

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: JOAN M. KENNEY
J.S.C.
Justice

PART 8

Excell 601 West 137th St LLC

INDEX NO. 104871/10

MOTION DATE _____

MOTION SEQ. NO. _____

Vinegar Hill Baking Co., et al.,

MOTION CAL. NO. 003

The following papers, numbered 1 to 48 were read on this motion to/for Sj motion

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits + <u>Memo, LAW</u>	<u>1-45</u>
Answering Affidavits — Exhibits + <u>Memo of LAW</u>	<u>46, 47</u>
Replying Affidavits + <u>Memo of LAW</u>	<u>48</u>

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

Plaintiff seeks an Order, pursuant to CPLR 3212, directing entry of judgment in favor of plaintiff and against defendant Sven Christian Oehme a/k/a Sven L. Oehme (Oehme) on plaintiff's 4th cause of action and entry of a money judgment in the amount of \$437,017.61 on the fourth cause of action. Plaintiff also seeks summary judgment against Oehme on its 5th, 6th, 11th and 12th causes of action as to liability and directing a hearing to compute the damages to be awarded based on said causes of action; and judgment in the amount of \$1,250,532.97 on its 10th cause of action against Oehme. Plaintiff additionally seeks dismissal of all of Oehme's affirmative defenses and counterclaims.

Briefly, it is alleged in the complaint that Oehme executed a good guy guarantee dated May 2003, to pay obligations under two executed leases of co-defendant Vinegar Hill Baking Company and Restaurant LLC (the Restaurant). In 2008, the Restaurant was evicted. The Restaurant never paid its outstanding rental arrears. The amounts dues and owing is disputed, as well as the date upon which the Restaurant purportedly surrendered the premises. Defendant, Oehme, however, has not presented any viable affirmative defenses as to the issue of liability on plaintiff's 4th, 5th, 6th, 10th, 11th, and 12th causes of action. Accordingly, it is

ORDERED that plaintiff's motion is granted, to the extent that judgment shall be entered in favor of plaintiff and against defendant Sven Christian Oehme a/k/a Sven L. Oehme with respect to the 4th, 5th, 6th, 10th, 11th, and 12th causes of action on the issue of liability only; and it is further

ORDERED that an assessment of damages against defendant Sven Christian Oehme a/k/a Sven L. Oehme is directed on the aforementioned causes of action, and it is further

ORDERED that a copy of this order with notice of entry be served by the movant upon the Clerk of the Trial Support Office (Room 158), who is directed, upon the filing of a note of issue and a statement of readiness, if applicable, and the payment of proper fees, if any, to place this action on the appropriate trial calendar for the assessment hereinabove directed.

Dated: November 28, 2012


J.S.C.
JOAN M. KENNEY

Check one: FINAL DISPOSITION NON-FINAL DISPOSITIONS.C.
Check if appropriate: DO NOT POST REFERENCE
 SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):