

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
HON. MELISSA A. CRANE
J.S.C.

311 West 43rd Venture, LLC.,

Plaintiff,

~~BROAD STREET CONVENIENCE, INC d/b/a~~

~~BROAD STREET CONVENIENCE and,~~

~~ANDREW FLITTER (A/K/A ANDREW M. FLITTER),~~

Defendants.

15th Floor Medicine LLC
and Todd Feuer

INDEX NO. 650851/2018

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL. NO. *Amended*
DECISION AND ORDER

The following papers, numbered ___ to ___ were read on this motion for _____.

Notice of Motion/Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

CROSS-MOTION: YES NO

PAPERS NUMBERED

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

The court grants defendants' motion to dismiss the complaint against Todd Feuer individually, because the personal guaranty in this case cuts off liability under that guaranty after the tenant surrenders possession to plaintiff. The personal guaranty in this case, sometimes known as a "Good Guy" guaranty states:

Guarantor hereby absolutely, unconditionally and irrevocably guarantees to Landlord (a) the prompt and timely performance by Tenant of all the terms, covenants, conditions and agreements to be performed or observed by Tenant under the Lease during the Term of the Lease, and any extension thereof, if applicable, and following the termination of the Lease by reason of an Event of Default or during any period Tenant remains in the Premises as a holdover or otherwise following the expiration or termination of the Lease, including, without limitation, the payment of Rent, Additional Rent, security deposits, indemnities and other payments by Tenant at the times and in the manner provided in the Lease, and the payment of damages, "use and occupancy" and all amounts payable under the Lease or holdover tenancies or periods following the expiration or termination of the Lease, and (b) **the prompt payment of all damages which may arise as a result of Tenant's failure to perform any such obligation.**

Notwithstanding the foregoing, the amount of the Guarantor's liability under clause (a) of this paragraph 1 shall be limited to the payment and performance of the obligations and liabilities described in this paragraph 1 which accrue *up to the date that Tenant vacates and surrenders the Premises in the condition required under the Lease*, free of claims of occupancy by third parties, and removed its property therefrom, delivers the keys to Landlord and given written notice, executed by Tenant, to Landlord that it is so vacating and surrendering possession of the Premises.

(see EDOC # 24 at pg. 47 [emphasis added]).

There is no dispute that the commercial tenant surrendered the Premises to plaintiff on April 16, 2016 in the condition the Lease required. Nevertheless, despite the language in the Good Guy guaranty, plaintiff insists that Mr. Feuer is liable for all sums under the Lease that accrue after the surrender date. Plaintiff posits that subpart (b) above, keeps the individual defendant liable for all post surrender date claims

Plaintiff's reading makes little sense. First, to adopt plaintiff's interpretation would render meaningless the remainder of the "good guy" clause. Moreover, the Lease, that plaintiff drafted, does not define the term "damages." What is clear, however, is that the "damages" referred to in part (b) "arise" out of the obligations in part (a). Therefore, there was no need to refer to part (b) in the "Good Guy" portion of the guaranty (2nd paragraph), because the "damages" in part (b) only happen ("arise"), if there is liability under Part (a). Thus, according to the plain terms of the Guaranty, defendant Todd Feuer's liability ended after the date the Tenant vacated and surrendered the Premises.

However, defendant admits that the sum of \$252.32 is due as of the surrender date. Accordingly, the court awards judgment to plaintiff for that amount only.

Accordingly, it is

ORDERED THAT the court grants defendant Todd Feuer's motion to dismiss upon the payment of \$252.32 that he admits is due and owing; and it is further

ORDERED THAT the remaining parties are directed to attend a status conference on May 1, 2019 at 11:00 am.

DATED: 4-8, 2019



MELISSA A. CRANE, J.S.C
HON. MELISSA CRANE

Check one: FINAL DISPOSITION X NON-FINAL DISPOSITION
Check if appropriate: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
Check if appropriate: DO NOT POST REFERENCE SETTLE ORDER SUBMIT ORDER
 FIDUCIARY APPOINTMENT