

Supreme Court of the State of New York  
Appellate Division: Second Judicial Department

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Argued - December 4, 2012

PETER B. SKELOS, J.P.  
L. PRISCILLA HALL  
SHERI S. ROMAN  
JEFFREY A. COHEN, JJ.

2012-02034

DECISION & ORDER

JT Queens Carwash, Inc., appellant, v 88-16 Northern  
Blvd., LLC, respondent.

(Index No. 28362/11)

Sperber Denenberg & Kahan, P.C., New York, N.Y. (Steven B. Sperber and  
Jacqueline Handel-Harbour of counsel), for appellant.

Wagner Davis, P.C., New York, N.Y. (Daniel J. Schneider of counsel), for  
respondent.

In an action for declaratory and injunctive relief, the plaintiff appeals from an order  
of the Supreme Court, Queens County (Nahman, J.), entered February 22, 2012, which denied its  
motion, inter alia, for a *Yellowstone* injunction (*see First Nat'l Stores v Yellowstone Shopping Ctr.*,  
21 NY2d 630) enjoining the defendant from terminating its tenancy.

ORDERED that the order is affirmed, with costs.

The Supreme Court properly determined that the plaintiff failed to establish its  
entitlement to *Yellowstone* relief (*see First Nat'l Stores v Yellowstone Shopping Ctr.*, 21 NY2d 630).  
“A *Yellowstone* injunction maintains the status quo so that a commercial tenant, when confronted  
by a threat of termination of its lease, may protect its investment in the leasehold by obtaining a stay  
tolling the cure period so that upon an adverse determination on the merits the tenant may cure the  
default and avoid a forfeiture” of the lease (*Graubard Mollen Horowitz Pomeranz & Shapiro v 600  
Third Ave. Assoc.*, 93 NY2d 508, 514).

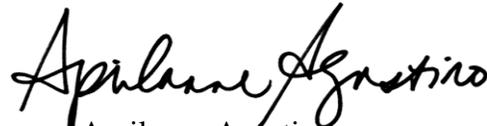
“To obtain a *Yellowstone* injunction, the tenant must demonstrate that (1) it holds a

commercial lease, (2) it received from the landlord either a notice of default, a notice to cure, or a threat of termination of the lease, (3) it requested injunctive relief prior to both the termination of the lease and the expiration of the cure period set forth in the lease and the landlord's notice to cure, and (4) it is prepared and maintains the ability to cure the alleged default by any means short of vacating the premises" (*Barsyl Supermarkets, Inc. v Avenue P Assoc., LLC*, 86 AD3d 545, 546; see *Trump on the Ocean, LLC v Ash*, 81 AD3d 713, 716; *Korova Milk Bar of White Plains, Inc. v PRE Props., LLC*, 70 AD3d 646, 647; see generally *Graubard Mollen Horowitz Pomeranz & Shapiro v 600 Third Ave. Assoc.*, 93 NY2d at 514).

Here, the plaintiff failed to demonstrate that it was not in breach of the provision of the lease agreement requiring it to maintain a policy of insurance naming the defendant as an additional insured. Under the circumstances of this case, the failure to maintain the requisite insurance would be an incurable default that formed an independent basis for the denial of *Yellowstone* relief (see *Kyung Sik Kim v Idylwood, N.Y., LLC*, 66 AD3d 528; *Grenadeir Parking Corp. v Landmark Assoc.*, 294 AD2d 313, 314; *Zona, Inc. v Soho Centrale*, 270 AD2d 12, 14). Contrary to the plaintiff's contention, certificates of insurance, which were issued as a matter of information only, were insufficient to establish that it maintained the requisite insurance or was capable of curing its default (see *Penske Truck Leasing Co. v Home Ins. Co.*, 251 AD2d 478).

SKELOS, J.P., HALL, ROMAN and COHEN, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court