349 Commercial L.P. v Soho's Sullivan Owner's Corp.
2026 NY Slip Op 30984(U)
March 13, 2026
Supreme Court, New York County
Docket Number: Index No. 153367/2023
Judge: Lori S. Sattler
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LORI S. SATTLER** **PART** **02M**

Justice

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349 COMMERCIAL L.P.

Plaintiff,

- v -

SOHO'S SULLIVAN OWNER'S CORP.,

Defendant.

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INDEX NO. 153367/2023

MOTION DATE 04/13/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 87, 88, 89, 90

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

Plaintiff 349 Commercial, L.P. ("Plaintiff") moves for a *Yellowstone* injunction in this action for a declaratory judgment as to its compliance with the terms of a commercial lease. Defendant Soho's Sullivan Owner's Corp. ("Defendant") opposes the motion and cross-moves for summary judgment dismissing the Complaint. Plaintiff opposes the cross-motion.

Plaintiff is Defendant's tenant in a commercial space at 150 Sullivan Street in Manhattan ("Premises") pursuant to a 99-year lease commenced in 1983 (NYSCEF Doc. No. 13, "Lease"). At the time the action was commenced, Plaintiff was subleasing the space to non-party 3ofCups, LLC ("3ofCups") (*see* NYSCEF Doc. No. 14). On April 5, 2023, Defendant served Plaintiff with a six-page Notice to Cure (NYSCEF Doc. No. 12, "Notice to Cure") generally describing a number of Lease violations, including claiming that Plaintiff improperly removed a circular stair between the first floor and basement without consent of Defendant or the Department of Buildings and installed restrooms on the first floor which did not comport with plans that Defendant had approved and failed to comply with the Americans with Disabilities Act

("ADA"). The Notice to Cure further stated Plaintiff was in violation of multiple Mechanical and Electrical Code provisions, noise and odor requirements, and the NYC Open Restaurants Program. Annexed to the Notice to Cure is an engineer's report, which outlines a "description of existing conditions and observations" for four mechanical, five electrical, and two plumbing issues. Some of these descriptions and observations include recommendations, and some make general reference to specific code provisions. The Notice to Cure indicates that Plaintiff was to cure these defaults on or before April 17, 2023, and that failure to do so would result in Defendant electing to terminate the tenancy.

Plaintiff commenced this action on April 13, 2023, and concurrently filed this Emergency Order to Show Cause. In the Complaint (NYSCEF Doc. No. 10), Plaintiff alleges it is entitled to declaratory judgment that the Notice to Cure is vague and unenforceable because it does not clearly and unequivocally state what Plaintiff must do to cure the alleged defaults. Nevertheless, it maintains it is willing and able to cure any defaults, as evidenced by the fact that it promptly served 3ofCups with its own notice to cure that mirrored the one served by Defendant. On April 18, 2023, the Court (Billings, J.) signed the Order to Show Cause and granted the interim *Yellowstone* relief ("TRO").

In October 2023, 3ofCups commenced a *Yellowstone* action against Plaintiff (*3ofCups, LLC v 349 Commercial L.P. et al*, NY County Index No. 159752/2023). That action was resolved and discontinued in August 2024, with 3ofCups vacating the Premises. The following month, in September 2024, Defendant filed a letter in this action seeking to have the Court vacate the TRO. It stated Plaintiff had permitted a new subtenant to open a restaurant in the Premises and argued that in doing so without first curing the outstanding defaults, Plaintiff had

proved it was unwilling to cure. Defendant then filed its opposition and cross-motion seeking summary judgment.

In July 2025, the parties submitted supplemental papers, in which, *inter alia*, Plaintiff stated it instructed its new subtenant to cease all food operations on the Premises in response to Defendant's letter. Plaintiff represented that the new subtenant's restaurant had since closed, and that no business of any kind is operating on the Premises. Defendant maintains Plaintiff knew that by re-subleasing the space without resolving the outstanding defaults and then allowing the new subtenant to cook food in the Premises, it would continue to be in default. Throughout the pendency of this action, the parties attempted to resolve the issues raised in the Notice to Cure, but after more than two and half years the parties remained unable to do so, and the motion was submitted.

Courts grant *Yellowstone* relief on "far less than the normal showing required for preliminary injunctive relief" (*Elite Wine & Spirit LLC v Michaelangelo Preserv. LLC*, 213 AD3d 143, 148 [1st Dept 2023], quoting *Post v 120 E. End Ave. Corp.*, 62 NY2d 19, 25 [1984]). These injunctions are "commonplace, with courts granting them routinely to avoid forfeiture of the tenant's substantial interest in the leasehold premises" (*Graubard Mollen Horowitz Pomeranz & Shapiro v 600 Third Ave. Assoc.*, 93 NY2d 508, 514 [1999]). A party is entitled to a *Yellowstone* injunction when "(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 the termination of the lease; and (4) it is prepared and maintains the ability to cure the alleged default by any means short of vacating the premises" (*Audthan LLC v Nick & Duke LLC*, 181 AD3d 503 [1st Dept 2020], quoting *Graubard*, 93 NY2d at 514).

When a tenant establishes these elements, a court in its discretion may issue an injunction tolling the tenant's time to cure to preserve a lease until the merits of the dispute are resolved (*Graubard*, 93 NY2d at 514; *Elite Wine & Spirit*, 213 AD3d at 148). Such an injunction is a provisional remedy, and the purpose is "not to determine the ultimate rights of the parties but to maintain the status quo until a full hearing on the merits can be held" (*2914 Third Sportswear Realty Corp. v Acadia 2914 Third Ave., LLC*, 93 AD3d 573 [1st Dept 2012]).

It is undisputed that Plaintiff holds a commercial lease, received a Notice to Cure from Defendant, and timely sought injunctive relief, and the parties disagree over whether Plaintiff is prepared to cure the alleged defaults. As to this fourth prong, a plaintiff's burden is only to establish its ability to cure (*Atta, Inc. v 450 West 31st Owners Corp.*, — AD3d —, 2026 NY Slip Op 01295 [1st Dept 2026], citing *WPA/Partners LLC v Port Imperial Ferry Corp.*, 307 AD2d 234, 237 [1st Dept 2003]). A dispute as to the effectiveness of a tenant's efforts to cure merely generates issues of fact that should not be resolved in the context of the *Yellowstone* application (*Elite Wine & Spirit*, 213 AD3d at 149; *JDM Wash. St. LLC v 90 Wash. St., LLC*, 200 AD3d 612, 613 [1st Dept 2021]).

Defendant states that when Plaintiff filed this Order to Show Cause, it claimed that occupancy of the Premises by 3ofCups prevented it from curing the defaults, but once 3ofCups vacated, instead of working to cure the defaults, Plaintiff obtained a new tenant and therefore has exhibited an unwillingness to cure. Plaintiff maintains it was and continues to be willing and able to cure any outstanding defaults. It outlines steps it has taken in furtherance of that goal, including serving a notice to cure on 3ofCups, retaining its own expert, and making multiple proposals to resolve Defendant's concerns. The Court finds that Plaintiff has shown it is able to

cure any outstanding defaults such that it has demonstrated entitlement to a *Yellowstone* injunction.

With respect to the cross-motion, on a motion for summary judgment, the moving party "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (*Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 853 [1985]). Should the movant make its prima facie showing, the burden shifts to the opposing party, who must then produce admissible evidentiary proof to establish that material issues of fact exist (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The Complaint alleges that the Notice to Cure fails to clearly and unequivocally state what Plaintiff must do to cure the alleged defaults and therefore is unenforceable. The purpose of a notice to cure is to "specifically apprise the tenant of claimed defaults in its obligations under the lease and of the forfeiture and termination of the lease if the claimed default is not cured within a set period of time" (*Filmtrucks, Inc. v Express Industries and Terminal Corp.*, 127 AD2d 509, 510 [1st Dept 1987]). A notice to cure must be unequivocal and unambiguous (*Greenfield v Etts Enters.*, 177 AD2d 365 [1st Dept 1991]).

In the papers filed in July 2025, the parties continue to dispute what is required to cure the remaining defaults, or at a minimum to resolve the action. For one, Plaintiff contends it believed that limiting its subtenant to reheating foods using electric-powered appliances was an appropriate response to Defendant's concerns, while Defendant maintains this does not address the code violations regarding proper ventilation. In addition, there are disagreements with respect to restoration of the spiral staircase, and either removal or alteration of the non-ADA compliant bathroom. It is further unclear whether resolution of these three items would satisfy all the issues raised in the Notice to Cure. The Court further notes that the parties' supplemental

papers address Plaintiff's potential surrender of a portion of the basement, which is not addressed in the Notice to Cure. Ultimately, these disagreements are issues of fact requiring that the cross-motion for summary judgment be denied.

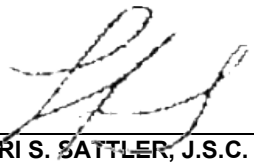
Accordingly, for the reasons set forth herein, it is hereby

ORDERED that Plaintiff's motion for a *Yellowstone* injunction is granted; and it is further

ORDERED that Defendant's cross-motion for summary judgment is denied; and it is further

ORDERED that a conference shall be held on April 7, 2026, at 9:30 a.m. in person at 60 Centre Street, Room 212.

This constitutes the Decision and Order of the Court.



3/13/2026
DATE

LORI S. SATTLER, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE