

104 A.D.3d 471, 960 N.Y.S.2d 417, 2013 N.Y. Slip Op. 01509
(Cite as: **104 A.D.3d 471, 960 N.Y.S.2d 417**)

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Supreme Court, Appellate Division, First Department,
New York.

ARTHUR AT THE WESTCHESTER, INC., etc., et
al., Plaintiffs–Appellants–Respondents,
v.
WESTCHESTER MALL, LLC, Defend-
ant–Respondent–Appellant.

March 12, 2013.

Background: Tenant's guarantor filed action against landlord alleging wrongful eviction from commercial premises. Landlord counterclaimed for rent. The Supreme Court, New York County, Saliann Scarpulla, J., 34 Misc.3d 1230(A), 2012 WL 603952, denied guarantor's motion to dismiss counterclaim and granted guarantor's motion for summary judgment on wrongful eviction claim. Guarantor appealed.

Holdings: The Supreme Court, Appellate Division, held that:

(1) guaranty, which recited that it was made to induce execution of lease, was supported by consideration notwithstanding that it was signed before lease and
(2) vacatur of default judgment in summary proceeding for improper service of process precluded any argument that evictions from commercial premises were lawful.

Affirmed.

West Headnotes

[1] Guaranty 195 16(2)

195 Guaranty
195I Requisites and Validity

195k13 Consideration

195k16 Sufficiency

195k16(2) k. Consideration of principal contract in general. [Most Cited Cases](#)

Guaranty, which recited that it was made to induce execution of lease, was supported by consideration notwithstanding that it was signed before lease.

[2] Landlord and Tenant 233 1822

233 Landlord and Tenant

233VIII Reentry and Recovery of Possession by Landlord

233VIII(E) Wrongful Dispossession

233k1817 Actions

233k1822 k. Judgment. [Most Cited Cases](#)
(Formerly 233k278)

Vacatur of default judgment in summary proceeding for improper service of process precluded any argument that evictions from commercial premises were lawful, where lease did not authorize the landlord's re-entry to premises without legal process.

****418** Tenenbaum Berger & Shivers LLP, Brooklyn (David M. Berger of counsel), for appellants-respondents.

Braff, Harris & Sukoneck, New York (Massimo F. D'Angelo of counsel), for respondent-appellant.

MAZZARELLI, J.P., [SAXE](#), DeGRASSE, MANZANET–DANIELS, [CLARK](#), JJ.

***471** Order, Supreme Court, New York County (Saliann Scarpulla, J.), entered February 21, 2012, which, insofar as appealed from, denied plaintiffs'

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motion to the extent that it sought to dismiss the counterclaims for rent against plaintiff guarantor and granted their motion to the extent that it sought summary judgment as to liability on their causes of action for wrongful eviction, unanimously affirmed, with costs.

[1] The guaranty, which recited that it was made to induce execution of a lease, was supported by consideration notwithstanding that it was signed before the lease (*see Teitelbaum v. Mordowitz*, 248 A.D.2d 161, 669 N.Y.S.2d 811 [1st Dept. 1998]; *Michelin Mgt. Co. v. Mayaud*, 307 A.D.2d 280, 281, 762 N.Y.S.2d 108 [2nd Dept. 2003]).

[2] Vacatur of the default judgment in the summary proceeding for improper service of process precludes any argument that the evictions were lawful (*see *472Maracina v. Shirrmeister*, 105 A.D.2d 672, 673, 482 N.Y.S.2d 14 [1st Dept. 1984]). We note that the lease did not authorize the landlord's re-entry to the commercial premises without legal process (*see North Main St. Bagel Corp. v. Duncan*, 6 A.D.3d 590, 591, 775 N.Y.S.2d 362 [2nd Dept. 2004]).

We have considered the remaining contentions of the parties and find them unavailing.

N.Y.A.D. 1 Dept.,2013.
Arthur at the Westchester, Inc., v. Westchester Mall,
LLC
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