

**CKMR Corp. v Namdor Inc.**

2026 NY Slip Op 31993(U)

May 6, 2026

Supreme Court, New York County

Docket Number: Index No. 656033/2023

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14**

*Justice*

-----X

CKMR CORPORATION,

Plaintiff,

- v -

NAMDOR INC. and JOHN CATSIMATIDIS,

Defendants.

-----X

INDEX NO. 656033/2023

MOTION DATE 03/24/2026

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 110, 111, 112, 113, 114, 115, 116, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130

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

Plaintiff’s motion for summary judgment is granted in part and denied in part.

Defendants’ cross-motion is granted in part and denied in part.

**Background**

This landlord-tenant dispute arises out of a commercial lease involving a property owned by plaintiff (the landlord) and leased by defendant Namdor Inc. (the “Tenant”). The individual defendant signed a guaranty in connection with the lease. The original lease commenced in 1993 and was thereafter amended on multiple occasions. The instant dispute arises out of a disagreement concerning the amount of real estate taxes owed by the Tenant.

The original lease stated that “Tenant shall pay, as additional rent of all [sic] Real Estate Taxes due for each Tax Year occurring during the term of this Lease, either in annual, semi-annual or quarterly installments, depending on which method Owner pays its Real Estate Taxes”

(NYSCEF Doc. No. 49, § 44[2][b]). Plaintiff says that this lease provision required the Tenant to pay 100% of all the building's real estate taxes.

In 2017, plaintiff contends that the parties entered into a second amendment to the original lease which involved a substantial reduction in the amount of real estate taxes owed by the Tenant. The lease provision states that "After Landlord shall receive its tax bill for each Tax Year after the Base Tax Year, Landlord shall furnish Tenant with a written statement setting forth Tenant's Proportionate Share of Tax Increase for such Tax Year, which statement shall be sent to Tenant together with a copy of the tax bill received by Landlord. Each statement furnished under this Section is hereinafter called a "Tax Statement". Every Tax Statement furnished by Landlord shall be conclusive and binding upon Tenant" (NYSCEF Doc. No. 51, § 3.2).

"Tenant's Proportionate Share shall mean, for purposes of the Lease and all calculations in connection herewith, one hundred (100%) percent of all increases" (*id.* §3.1.4). Moreover, "Tenant's Proportionate Share of Tax Increase shall mean (a) fifty percent (50%) of the amount due for the Base Tax Year, as finally determined, and additionally, (b) Tenant's Proportionate Share multiplied by the amount by which the Taxes for the subject Tax Year exceeds the Taxes for the Base Tax Year, as finally determined (whether such excess results from an increase in the applicable tax rate, or an increase in the assessed valuation of the land and Building or an imposition of a special assessment against the land and Building, or otherwise" (*id.* § 3.1.5).

Plaintiff seeks unpaid amounts arising out of this provision of the second amendment to the lease as well as late payments, interest and legal fees. It also seeks leave to amend to add in charges that have accrued since the commencement of this action.

Defendants offer a different account. They observe that the second amendment to the lease involved a substantial increase in the basic rent but was supposed to also include a reduction in real estate taxes. Defendants argue that relevant lease amendment was incorrect in that it required the Tenant to pay both the proportionate share of taxes (i.e., the increase in real estate taxes for the 2017/2018 base tax year) plus 50% of the amount due for the 2017/2018 base tax year. In other words, it included both the increase in real estate taxes plus paying half of the total amount of real estate taxes. Defendants also complain that plaintiff never sent any of the tax statements to the Tenant as required under the second amendment to the lease.

They maintain that the purpose of the lease amendment in 2017 was to ensure that the Tenant did not have to pay 100% of the real estate taxes every year and so the idea was to pick a base tax year and a requirement to pay only the increase in subsequent tax years. Defendants maintain that in connection with the third and fourth amendments of the lease, they found out for the first time (in October 2022) that plaintiff claimed it was underbilling for the taxes under the second amendment discussed above.

### **Discussion**

As an initial matter, the Court denies the branch of plaintiff's motion that seeks summary judgment as there are numerous issues of fact. Of course, there is no doubt that plaintiff uploaded a signed copy of the second amendment to the lease (NYSCEF Doc. No. 51) that contains the language that defendants say they did not intend to accept. It is axiomatic that mere dissatisfaction with the terms of a signed agreement or the failure to peruse an agreement prior to execution is not a basis to set aside a contract.

However, the Court denies the motion because of the bills attached by plaintiff in reply (NYSCEF Doc. No. 125). These bills, curiously, make no mention of the fact that the Tenant had

to pay 50% of the tax bill plus any increases from the base tax year. Instead, these bills repeatedly state that “In accordance with the terms of your Lease, you are required to pay 100% of the Real Estate Tax increase over the 2017/18 Base Year” (*id.* at 34 of 41). There is no mention of paying 50% of the base taxes each tax year. And that is in accordance with defendant’s understanding – that their obligation was to pay only the tax increase over the 2017/2018 Base Year. And so the Court finds that summary judgment is simply not appropriate on this record. Compounding the factual issues are the later demands for payment, which specifically mention the fact that the Tenant had to pay the 50% amount (NYSCEF Doc. No. 126). The inconsistency in the billing demonstrate material issues of fact exist.

It will be up to a fact finder to assess whether or not plaintiff waived its right to seek all of the amounts it claims are due given these apparently conflicting documents. In other words, the Court finds that it is premature to grant summary judgment and that more discovery, such as depositions, are needed to probe exactly how plaintiff handled the tax payments which it now claims were due from defendants.

### *Discovery*

The Court denies plaintiff’s request for relief under CPLR 3126 on the ground that defendants have failed to provide certain documents. The record demonstrates that defendants have substantially responded and it is beyond dispute that the parties have all of the key documents in this case—the lease, the amendments and the various bills/demands for payment. In other words, the parties are well aware of what the key documents are in this matter and the drastic sanctions plaintiffs seek are wholly without merit.

With respect to defendants' claims about missing discovery from plaintiff, the Court will give plaintiff until May 29, 2026 to substantively respond to defendants' discovery demands referenced on page 22-23 of NYSCEF Doc. No. 106. Plaintiff must respond (i.e. with documents) or the Court will not hesitate to impose sanctions.

#### *Amendment*

The Court denies plaintiff's motion for leave to amend to include additional amounts it claims has accrued as it did not annex a proposed amended pleading to its papers. While amendment is freely given, the Court must be able to evaluate the exact nature of the proposed amended pleading before granting that requested relief.

However, defendants' cross-motion for leave to amend is granted as defendants simply want to substitute references to the third amendment to the lease to the fourth amendment. They contend that certain allegations seemed to have mixed up these two and so they want to clarify.

#### *Affirmative Defenses and Counterclaims*

Plaintiff also seeks to dismiss defendants' affirmative defenses. The first defense, failure to state a claim upon which relief can be granted, is severed and dismissed as defendants did not oppose this request in their papers.

The second affirmative defense, regarding documentary evidence, remains as it is premature—there may be documents that exist that support defendants' version of events.

The third affirmative defense for accord and satisfaction survives because, as noted above, there are documents suggesting that plaintiff may have not explicitly charged the 50% of the real estate taxes.

However, the Court dismisses the unjust enrichment affirmative defense as there is no basis in which it might be against good conscience for plaintiff to recover what it claims is due under the contract. That is not to say that plaintiff will prevail—it simply means that unjust enrichment is inapplicable.

The fifth affirmative defense based on waiver remains because some of the bills seem to suggest that the Tenant was only charged with the increases over the base tax year.

The sixth affirmative defense of unclean hands is dismissed as defendants did not address it in their papers.

The seventh affirmative defense, as well as the first two counterclaims, that deal with mutual mistake remain as it is premature to make a finding on these claims.

The eighth affirmative defense, which references fraud related to the Fourth Amendment to the lease, as well as the third counterclaim (also based on the purported fraud) remain.

Defendants contend that at a meeting in October 2022, plaintiff represented that the total amount due for real estate taxes was between \$20,000 and \$40,000 despite knowing it thought \$500,000 was due; defendants claim this misrepresentation was made as a way to get defendants to sign the Fourth Amendment to the lease, which extended the term. It is premature to dismiss this counterclaim and affirmative defense, making a representation known to be false in order to induce another to take certain actions, and it sets a viable theory of fraud.

The ninth affirmative defense of reliance upon Local Law 55 (regarding enforcement of guarantees against individuals during COVID-19) is severed and dismissed as defendants did not address this claim in their opposition papers.

## Summary

Although there is evidence that defendants signed the second amendment to the lease and that this amendment included the requirement that the Tenant pay 50% of the real estate taxes plus the increases in real estate taxes over the base year rent, the fact is that it is not yet clear that plaintiff enforced these provisions or even recognized these terms. The initial bills (which defendants contend they never received) only mention that the Tenant had to pay the increases over the base year rent. That happens to be exactly the deal that defendants claim they negotiated—a significant increase in base rent and lower real estate taxes. Of course, even under the second amendment to the lease, it would seem that their real estate tax burden diminished somewhat. But there are far too many issues to explore about what happened after the parties entered into the second amendment to the lease for this Court to grant summary judgment.

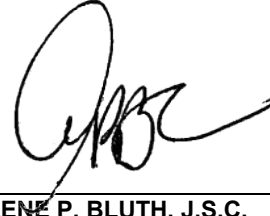
Accordingly, it is hereby

ORDERED that plaintiff's motion is granted only to the extent that defendants' first, fourth, sixth and ninth affirmative defenses are severed and dismissed; and it is further

ORDERED that defendants' cross-motion is granted to the extent that they are granted leave to amend their answer and they shall upload a copy of their proposed amended pleading as a separately e-filed document on or before May 19, 2026; and it is further

ORDERED that plaintiff shall substantively respond to defendants' discovery demands as detailed above by May 29, 2026.

See NYSCEF Doc. No. 133 regarding the next conference.



5/6/2026  
DATE

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ARLENE P. BLUTH, 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: