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CODY REAL ESTATE, LLC *v.* G & H CATERING, INC., ET AL.
(AC 44909)

Alvord, Clark and Palmer, Js.

Syllabus

The plaintiff landlord brought this action against the defendant tenant, T Co., and the defendant corporate guarantors, G Co. and H Co., for nonpayment of rent and breach of a guarantee agreement. The plaintiff owns certain real property located in New Canaan. T Co. and C Co., the predecessor in interest to the plaintiff, entered into a commercial lease for a portion of the premises. After the initial term of the lease ended in 2008, the lease provided T Co. with an option to renew for a term of five years, to conclude on May 31, 2014. T's obligations were guaranteed by G Co. and H Co., affiliates of T Co., pursuant to a guarantee agreement executed simultaneously with the lease. The guarantee was signed by J on behalf of G Co. and H Co. J also provided the plaintiff with a corporate resolution from G Co., in which J represented that G Co. was authorized to execute the guarantee. The guarantee provides that the obligations of G Co. and H Co. are unconditional and shall not be affected by the renewal of the lease. T Co. exercised its option to renew the lease, and thereafter the plaintiff and T Co. entered into a first lease extension agreement, pursuant to which the lease term was extended to May 31, 2017. The first lease extension included an option to renew for three years and was signed by J and P on the guarantor lines, without a designation that J or P had signed in a representative capacity or an accompanying corporate resolution. The parties executed a second lease extension agreement to extend the lease term until May 31, 2020. Subsequently, T Co. made only partial rent payments and the plaintiff commenced this action. Following a trial, the trial court concluded that the plaintiff established its claim for nonpayment of rent by T Co. and that G Co. and H Co. were liable under the guarantee for T Co.'s obligations under the second lease extension. *Held*:

1. The trial court properly determined that the guarantee agreement applied to any renewal of the lease: although there was an arguable ambiguity in the guarantee concerning the phrase "the renewal of the lease" when that language is considered in light of the provision of the initial lease affording only one renewal option as of right, the parties presented no extrinsic evidence to clarify that ambiguity and, consequently, the trial court properly interpreted the guarantee based solely on its language; moreover, although G Co. and H Co. argued that the language of the guarantee providing that the obligations thereunder remain in full force referred only to the "single option to renew" referenced in the initial lease, the more reasonable interpretation of that language did not read a limitation into the guarantee not contained therein, as the parties referred to a "single option to renew" in the initial lease but did not use that same or similar language in the guarantee, which referred simply to the "renewal" of the lease; furthermore, the guarantee underscored the unconditional nature of the obligations of G Co. and H Co. and, therefore, the court correctly construed the guarantee as applying to the two additional renewals of the lease.
2. G Co. and H Co. could not prevail on their claim that the trial court improperly concluded that they were liable under the second lease extension even though they were not signatories to that agreement: because the guarantee contemplated renewals of the lease, it was not necessary for the parties to execute a new guarantee with each renewal, as, under the express terms of the guarantee, G Co. and H Co. remained liable on renewal of the lease without notice to or the further consent of G Co. and H Co.; moreover, the fact that J and P signed on the guarantor lines of the extension agreements without indicating that they were doing so on behalf of G Co. and H Co. had no bearing on the court's determination of the parties' intent when they entered into the initial lease and guarantee agreements.
3. This court declined to review G Co. and H. Co.'s claim that the guarantee

agreement could not have applied after May 31, 2017, when the first lease extension expired, because that claim was not properly preserved: G Co. and H Co. never claimed before the trial court that the guarantee expired before the execution of the second lease extension and, therefore, that the second extension could not be considered a lease renewal under the guarantee; moreover, the resolution of this issue raised at least one significant factual question, specifically, the issue of whether the guarantee expired on May 31, 2017, because the second lease extension was not signed by T Co. and the plaintiff until June 6, 2017, and June 14, 2017, respectively, although it purported to be effective as of June 1, 2017, and, thus, the parties may have treated the second lease extension as a renewal of the lease, but the court never had the opportunity to consider that issue.

Argued October 4, 2022—officially released June 6, 2023

Procedural History

Action to recover damages for, inter alia, breach of a guarantee agreement, and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk, Housing Session, where the defendants filed a counterclaim; thereafter, the case was tried to the court, *Spader*, *J.*; judgment for the plaintiff, from which the defendant Garelick & Herbs of Greenwich, Inc., et al., appealed to this court. *Affirmed.*

Liam S. Burke, for the appellee (plaintiff).

Sabato P. Fiano, with whom, on the brief, was *Lori A. DaSilva-Fiano*, for the appellants (defendant Garelick & Herbs of Greenwich, Inc., et al.)

Opinion

PALMER, J. In this action brought by the plaintiff landlord, Cody Real Estate, LLC, against the defendant tenant, G & H Catering, Inc., now known as Garelick & Herbs of New Canaan, Inc. (tenant), for nonpayment of rent due under a commercial lease agreement, and against the defendant guarantors of the lease, Garelick & Herbs of Greenwich, Inc., and Garelick & Herbs, Inc., now known as Garelick & Herbs of Westport, Inc. (corporate guarantors),[1] the corporate guarantors appeal from the judgment of the trial court rendered against them, following a trial to the court, in the amount of $362,948.61 for unpaid rent and other charges stemming from the tenant's breach of the lease.[2] We affirm the judgment of the trial court.

The following facts and procedural history are relevant to this appeal. The plaintiff, a small, family owned business, owns certain real property located at 97 Main Street in New Canaan (premises). On September 4, 1998, Cody Real Estate, the predecessor in interest to the plaintiff, Cody Real Estate, LLC, and the tenant, which operates a food service and catering business, entered into a written commercial lease for a portion of the ground floor of the premises.[3] The lease provided that it was for a term of ten years, commencing on December 1, 1998, and continuing through the last day of September, 2008.[4] The lease also provided the tenant with an option to renew, which provided in relevant part: "The [l]andlord hereby grants to the [t]enant one (1) single option to renew the term of this [l]ease upon all of its covenants, with the exception of the covenant of basic rent, and the covenant of renewal [is] for a further term of five (5) years to . . . conclude on the last day of May, 2014. The right to elect said option is expressly contingent upon and subject to the [t]enant giving a written notice to the [l]andlord of its intent to exercise such option at least six (6) calendar months next prior to the expiration date of the original term of this [l]ease . . . ."[5] The lease was signed by Therese Marie Spring, an authorized agent of Cody Real Estate, and by Paola V. Garelick, as president of the tenant.

The tenant's obligations under the lease were guaranteed by the two corporate guarantors, which are affiliates of the tenant, pursuant to a separate, written guarantee agreement (guarantee agreement) that was executed simultaneously with the lease.[6] The guarantee agreement was signed twice by Jason Garelick on behalf of the corporate guarantors, first as president of Garelick & Herbs of Greenwich, Inc., and second as president of Garelick & Herbs, Inc. On the same day that the lease and guarantee agreement were executed, Jason Garelick provided Cody Real Estate with a corporate resolution from Garelick & Herbs of Greenwich, Inc. In the resolution, which was signed by Jason Garelick in his capacity as president, he represented that, pursu-

ant to a unanimous vote of the directors, Garelick & Herbs of Greenwich, Inc., was authorized to execute the guarantee of the lease "between [the tenant] and Cody Real Estate for a period of ten (10) years, with an option period of five (5) years for certain demised premises located at 97 Main Street, New Canaan . . . ."[7]

The first paragraph of the guarantee agreement provides in relevant part: "Guarantors each unconditionally and irrevocably jointly and severally guarantee that all sums stated in the [l]ease to be payable by [t]enant will be promptly paid in full when due in accordance with the provisions thereof, and that [t]enant will perform and observe each and every covenant, agreement, term and condition in the [l]ease to be performed or observed by [t]enant. This [g]uarant[ee] is irrevocable, unconditional and absolute and, if for any reason any such sums, or any part thereof, shall not be paid promptly when due, [g]uarantors will immediately pay the same to the person entitled thereto pursuant to the provisions of the lease, regardless of any defenses or rights of setoff or counterclaim which [t]enant may have or assert and regardless of whether [l]andlord shall have taken any steps to enforce any rights against [t]enant to collect such sum or any part thereof and regardless of any other condition of contingency." The guarantee agreement stated further that it "shall be binding upon and inure to the benefit of the parties thereto and their respective successors and assigns."

In addition, and of particular significance to this appeal, the second paragraph of the guarantee agreement lists the circumstances and events under which the corporate guarantors would continue to be obligated pursuant to that agreement, without notice or their further consent. The pertinent part of that second paragraph provides as follows: "*The obligations*, *covenants*, *agreement and duties of* [*g*]*uarantors under this* [*g*]*uarant*[*ee*] *are unconditional and shall in no way be affected or impaired by reason of* the happening from time to time of any of the following, although without notice to or the further consent of [g]uarantors: (a) the waiver by [l]andlord of the performance or observation by [t]enant of any of the agreements, covenants, terms or conditions contained in the [l]ease or this [g]uarant[ee]; (b) the extension, in whole or in part, of the time for payment by [t]enant or [g]uarantor of any sums owing or payable under the [l]ease or this [g]uarant[ee], or of any other sums or obligations under or arising out of or on account of the [l]ease or this [g]uarant[ee], or *the renewal of the* [*l*]*ease* or this [g]uarant[ee] . . . ." (Emphasis added.)

Upon the expiration of the initial lease term, the tenant exercised its option to renew the lease. Following the renewal and extension, the lease was set to expire on May 31, 2014. Prior to that expiration date, the plain-

tiff and the tenant entered into a "First Lease Modification and Extension Agreement" (first lease extension), pursuant to which the lease term was extended to May 31, 2017. The first lease extension also included an option to renew, which provided in relevant part: "Upon the expiration of the original term of this [l]ease, and provided that the [tenant] shall not be in default hereof beyond the expiration of applicable grace, cure and notice periods, the [tenant] shall have the option to renew this [l]ease upon the same terms and conditions excepting the provisions for minimum base rent and excepting this renewal provision, for an extended term of three (3) years." The first lease extension was signed by Spring, an authorized representative of the plaintiff, and by Jason Garelick on behalf of the tenant. The signature page of the first lease extension contains two lines below the signatures of the landlord and tenant for signatures of the guarantors. Those lines were signed by Jason Garelick and Paola Garelick but, in contrast to the guarantee agreement accompanying the initial lease, with no designation that either one was signing in a representative capacity and with no accompanying corporate resolution from either Garelick & Herbs of Greenwich, Inc., or Garelick & Herbs, Inc.

On or about June 6, 2017, the parties executed a "Second Lease Modification and Extension Agreement" (second lease extension), which extended the lease term from June 1, 2017, to May 31, 2020. The second lease extension was signed by Spring on behalf of the plaintiff, and by Jason Garelick on behalf of the tenant as its president. As was the case with respect to the first lease extension, the signature lines designated for the guarantors in the second lease extension were signed by Jason Garelick and Paola Garelick without any designation that they were signing in a representative capacity and without any accompanying corporate resolutions.

Beginning in October, 2017, the tenant made only partial rent payments. The plaintiff thereafter served the tenant with notice of its default for failing to pay base rent and certain additional rent as required under the lease. The plaintiff commenced this action on or about May 31, 2018, with an application for a prejudgment remedy. The tenant continued to make partial payments until July, 2018, when it ceased paying rent altogether. Despite its default under the lease, the tenant continued to occupy the premises through the end of the lease term on May 31, 2020.

The first count of the plaintiff's two count complaint is against the tenant for nonpayment of rent, and the second count is against the corporate guarantors for breach of the guarantee agreement. The tenant and the corporate guarantors jointly filed an amended answer to the complaint, ten special defenses and a right of recoupment. They alleged the following special

defenses: (1) the plaintiff failed to perform its obligations under the lease; (2) the plaintiff breached the lease prior to the defendants' alleged breach; (3) equitable estoppel and/or promissory estoppel; (4) waiver; (5) laches; (6) unclean hands; (7) comparative negligence; (8) failure to mitigate damages; (9) accord and satisfaction; and (10) fraudulent, negligent or innocent misrepresentations by the plaintiff. In addition, the tenant filed a counterclaim seeking to recover for business losses allegedly sustained as a result of damage to the leased premises due to a major rainstorm on June 29, 2018.

Following a bench trial, the court issued a memorandum of decision dated August 3, 2021, in which it concluded that the plaintiff established its claim for nonpayment of rent by the tenant. In support of its determination, the court found that "any and all of the reasons" advanced by the tenant for its refusal to pay rent—primarily, the plaintiff's purported failure to adequately repair the premises following the rainstorm—"were either negotiation tactics or pretextual" and, therefore, wholly unpersuasive. The court further found that, when the tenant stopped making payments under the lease, it merely "was looking for a way 'out' of [the] lease" because of its desire "to move its operations to . . . Southport," and that its breach of the lease was "an ill-fated, bad faith maneuver . . . to squeeze concessions from the plaintiff" to that end. Indeed, the court explained that the tenant "actively interfered with the plaintiff's ability to mitigate" any damages. Consistent with these findings, the trial court rejected the tenant's special defenses and other claims as unsupported by any credible evidence.

The court also found the corporate guarantors liable under the guarantee agreement. In addressing that issue in its memorandum of decision, the court explained: "In their briefs, the defendants claim that, even if judgment enters against the tenant, the [corporate] guarantors should escape liability as the guarantee [had] expired. The court disagrees. The initial guarantee agreement . . . provides, in [the second paragraph], that the obligations of the guarantors are unconditional and are in no way affected or impaired by . . . the renewal of the [l]ease or this [g]uarant[ee]. . . . The lease was renewed by a modification and extension twice. The guarantors signed both extensions, which provided them actual knowledge of the extensions. There was no need for a new guarantee with each extension as any such renewals were anticipated and proactively acknowledged as possible by the guarantee, which is still in full force and effect." (Citation omitted; emphasis omitted; internal quotation marks omitted.)

In accordance with its findings and construction of the guarantee agreement, the trial court rendered judgment in favor of the plaintiff as to both counts of the complaint in the amount of $362,948.61. This appeal

by the corporate guarantors followed. On appeal, they claim that the court improperly found them liable as guarantors for the tenant's obligations under the second lease extension. In support of this claim, they make three arguments, which we consider in turn.

I

The corporate guarantors first contend that the trial court improperly determined that the guarantee agreement applied to *any* renewal of the initial lease. Relying on the provision of the initial lease that the tenant had "one (1) single option to renew," as well as the language of the guarantee agreement providing that it would not be affected or impaired by the occurrence of certain events, including "*the* renewal of the [l]ease," the corporate guarantors argue that the renewal language of that agreement applies only to the single renewal of the initial lease, which extended the initial lease term to the last day of May, 2014. (Emphasis added.) Under this construction, the corporate guarantors argue that the guarantee agreement expired on May 31, 2014, and that the court, by interpreting that language as applying to any renewal—including the second lease extension—expanded the scope of the guarantee beyond the intent of the parties as reflected in the agreement. For its part, the plaintiff maintains that the court properly determined that the guarantee agreement contains no language that limits its duration and, therefore, it is continuing in nature. Under this view, the agreement remained in full force and effect at the time of the second lease extension and, as a consequence, the corporate guarantors are liable for the tenant's obligations under the initial lease *and* both lease extensions.

We note, as well, that the parties disagree about the proper standard of review for purposes of this claim. According to the corporate guarantors, the correct standard is plenary review, whereas the plaintiff contends that the trial court's determination concerning the applicability of the guarantee agreement to the second lease extension implicates the intent of the parties and, therefore, involves a question of fact subject to the clearly erroneous standard of review.

Because the issues on appeal involve the interpretation of the language of the lease, the lease extensions, and the guarantee agreement,[8] all of which are contracts, we employ the standard of review applicable to contract interpretation. See, e.g., *Bristol* v. *Ocean State Job Lot Stores of Connecticut, Inc.*, 284 Conn. 1, 7, 931 A.2d 837 (2007); *Meeker* v. *Mahon*, 167 Conn. App. 627, 632, 143 A.3d 1193 (2016). "Although ordinarily the question of contract interpretation, being a question of the parties' intent, is a question of fact . . . [when] there is definitive contract language, the determination of what the parties intended by their . . . commitments is a question of law [over which our review is plenary]. . . . Where the language of an agreement is susceptible

to more than one reasonable interpretation, however, it is ambiguous. . . . Ordinarily, such ambiguity requires the use of extrinsic evidence by a trial court to determine the intent of the parties, and, because such a determination is factual, it is subject to reversal on appeal only if it is clearly erroneous." (Citations omitted; internal quotation marks omitted.) *Meeker* v. *Mahon*, supra, 632–33.

Furthermore, "[w]hen two agreements . . . are connected by reference and subject matter, both are to be considered in determining the real intent of the parties. . . . Where . . . the signatories execute a contract which refers to another instrument in such a manner as to establish that they intended to make the terms and conditions of that other instrument a part of their understanding, the two may be interpreted together as the agreement of the parties." (Internal quotation marks omitted.) Id., 634. Therefore, because the guarantee agreement references the initial lease, and because the two agreements are connected by both reference and subject matter, we read them together to ascertain the parties' intent. See *Regency Savings Bank* v. *Westmark Partners*, 59 Conn. App. 160, 164–65, 756 A.2d 299 (2000).

In the present case, there is an arguable ambiguity in the guarantee agreement as reflected in the parties' conflicting interpretations of the provision of that agreement concerning "the renewal of the [l]ease," an ambiguity that arises when that language is considered in light of the provision of the initial lease that affords only one renewal option as of right. The parties, however, presented no extrinsic evidence at trial to clarify that ambiguity. Consequently, the trial court's interpretation of the guarantee agreement was based solely on the language of that agreement and the lease and "did not involve the resolution of any evidentiary issues of credibility." *Bristol* v. *Ocean State Job Lot Stores of Connecticut, Inc.*, supra, 284 Conn. 7–8. For that reason, our review of the trial court's determination with respect to the parties' intent is predicated entirely on the four corners of those agreements and, therefore, involves a question of law over which we exercise plenary review.[9] See, e.g., id., 8; *Aurora Loan Services, LLC* v. *Condron*, 181 Conn. App. 248, 265–66, 186 A.3d 708 (2018).

The portion of the trial court's memorandum of decision that addresses the guarantee agreement is brief, comprising three short paragraphs. The brevity of the court's decision on that issue is undoubtedly due to the fact that the issue of the corporate guarantors' liability essentially went unaddressed at trial, which concerned almost exclusively the tenant's contention that, in effect, it had been constructively evicted from the premises by virtue of the plaintiff's failure to adequately repair the damage caused to the roof by the rainstorm on June 29, 2018.

As stated previously in this opinion, no extrinsic evidence was presented concerning the intent of the parties with respect to the guarantee agreement. Our Supreme Court was presented with a similar circumstance in *Bristol* v. *Ocean State Job Lot Stores of Connecticut, Inc.*, supra, 284 Conn. 7–10. In *Bristol*, which involved, inter alia, a dispute over the meaning of a lease, the parties did not offer any extrinsic evidence at trial with respect to an ambiguity in that lease and, accordingly, the trial court's determination of the parties' intent was based solely on the language of the lease. Id., 7–8. Our Supreme Court, after affording plenary review to the trial court's construction of the lease provision at issue, determined that, although the defendant had advanced a plausible construction of the provision, that construction resulted in an internal redundancy in the language of the lease. Id., 9. The court therefore concluded that "the better, and more plausible, construction of the language" was one that eliminated that redundancy; id.; and, "[i]n the absence of any other evidence of the intent of the parties to the lease agreement," held that the trial court's construction of the lease was correct. Id., 10.

In the present case, the corporate guarantors have urged a plausible construction of the guarantee agreement, arguing that the language of that agreement providing that the obligations thereunder remain in full force and effect "without notice to or the further consent of" the corporate guarantors in the event of "the renewal of the [l]ease" refers only to the "single option to renew" referenced in the initial lease. We are persuaded, however, that the more reasonable interpretation of that language is one that does not read a limitation into the guarantee agreement that is not contained therein. Our conclusion is based largely on the fact that the parties specifically referred to a "single option to renew" in the initial lease but did not use that same or similar language in the guarantee agreement, which was executed simultaneously with the initial lease and refers simply, and without restriction, to "the renewal" of the lease. To afford the guarantee agreement the narrow construction advocated by the corporate guarantors would require us to add limiting language to the guarantee agreement that the parties themselves did not include, an approach contrary to established principles of contract interpretation. See, e.g., *R.T. Vanderbilt Co.* v. *Hartford Accident & Indemnity Co.*, 333 Conn. 343, 370, 216 A.3d 629 (2019). Our determination in this regard is buttressed by the fact that the language in dispute appears in the section of the guarantee agreement that, in broad and encompassing terms, underscores the "unconditional" nature of the corporate guarantors' "obligations, covenants, agreement and duties" pursuant to the agreement.

It is entirely reasonable, moreover, for the parties to

have agreed in the initial lease that the tenant would have a single option to renew as a matter of right and, at the same time, structure the guarantee as a continuing one, such that it would apply if and when the lease was renewed, whether under the option or thereafter. In addition, although the initial lease speaks in terms of a single option to renew, neither that initial lease nor the accompanying guarantee agreement contained any suggestion that future lease renewals were precluded or otherwise unanticipated.

In construing any contract, "[w]e accord the language employed [therein] a rational construction based on its common, natural and ordinary meaning and usage as applied to the subject matter of the contract." (Internal quotation marks omitted.) *EH Investment Co., LLC* v. *Chappo, LLC*, 174 Conn. App. 344, 358, 166 A.3d 800 (2017). Applying that bedrock rule of construction to the present case, we believe that the trial court adopted the better and more reasonable construction of the language at issue in concluding that renewals of the lease were expressly "anticipated and proactively acknowledged as possible by the guarantee" agreement. Because the language of the guarantee agreement fully supports that determination, and because the parties easily could have provided for a more restrictive application of the agreement if they had so intended, we conclude that the trial court correctly construed the guarantee agreement as applying to the two additional renewals of the lease.

II

The corporate guarantors next claim that the trial court improperly concluded that they were liable for the tenant's obligations under the second lease extension even though they were not signatories to either of the lease extensions. In support of this contention, they highlight the fact that the guarantor lines of the lease extension agreements were signed by Jason Garelick and Paola Garelick without any reference to the corporate guarantors, which, they argue, demonstrates the intent of the parties that the individual signatories, and not the corporate guarantors, were to serve as guarantors of the tenant's obligations under the lease extensions.

Because we agree with the trial court's determination that the guarantee agreement contemplated renewals of the lease, we also agree with the court that it was not necessary for the parties to execute a new guarantee agreement with each renewal. As we explained in part I of this opinion, under the express terms of the guarantee agreement, the corporate guarantors remained liable upon the renewal of the lease "without notice to or the further consent of [the] [g]uarantors," such that the renewal itself, without anything more, triggered the continuing guarantee. Thus, it is of no consequence that the lease extension agreements did not refer to the

corporate guarantors. Furthermore, the fact that Jason Garelick and Paola Garelick signed on the guarantor lines of the first and second lease extensions in 2014 and 2017, respectively, with no indication that they were doing so on behalf of the corporate guarantors, had no bearing on the trial court's determination of the intent of the parties in 1998, when they entered into the initial lease and the guarantee agreement.[10] We therefore reject the corporate guarantors' argument that the signatures of Jason Garelick and Paola Garelick on the guarantor lines of the lease extension agreements demonstrate the parties' understanding that the corporate guarantors were not liable under those agreements.[11]

III

The final claim of the corporate guarantors is that "[t]he initial guarant[ee] could not . . . possibly [have] applied to obligations [of the tenant] incurred after May 31, 2017, because the lease itself expired on that date." This argument is based on the corporate guarantors' assertion that, because the first lease modification had expired on May 31, 2017, prior to the execution of the second lease modification on June 6, 2017,[12] the second lease modification was, in effect, a new lease and could not have modified, extended or renewed an expired lease. For that reason, they contend, their obligations under the guarantee agreement ceased when the underlying lease expired. We decline to review this claim because it is not properly preserved.

The principles that govern appellate review of unpreserved claims of a nonconstitutional nature are well established. "Our appellate courts, as a general practice, will not review claims made for the first time on appeal. . . . [A]n appellate court is under no obligation to consider a claim that is not distinctly raised at the trial level. . . . [B]ecause our review is limited to matters in the record, we [also] will not address issues not decided by the trial court. . . . The purpose of our preservation requirements is to ensure fair notice of a party's claims to both the trial court and opposing parties. . . . These requirements are not simply formalities. They serve to alert the trial court to potential error while there is still time for the court to act. . . . The reason for the rule is obvious: to permit a party to raise a claim on appeal that has not been raised at trial—after it is too late for the trial court or the opposing party to address the claim—would encourage trial by ambuscade, which is unfair to both the trial court and the opposing party." (Internal quotation marks omitted.) *Guddo* v. *Guddo*, 185 Conn. App. 283, 286–87, 196 A.3d 1246 (2018); see also *J. M.* v. *E. M.*, 216 Conn. App. 814, 823, 286 A.3d 929 (2022) ("[t]he theory upon which a case is tried in the trial court cannot be changed on review, and an issue not presented to or considered by the trial court cannot be raised for the first time on review" (internal quotation marks omitted)); Practice

Book § 60-5 (appellate court is not bound to consider claim not distinctly raised at trial).

Our examination of the trial court record reveals that the corporate guarantors never claimed that the guarantee agreement had expired prior to the execution of the second lease extension and, therefore, that the second extension cannot be considered a lease renewal within the meaning of the guarantee agreement.[13] Instead, the corporate guarantors raised two primary claims in their posttrial brief with respect to the guarantee agreement, namely, that it had expired when the *initial* lease expired on May 31, 2014, because it "contain[ed] no indication that it was intended to continue beyond the [initial] lease term and single option renewal of five . . . years," and that the guarantor lines of the lease extension agreements made no reference to the corporate guarantors and were signed by Jason Garelick and Paola Garelick in an individual, rather than a representative, capacity. The corporate guarantors' posttrial brief, however, is devoid of any claim that, because the guarantee agreement expired on May 31, 2017, when the first lease extension expired, the second lease extension could not constitute a renewal of the lease. Indeed, in setting forth the relevant lease agreements between the parties in their posttrial brief, the defendants specifically stated that "the parties entered into a second lease modification and extension agreement . . . *which modified and extended the lease terms* and conditions for a term of three (3) years through May 31, 2020." (Emphasis added.) The trial court, therefore, was never asked to consider the issue of whether the guarantee agreement expired on May 31, 2017, the date the first lease extension was set to expire, because the second lease extension was not signed by the tenant until June 6, 2017.

We are particularly unwilling to review this unpreserved claim because its resolution appears to raise at least one significant factual question. More specifically, as we previously noted, the second lease extension provides that it is "for a term of three . . . years commencing on the *first . . . day of June, 2017* and continuing through the thirty-first . . . day of May, 2020." (Emphasis added; internal quotation marks omitted.) Thus, although the second lease extension was not signed by the tenant and the plaintiff until June 6, 2017, and June 14, 2017, respectively, it purported to be *effective* as of June 1, 2017. It may well be, therefore, that the parties treated the second lease extension as a renewal of the lease. The trial court, however, never had the opportunity to consider that issue—and the plaintiff never had occasion to present evidence on the issue—because the corporate guarantors have claimed for the first time on appeal that the guarantee agreement expired upon the expiration of the first lease extension. It is axiomatic, moreover, that, "[a]s an appellate court, it is not within our province to make factual findings."

National Groups, LLC v. *Nardi*, 145 Conn. App. 189, 201 n.11, 75 A.3d 68 (2013). Accordingly, we do not review this claim.

The judgment is affirmed.

In this opinion the other judges concurred.

[1] In this opinion, we refer to the tenant and the corporate guarantors collectively as the defendants.

[2] As we explain more fully hereinafter, the trial court also rendered judgment against the tenant in the same amount for unpaid rent and other charges due to its breach of the lease. The tenant, however, has not appealed from that judgment.

[3] On or about July 2, 2002, the plaintiff succeeded to the interest in the lease held by Cody Real Estate.

[4] Although the lease expressly provided that it was for a term of ten years, the dates of the lease reflect a term of nine years and eleven months. This discrepancy in the stated term and dates of the lease is not material to any issue in this appeal.

[5] As previously noted, by its terms, the expiration date of the initial lease was September 30, 2008. The option to renew the lease, however, stated that the renewal would be for a term of five years commencing on June 1, 2009. Any apparent discrepancy between the date that the initial lease expired and the renewal date is not relevant to our resolution of this appeal.

[6] The guarantee agreement provides that the tenant "is an affiliate by one-hundred percent (100%) equity of [the] [g]uarantor[s] . . . ."

[7] The evidence adduced at trial established that all three corporate defendants are wholly owned by Jason Garelick and Paola Garelick.

[8] "A guarant[ee] is a promise to answer for another's debt, default, or failure to perform a contractual obligation. . . . [A] guarant[ee] agreement is a separate and distinct obligation from that of the note or other obligation. . . . [Guarantees] are . . . distinct and essentially different contracts; they are between different parties, they may be executed at different times and by separate instruments, and the nature of the promises and the liability of the promisors differ substantially . . . . The contract of the guarantor is his own separate undertaking in which the principal does not join. . . . The independence of these contracts is not affected by the fact that they are executed contemporaneously or in the same document." (Citations omitted; internal quotation marks omitted.) *Meeker* v. *Mahon*, 167 Conn. App. 627, 633–34, 143 A.3d 1193 (2016).

[9] It bears noting that the evidence adduced at trial does not reflect whether Cody Real Estate or the corporate guarantors drafted the guarantee agreement. Consequently, the rule of contract construction that, in the absence of other evidence of the parties' intent, ambiguities in a contract are to be construed against the drafter; see, e.g., *Johnson* v. *Vita Built, LLC*, 217 Conn. App. 71, 85, 287 A.3d 197 (2022); is not applicable to the present case, and no party claims otherwise.

[10] Of course, we do not suggest that conduct occurring after the execution of an arguably ambiguous contract can never bear upon the intent of the contracting parties. In the present case, however, because no extrinsic evidence was adduced regarding that intent, the trial court was required to ascertain the parties' intent from the four corners of the agreements. In the absence of any evidence bearing on the intent of the parties with respect to the signatures of Jason Garelick and Paola Garelick on the guarantor lines of the lease extension agreements, the trial court correctly resolved the issue on the basis of the language of the initial lease and the guarantee agreement.

[11] The corporate guarantors direct our attention to the trial court's purported misstatement in its memorandum of decision that "[t]he guarantors signed both extensions, which provided them actual knowledge of the extensions." Although Jason Garelick and Paola Garelick, and not the corporate guarantors, signed the guarantor lines of the lease extensions, the trial court merely was making the point that the corporate guarantors necessarily had notice of the extensions because they are wholly owned by Jason Garelick and Paola Garelick. The court made no suggestion that their individual signatures on the extensions somehow rendered the corporate guarantors liable. As the court made clear, rather, the corporate guarantors are liable under the terms of the guarantee agreement, not by virtue of the signatures of Jason Garelick and Paola Garelick on the lease extension agreements.

[12] The record indicates that the second lease extension was signed by the

tenant on June 6, 2017, and by the plaintiff on June 14, 2017.

[13] We note that, although the plaintiff did not raise the preservation issue in its brief to this court, we are not precluded from doing so. See, e.g., *State* v. *Qayyum*, 201 Conn. App. 864, 872 n.2, 879 n.3, 242 A.3d 500 (2020) (observing that defendant failed to properly preserve claims on appeal even though state had not raised preservation issue), aff'd, 344 Conn. 302, 279 A.3d 172 (2022).