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As of: March 3, 2023 4:31 PM Z

## Epic W14 LLC v. Malter

Supreme Court of New York, Appellate Division, First Department

December 20, 2022, Decided; December 20, 2022, Entered

Index No. 150148/19, Appeal No. 16920, Case No. 2020-03402

### Reporter

211 A.D.3d 574 \*; 178 N.Y.S.3d 442 \*\*; 2022 N.Y. App. Div. LEXIS 7069 \*\*\*; 2022 NY Slip Op 07185 \*\*\*\*; 2022 WL 17813648 (counsel), for respondent.

[\*\*\*\*1] Epic W14 LLC, Plaintiff-Respondent, v Stefan Malter et al., Defendants-Appellants.

**Judges:** Before: Kern, J.P., Friedman, Gesmer, González, Mendez, JJ.

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THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTS.

**Prior History:** [\*\*\*1] Order, Supreme Court, New York County (David Benjamin Cohen, J.), entered July 9, 2020, which, to the extent appealed from, granted summary judgment in favor of plaintiff with respect to liability only, unanimously affirmed, with costs.

Epic W14 LLC v. Malter, 2020 N.Y. Misc. LEXIS 3220 (N.Y. Sup. Ct., July 8, 2020)

### Core Terms

guaranty, guarantor, summary judgment, cause of action, lease, unconditional, undisputed, obligated, parties

### Headnotes/Summary

#### Headnotes

**Suretyship and Guarantee — Scope of Guarantee — Absolute and Unconditional Guarantee — Judgments — Summary Judgment — Partial Summary Judgment — Limitation of Issues of Fact for Trial**

**Counsel:** Lambert & Shackman, PLLC, New York (Thomas C. Lambert of counsel), for appellants.

SDK Heiberger, LLP, New York (Steven B. Sperber of

### Opinion

[\*574] [\*\*443] "Guaranties that contain language obligating the guarantor to payment without recourse to any defenses or counterclaims, i.e., guaranties that are 'absolute and unconditional,' have been consistently upheld by New York courts" (*Cooperative Centrale Raiffeisen-Boerenleenbank, B.A., "Rabobank Intl.," N.Y. Branch v Navarro*, 25 NY3d 485, 493, 15 N.Y.S.3d 277, 36 N.E.3d 80 [2015]). The lease and guaranty are viewed as two independent contracts, and the holder of the guaranty is "not obligated to wait and attempt to receive payment from [the tenant but is] entitled to proceed directly against [the guarantor]" (*APF 286 Mad LLC v Chittur & Assoc., P.C.*, 132 AD3d 610, 610, 20 N.Y.S.3d 4 [1st Dept 2015]). Here, it is undisputed that defendant guarantors were parties to an "absolute and unconditional" guaranty. Furthermore, it is undisputed that, per the terms of the lease, defendant guarantors can be held liable for damages to plaintiff under the first, second, third, fourth, and sixth [\*\*\*2] causes of action. The only issue is the amount, if any, of damages under each cause of action for which they can be held liable.

[\*575] Under CPLR 3212(e), "summary judgment may be granted as to one or more causes of action, or part thereof, in favor of any one or more parties, to the extent warranted, on such terms as may be just." Additionally, under CPLR 3212(g), the court may limit issues of fact for trial: "If a motion for summary judgment is denied or is granted in part, the court, by examining the papers before it and, in the discretion of the court . . . shall, if practicable, ascertain what facts are not in dispute or are incontrovertible." Thus, the court was correct to narrow the issues for trial in granting partial summary

211 A.D.3d 574, \*575; 178 N.Y.S.3d 442, \*\*443; 2022 N.Y. App. Div. LEXIS 7069, \*\*\*2; 2022 NY Slip Op 07185,  
\*\*\*\*<sub>1</sub>

judgment as to liability, because liability itself under the guaranty and lease is not at issue.

We have considered defendants' remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: December 20, 2022

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