ISTA Holding Co Inc v Nikolakakos
2026 NY Slip Op 31986(U)
May 7, 2026
Supreme Court, New York County
Docket Number: Index No. 650167/2024
Judge: Lyle E. Frank
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. LYLE E. FRANK** **PART** **11M**

Justice

----------X

ISTA HOLDING CO INC

Plaintiff,

- v -

PETER NIKOLAKAKOS,

Defendant.

----------X

INDEX NO. 650167/2024

MOTION DATE 01/20/2026

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91

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

Upon the foregoing documents, the motion is granted and the cross-motion is denied.

Background

This motion for summary judgment arises out of a commercial lease dispute regarding a restaurant on Staten Island. In August of 2000, Plaintiff entered into a commercial lease with non-party 68th Grill Inc, and alongside that lease 68th Grill's president at the time signed a personal guaranty. The lease was amended several times, and then in June of 2008 a limited guaranty was signed by Steve Nikolakakos, who had become the president of 68th Grill. Another limited guaranty was signed by Steve Nikolakakos in 2010 (the "2010 Guaranty"). Several further amendments to the lease were later signed by Peter Nikolakakos ("Peter" or "Defendant"), who had become the president of 68th Grill in 2016. These amendments included a line in the signature block above Peter's signature stating "Guarantor hereby reaffirms the Limited Guaranty dated December 29, 2010."

68th Grill eventually defaulted on the lease, and Plaintiff commenced an action in Civil Court against them in 2022, obtaining a judgment against the tenant. Then in 2024, Plaintiff

commenced this present proceeding against Peter, seeking to enforce the 2010 Guaranty. On May 13, 2025, Plaintiff filed suit against Steve Nikolakakos in Richmond County, seeking to enforce the same guaranty against Steve. Shortly after filing that suit, Plaintiff moved in this action for summary judgment against Peter on the guaranty. That motion was decided by an order from this Court dated November 10, 2025. The November Order held that Plaintiff had failed to meet their burden of establishing a prima facie case of breach of the guaranty, as Plaintiff had "failed to provide sufficient evidence to demonstrate the absence of genuine issues of material fact" going to Defendant's liability under the 2010 Guaranty. The Court noted that Defendant never signed the 2010 Guaranty, and that Plaintiff had not cited to any agreement containing any express undertaking of personal guaranty obligations by Defendant.

Standard of Review

Under CPLR § 3212, a party may move for summary judgment and the motion "shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." CPLR § 3212(b). Once the movant makes a showing of a prima facie entitlement to judgment as a matter of law, the burden then shifts to the opponent to "produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action." *Stonehill Capital Mgt. LLC v. Bank of the W.*, 28 N.Y.3d 439, 448 [2016]. The facts must be viewed in the light most favorable to the non-moving party, but conclusory statements are insufficient to defeat summary judgment. *Id.*

Discussion

Defendant now moves for summary judgment in his favor, dismissing the action. His argument is that Plaintiff will not be able to establish his liability as a matter of law under the

2010 Guaranty. Plaintiff opposes the motion, pointing to the questions of fact and ambiguities present in the record that the November Order mentioned. Plaintiff cross-moves for leave to amend the complaint, seeking to clarify who signed the 2010 Guaranty and the subsequent lease amendments on behalf of 68th Grill. They argue that by signing the subsequent lease amendments, it was implied that Defendant would be jointly and severally liable under the 2010 Guaranty with Steve Nikolakakos. For the reasons that follow, the motion is granted and the cross-motion is denied.

A Guaranty Must Be Clear and Unambiguous On Its Face

Because a guaranty is a "heavy" obligation, courts will not impose guarantor liability unless there is "the requisite clear and unequivocal evidence, to be gathered from the writing itself, that he intended to assume such a liability." *Savoy Record Co. v. Cardinal Export Corp.*, 15 N.Y.2d 1, 6 – 7 [1964]; *see also N.Y. Produce Trade Ass'n v. Mazzilli*, 49 A.D.2d 729, 729 [1st Dept. 1975] (holding that a guaranty must be in writing and signed by the party to be charged); *Lo-Ho LLC v. Batista*, 62 A.D.3d 558, 559 – 60 [1st Dept. 2009] (holding that guaranties are to be strictly interpreted and a guarantor cannot be "bound beyond the express terms of his guarantee"); *Citibank, N.A. v. Uri Schwartz & Sons Diamonds Ltd.*, 97 A.D.3d 444, 446 [1st Dept. 2012] (holding that a guaranty is binding if it is "clear and unambiguous on its face and, by its language, absolute and unconditional").

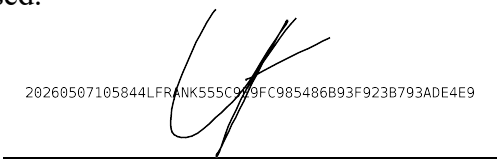
Plaintiff is correct that there are issues of fact and ambiguities going to the question of what the parties intended in signing the various lease amendments. But it is these very ambiguities that entitles Defendant to summary judgment. As stated above, New York law is clear that a guaranty must be in writing, signed by the party to be charged, and clear and

unambiguous as to the terms and intent to be bound. Such clarity must be present on the face of the signed writing itself.

Here, it is unclear what the parties intended in signing the subsequent lease amendments, and whether Defendant intended to be personally liable for 68th Grill or was merely signing in his capacity as officer. Because the document that Plaintiff purports to bind Defendant with is not a clear and unambiguous guaranty for the debts of another, signed by Defendant, Peter has established a prima facie entitlement to summary judgment. No reasonable trier of fact could find that the subsequent lease amendments were a clear and unambiguous intent to be personally bound, nor can any reasonable trier of fact find that the 2010 Guaranty was signed by Peter. Accordingly, it is hereby

ADJUDGED that the motion is granted and the cross-motion denied as futile; and it is further

ORDERED that the amended complaint is dismissed.



5/7/2026
DATE

LYLE E. FRANK, J.S.C.

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