

Great Wall 384, Inc. v 384 Grand Street Hous.

2016 NY Slip Op 32942(U)

September 29, 2016

Supreme Court, New York County

Docket Number: 654198/2016

Judge: David Benjamin Cohen

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

PRESENT: COHEN, DAVID B. HON. DAVID B. COHEN Justice J.S.C.

PART 58

GREAT WALL 384, INC.

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384 GRAND STREET HOUSING

MOTION SEQ. NO. 001

Table with 2 columns: Description of papers and No(s). Rows include Notice of Motion/Petition/OSC - Affidavits - Exhibits (1), Answering Affidavits - Exhibits (2), and Replying (3).

Upon the foregoing papers, it is decided that this motion for a Yellowstone Injunction is granted conditionally. To obtain a Yellowstone injunction, a tenant must establish 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 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 (Graubard Mollen Horowitz Pomeranz & Shapiro v 600 Third Ave. Assoc., 93 NY2d 508 [1999]; 3636 Greystone Owners, Inc. v Greystone Bldg., 4 AD3d 122 [1st Dept 2004]). Here, defendant argues that the default of the Article 51 insurance provision in the lease is not curable and a Yellowstone injunction would therefore be improper. Defendant cites to Kim v. Idylwood, 66 AD3d 528 [1st Dept 2009] and 117-119 Leasing Co. v. Reliable Wool Stock, 139 AD3d 420 [1st Dept 2016] (which relies on Kim) in support of its contention that plaintiff's failure to obtain the full amount of insurance is not curable. In Kim, plaintiff did not continuously have insurance and only offered to obtain prospective insurance for the remainder of the lease. The Court did not find that availing and held that such a policy would not "protect defendant against the unknown universe of any claims arising during the period of no insurance coverage" (Kim at 529). Here, plaintiff has submitted the affidavit of Zong Rong Zou, an officer of plaintiff and has stated that plaintiff has the ability to obtain retroactive insurance to bridge the gap or bond the landlord. Thus, unlike in Kim plaintiff offers the ability to protect the landlord for the period in default. Accordingly, plaintiff is granted a conditional Yellowstone injunction until October 10, 2016 to either obtain retroactive insurance or bond the landlord. Parties to appear on October 11, 2016. Plaintiff must demonstrate that it has either cured the default or has entered into a binding contract for the retroactive insurance or bond.

DATE : 9/29/2016

Signature of David B. Cohen, J.S.C.

- 1. CHECK ONE : [] CASE DISPOSED [X] NON-FINAL DISPOSITION
2. APPLICATION : [X] GRANTED [] DENIED [] GRANTED IN PART [] OTHER
3. CHECK IF APPROPRIATE : [] SETTLE ORDER [] SUBMIT ORDER [] DO NOT POST [] FIDUCIARY APPOINTMENT [] REFERENCE