

611 W. 46 LLC v Flom

2024 NY Slip Op 34425(U)

December 5, 2024

Supreme Court, New York County

Docket Number: Index No. 655558/2020

Judge: Debra A. James

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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. DEBRA A. JAMES

PART 59

Justice

-----X

611 WEST 46 LLC,

Plaintiff,

- v -

GARY FLOM, VENIAMIN NILVA, and JEFFREY
JANKELOVITS,

Defendants.

-----X

INDEX NO. 655558/2020

MOTION DATE 03/31/2024

MOTION SEQ. NO. 004 005

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 44, 45, 46, 47, 48, 49, 50, 53, 54, 57, 58, 60, 66

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

The following e-filed documents, listed by NYSCEF document number (Motion 005) 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER.

ORDER

ORDERED that the motion of plaintiff that seeks a default judgment against defendant Jeffrey Jankelovits (motion sequence number 004) is dismissed, as moot, as supplanted by the motion of plaintiff for summary judgment against defendant Jankelovits, on the merits; and

It appearing to the court that the plaintiff 611 West 46 LLC is entitled to judgment on liability against defendant Jeffrey Jankelovits and that the only triable issues of fact arising on the motion of plaintiff for summary judgment against defendant

Jankelovits relate to the amount of damages to which plaintiff is entitled, it is

ORDERED that the motion is granted with regard to liability against defendant Jankelovits; and it is further

ORDERED that, as plaintiff filed its Note of Issue on June 13, 2023 (NYSCEF Doc No 63), the assessment of damages trial against defendant Jankelovits shall take place at the trial of damages against defendants Flom (NYSCEF Doc No 27) and Nilva (NYSCEF Doc No 61); and it is further

ORDERED that counsel are directed to confer with the Clerk of Trial Assignment Part (TAP) 40 to secure a mediation and/or trial date.

DECISION

In this action for breach of lease and personal guaranty, plaintiff-landlord 611 West 46 LLC ("611 West") moves for summary judgment against the defendant Jeffrey Jankelovits ("Jankelovits"), as a personal guarantor of a commercial lease with non-party tenant Autohaus LLC ("Autohaus"). See Lease and Guaranty dated January 26, 2015, NYSCEF Doc. No. 87.

There is no dispute that Jankelovits executed the Guaranty. However, Jankelovits contends that 611 West waived the guaranty liability upon the execution of a stipulation arising out of a summary landlord-tenant proceeding commenced in New York City Civil Court by 611 West against non-party Autohaus for a default

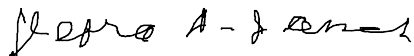
of the lease. See Stipulation of Settlement dated May 8, 2018, 611 West 46 LLC v Autohaus NYC LLC, NYC City Civil Court, NY County, L&T 82841/2019, NYSCEF Doc No 88.

Under that Stipulation of Settlement dated May 8, 2018, 611 West, Autohaus, and unnamed respondent Mobile Audio Specialists, Inc., d/b/a Manhattan Armor ("Mobile"), agreed that Autohaus would vacate the premises by May 18, 2022, and that Mobile would remain in occupancy, subject to certain conditions.¹ Jankelovits was not a party to the Stipulation of Settlement, which was devoid of any reference to the Guaranty. The Stipulation required that non-party Mobile pay Use and Occupancy to 611 West.

By the Statement of Material Facts dated December 22, 2023 (NYSCEF Doc No 71), and e-mail message of plaintiff's counsel dated December 4, 2018, NYSCEF Doc No 91 ("The client does not agree to any releases"), plaintiff refutes the contention of Jankelovits that the parties agreed to waive his personal liability under the Guaranty. Moreover, the Guaranty itself provides that it can be modified only by "an instrument signed by the Landlord and Guarantor". See Lease and Guaranty, p. 32, ¶ 10, NYSCEF Doc No 87, supra, p. 36. Jankelovits fails to submit evidence of any such instrument.

¹ Mobile shared the premises with Autohaus, the sole lessee under the subject commercial lease. Jankelovits is a principal of both Mobile and Autohaus.

However, there are issues of fact as to damages raised by conflicting Rent Ledger as of May 14, 2024 (NYSCEF Doc No 112) and the Tenant Ledger dated as of August 20, 2020 (NYSCEF Doc No 92). There must be a trial on damages before a factfinder, as to unpaid rent and other charges Jankelovits owes under the Guaranty. The court notes that such damages are limited to the amounts due under the Lease with Autohaus, as of its surrender of the premises on May 22, 2018, which surrender is not disputed by 611 West. 611 West is not entitled seek amounts that represent the Use and Occupancy that non-party Mobile promised to pay under the Stipulation of Settlement, as same do not constitute damages for breach of Lease with Autohaus and Guaranty by Jankelovits. Such Stipulation, to which Jankelovits was not a party, did not modify the Lease to extend the Guaranty to Mobile's use and occupancy obligations. "It is well established that '[a] guaranty is to be interpreted in the strictest manner', particularly in favor of a private guarantor, and cannot be altered without the guarantor's consent" Lo-Ho LLC v Batista, 62 AD3d 558, 559-60 (1st Dept 2009) (citations omitted).



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12/5/2024

DATE

DEBRA A. JAMES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE