guaranty can be construed to make Defendant liable for legal fees associated with this action. Therefore, cross motion is granted.

Because the affirmative defenses raise issues of fact which require discovery, the motion for summary judgment is denied, without prejudice, and with leave to renew after further discovery.

Accordingly, it is hereby,

ORDERED that Plaintiff's motion for summary judgment is denied, without prejudice, and with leave to renew upon further discovery; and it is further

ORDERED that Defendant's cross motion seeking leave to amend is granted, and the proposed pleading annexed to the motion papers (NYSCEF Doc. 28) shall be deemed served alongside a copy of this Decision and Order, with notice of entry; and it is further

ORDERED that the parties shall meet and confer immediately and submit a proposed preliminary conference order to the Court, but in no event shall the proposed order be submitted

any later than June 16, 2026. If the parties have a serious discovery dispute they shall notify the Court via e-mail so that an in-person conference can be scheduled; and it is further

ORDERED that if the parties elect to resolve this dispute via Court sponsored ADR, they shall notify the Court accordingly so the appropriate referral order may be issued; and it is further

ORDERED that within ten days of entry counsel for Defendant shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

5/4/26
DATE


HON. PHAEDRA F. PERRY-BOND, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: