

Hamiltonian Corp. v Trinity Ctr., LLC

2007 NY Slip Op 32646(U)

June 20, 2007

Supreme Court, New York County

Docket Number: 0113395/2006

Judge: Louis B. York

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. LOUIS B. YORK

PART 2

Justice

AMENDED ORDER

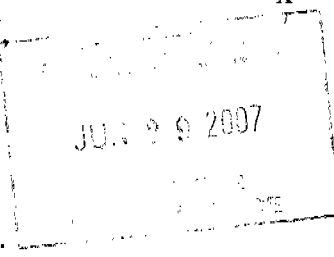
HAMILTONIAN CORPORATION,

Plaintiff,

-against-

TRINITY CENTRE, LLC,

Defendant.



Index No. 113395/06

Motion Date 01/03/07

Motion Seq. No. 001

Motion Cal. No.

*3-30-07
Amended*

The following papers, numbered 1 to _____ were read on this motion for Preliminary Injunction

NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits _____

Answering Affidavits — Exhibits _____

Σ Replying Affidavits _____

PAPERS

Cross-Motion: [] Yes [] No

The Court, sua sponte, moves to amend the decision dated 3/30/07. The decision contained several defects This decision is issued to remove those defects.

This motion for a Yellowstone Injunction and a Declaration that the plaintiff is not in default of the lease is denied and the cross-motion to dismiss this action is denied without prejudice.

The Yellowstone relief seeks to enjoin the defendant from enforcing the conditional limitation in the lease that a transfer of more than 50% of the interest in the lease requires that consent of the defendant-landlord which was neither requested nor given and, also, to challenge the allegation that plaintiff is in default of the

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payment of additional rent. Defendant has served a Notice of Default based on the grounds that plaintiff has challenged. Plaintiff is moving to toll the Notice until these issues are decided.

While movant vigorously challenges the claim that it owes additional rent and that more than 50% of the assets were transferred, it does not challenge that the transfer of more than 50% is a conditional limitation and only in reply papers does it allege in conclusory fashion that if it is found that it owes the rent, it will pay the additional amount.

The landlord contends that the plaintiff's defaults are incurable and the part of the motion seeking a declaration as to the matters in dispute is premature as no answer has as yet been lodged against the complaint.

The function of a Yellowstone Injunction is to stop the running of a Notice to Cure so that if the plaintiff is held to have violated the disputed lease term, the Court can keep the Notice to Cure tolled while an adequate time is given to the defendant to rectify the problem. But here, we have a conditional limitation which cannot be cured if, in fact, more of 50% of the interest in the lease has been conveyed. Consequently, the Yellowstone Injunction cannot help and plaintiff's only recourse is to defend in any holdover proceeding that is brought on these grounds. If the

plaintiff does owe any arrears, the defendant will bring a non-payment of rent summary proceeding as it has done in the past, and plaintiff will have an opportunity to satisfy a judgment obtained on non-payment grounds as it has done in the past.

The defendant also claims that there is a persistent pattern by the plaintiff of not paying the rent over successive months, and only at the last minute after a proceeding is brought or a judgment of possession has been rendered, does the plaintiff pay up, leaving the defendant without adequate income for months on end. If this is true, the defendant has the option to initiate a holdover proceeding based on a persistent pattern of non-payment of rent.

Even if the Court were to award the plaintiff some relief, it cannot award it a Declaratory Judgment because issue has not yet been drawn.

Since a Yellowstone Injunction cannot assist the plaintiff in avoiding the transfer of more than 50% conditional limitation and plaintiff is adequately protected in a non-payment proceeding by timely satisfying a judgment in defendant's favor, there is no adequate basis for granting an injunction.

Accordingly, it is

ORDERED and **ADJUDGED** that this motion for a Yellowstone Injunction is denied as is the portion of the motion seeking a declaratory judgment. That latter request is premature; and it is

ORDERED and ADJUDGED that although requested, neither party is awarded attorney fees. Attorney's fees are awarded to the prevailing party when the lease states that the tenant is responsible for attorney's fees if the plaintiff brings an action to enforce a term of the lease as the plaintiff has done. Because the Court has not issued a final judgment and, currently, there is no prevailing party.

Dated: 6/20/07

Enter:

Signature

Louis B. York, J.S.C.
LOUIS B. YORK
J.S.C.

FILED
AUG 23 2007
NEW YORK
COUNTY CLERK'S OFFICE

Norman Goodman
Clerk

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

[* 5]
SUPREME COURT OF THE STATE OF NEW YORK
CITY OF NEW YORK

HAMILTONIAN CORPORATION X

PLAINTIFF

AGAINST

TRINITY CENTER, LLC

DEFENDANT

INDEX NUMBER
113395-06

JUDGMENT

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