

El Padregal Rest. Corp. v Estate of Wong

2007 NY Slip Op 30035(U)

February 1, 2007

Supreme Court, Queens County

Docket Number: 0027592

Judge: Augustus C. Agate

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MEMORANDUM

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE AUGUSTUS C. AGATE IAS PART 24
Justice

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EL PADREGAL RESTAURANT CORP.,

Plaintiff,

-against-

ESTATE OF KATHERINE WONG, LANDLORD and
MICHELLE KOUTSOUBELIS, EXECUTRIX of Said
ESTATE OF KATHERINE WONG, With Respect To
The Subject Premises located at 38-19 69th
Street, Queens, New York,

Defendants.

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This Order to Show Cause by plaintiff for a Yellowstone
injunction and other relief is decided, without opposition, as
follows:

At the outset the court notes that defendant "Estate of
Katherine Wong, Landlord" is not a valid party. A deceased party
can only appear by their duly appointed estate representative,
and the Estate of Katherine Wong, Landlord" is not a legal
entity. (CPLR 1015[a].)

Yellowstone injunctions are routinely granted to avoid
forfeiture of a commercial tenant's interest prior to a
determination on the merits. (Post v 120 East End Ave. Corp., 62
NY2d 19, 25 [1984]; First Natl. Stores, Inc. v Yellowstone
Shopping Ctr., 21 NY2d 630 [1968].) In order to obtain a
Yellowstone injunction, a tenant must demonstrate the existence

of a commercial lease, receipt of a notice of a default, a timely application for a temporary restraining order and the desire and ability to cure the alleged default. (Purdue Pharma, LP v Ardsley Partners, LP., 5 AD3d 654, 655 [2004].) The standard to be applied for a Yellowstone injunction is far less than that normally required for preliminary injunctive relief. (Post v 120 East End Ave. Corp., 62 NY2d at 25.)

In the matter at hand, the plaintiff has satisfied the requirements for obtaining Yellowstone relief. Thus, a Yellowstone injunction is proper to preserve the status quo and the forfeiture of plaintiff's valuable interest in the leasehold, prior to the adjudication of the parties' rights. (see Marathon Outdoor, LLC v Patent Constr. Sys. Div. Of Harsco Corp., 306 AD2d 254, 255 [2003].) The court further notes that the law does not favor the forfeiture of leaseholds. (225 East 36th St. Garage Corp. v 221 East 36th Owners Corp., 211 AD2d 420, 422 [1995].)

Accordingly, this Order to Show Cause is granted to the extent that defendant Michelle Koutsoubelis, as Executrix of Estate of Katherine Wong, her agents, servants, employees, attorneys, persons acting on her behalf and /or in concert therewith, is enjoined from commencing summary proceedings to terminate the subject commercial tenancy, or from causing the termination, cancellation and/or forfeiture of the plaintiff's valuable leasehold herein on the basis of the defaults set forth

in the notice dated November 18, 2006 during the pendency of this action.

The foregoing is conditioned upon the filing of an undertaking in accordance with CPLR 6312, the amount which shall be fixed in the order to be settled hereon. Upon settlement of the order, the parties may submit proof and recommendations as to the amount of the undertaking.

Settle Order.

Dated: February 1, 2007

AUGUSTUS C. AGATE, J.S.C.