



The subject guaranties expressly provide that they are guaranties of payment and not of collection; that exhaustion of remedies as against the borrower or the collateral are not necessary preconditions to enforcement; that “Guarantor shall remain liable hereon regardless of whether Borrower or any other Person shall be found not liable on the Guaranteed Obligations or any part thereof for any reason”; that Guarantor’s obligations “shall not be reduced, discharged or released because or by reason of any existing or future right of offset, claim or defense of Borrower . . . against Lender . . . or against payment of the Guaranteed Obligations . . . , whether such right of offset, claim or defense arises in connection with the Guaranteed Obligations (or the transactions creating the Guaranteed Obligations) or otherwise”; and that any rights Guarantors might otherwise have with respect to these events and circumstances are “waive[d].” This language is sufficiently broad to foreclose challenges even to post-execution misconduct (*see DB 232 Seigel Mezz LLC v Moskovits*, 223 AD3d 610, 611 [1st Dept 2024]; *Fortress Credit Corp. v Hudson Yards, LLC*, 78 AD3d 577, 577 [1st Dept 2010]; *Hotel 71 Mezz Lender LLC v Mitchell*, 63 AD3d 447, 448 [1st Dept 2009]).

The “actual losses, actual damages” language in the free-standing paragraph of § 1.2 of the Payment Guaranty does not transform that guaranty into a conditional guaranty of collection. This paragraph provides that Guarantor shall be liable for not just “actual losses” and “actual damages,” but also “liabilities, claims, actions, judgments, court costs, and legal and other expenses ... incurred by the Lender as a direct or indirect consequence of the matters set forth therein.” At most, this implies a limitation to the outstanding amount of unpaid debt. It does not at any rate apply to § 1.2(a) (the sole section on which plaintiffs rely in this action) but only to § 1.2(b).

In light of our disposition of the appeal based on the guaranties themselves, we need not reach plaintiff's arguments with respect to substantial identity of the parties, prejudice, and the effect of Real Property Actions and Proceedings Law § 1301(3).

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

ENTERED: March 3, 2026

A handwritten signature in black ink, appearing to read "Susanna Molina Rojas". The signature is fluid and cursive, with the first name "Susanna" being the most prominent part.

Susanna Molina Rojas  
Clerk of the Court