

113 A.D.3d 521  
Supreme Court, Appellate Division,  
First Department, New York.

CELLULAR MANN, INC., Plaintiff–Appellant,  
v.  
JC 1008 LLC., et al., Defendants–Respondents.

Jan. 23, 2014.

#### Attorneys and Law Firms

Kucker & Bruh, LLP, New York ([Nativ Winiarsky](#) of counsel), for appellant.

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#### Opinion

Order, Supreme Court, New York County (O. Peter Sherwood, J.), entered on or about September 16, 2013, which, in an action for, inter alia, declaratory relief, granted defendants' motion to dismiss the complaint, unanimously modified, on the law, to declare in defendants' favor that the lease amendment renewal option was not properly exercised, and otherwise affirmed, without costs.

The motion court properly found the lease amendment unambiguous, and therefore correctly refused to consider extrinsic evidence of a prior agreement or the parties' post-amendment course of performance (see *Chelsea Piers, L.P. v. Hudson River Park Trust*, 106 A.D.3d 410, 412, 964 N.Y.S.2d 147 [1st Dept.2013] ) and correctly declined to construe the amendment against the drafter (see *Schron v. Troutman Saunders*, 97 A.D.3d 87, 93, 945 N.Y.S.2d 25 [1st Dept.2012], *affd.* 20 N.Y.3d 430, 963 N.Y.S.2d 613, 986 N.E.2d 430 [2013] ). The tenant's “limited” right to renew its lease was properly understood as an alternative to the landlord's right to reject the renewal notice if, at the expiration of the lease, the landlord decided to combine the tenant's premises with the adjacent vacant space.

We have considered plaintiff's additional arguments, including those raised for the first time in its appellate reply brief, and find them unavailing.

[MAZZARELLI](#), J.P., [FRIEDMAN](#), [RENWICK](#), [MOSKOWITZ](#), [RICHTER](#), JJ., concur.

#### All Citations

113 A.D.3d 521, 978 N.Y.S.2d 842 (Mem), 2014 N.Y. Slip Op. 00417