

Six Pleasant Ridge, LLC. v 79 Parsons LLC
2018 NY Slip Op 33483(U)
December 6, 2018
Supreme Court, Queens County
Docket Number: 716250/80S
Judge: Carmen R. Velasquez
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE CARMEN R. VELASQUEZ IAS PART 38
Justice

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SIX PLEASANT RIDGE, LLC. D/b/a KIM'S
MARTIAL ARTS,

Index NO. 716250/8 444-18 **OS**

Plaintiff,

Motion

Date: May 21, 2018

-against-

M# 2

FILED

79 PARSONS LLC, ET AL.,

DEC 18 2018

Defendants.

COUNTY CLERK
QUEENS COUNTY

-----x
The following papers numbered 1 - 11 read on this Order to Show Cause by the plaintiff for a Yellowstone injunction enjoining the termination of the plaintiff's lease herein pending the outcome of the subject litigation and for an order holding the defendants in contempt.

	<u>Papers Numbered</u>
Order to Show Cause - Affidavits - Exhibits.....	1 - 4
Affirmations in Opposition - Exhibits.....	5 - 11
Plaintiff's Memorandum of Law	
Defendants' Appendix of Law	
Defendant's Memorandum of Law	

Upon the foregoing papers it is ordered that this Order to Show Cause by the plaintiff is decided as follows:

Plaintiff leased the basement and part of the ground floor of premises located 79-11 Parsons Boulevard, Fresh Meadows, New York, pursuant to a commercial lease, which commenced on November 1, 2009. The lease was to expire on October 31, 2024. Plaintiff operated a martial arts school out of the premises. Defendants are the current owners of the premises. Plaintiff contends, *inter alia*, that during a cold spell in December 2017, the water pipes outside and above the plaintiff's premises froze and burst, flooding the premises on December 29, 2017. Plaintiff also alleges that as a result of defendants' inaction, additional pipe breakages and leakages occurred between January 4 and 5, 2018,

leaving the floor of the premises coated with ice. Plaintiff maintains that defendants are responsible for the damage because they continually left the roof of the building open during the winter of 2017-18.

Defendants delivered a Notice to Cure, dated April 12, 2018, to the plaintiff, alleging the plaintiff's failure to make timely rental payments for the months of January-April 2018 in the total sum of \$25,473.64. The notice further provided that the plaintiff had until April 30, 2018 to make the aforesaid payments. Plaintiff thereafter sought a Yellowstone injunction. The court granted plaintiff's application for a Temporary Restraining Order staying the time to cure set forth in the April 12, 2018 notice.

Pursuant to an order dated September 28, 2018, this court granted plaintiff's application for a preliminary injunction, directing the defendants to, *inter alia*, seal off and close all roof openings, windows and all other openings above and appurtenant to plaintiff's premises and repair and insulate any frozen, cracked and/or leaking water, sewage and or sprinkler pipes that are and/or originate anywhere above the ceiling tiles of the premises.

The court will now address the plaintiff's application for Yellowstone relief and for contempt.

The purpose of a Yellowstone injunction is to maintain the status quo until the merits of a landlord/tenant dispute are resolved in court. (see *Graubard Mollen Horowitz Pomeranz & Shapiro v 600 Third Ave. Assoc.*, 93 NY2d 508, 514-515 [1999]). Yellowstone injunctions are routinely granted to avoid forfeiture of a commercial tenant's interest prior to a determination of the merits. (*Post v 120 E. End Ave. Corp.*, 62 NY2d 19, 25 [1984]; *First Natl. Stores v Yellowstone Shopping Ctr.*, 21 NY2d 630, 637 [1968].) In order to obtain a Yellowstone injunction, a tenant must demonstrate the existence of a commercial lease, receipt of a notice of default, a timely application for a temporary restraining order and the desire and ability to cure the alleged default. (*Barsyl Supermarkets, Inc. v Avenue P Assoc., LLC*, 86 AD3d 545, 546 [2d Dept 2011].) The standard to be applied for a Yellowstone injunction is far less than that normally required for preliminary injunctive relief. (*Post v 120 E. Ave. Corp.*, 62 NY2d at 25.)

Thus, a Yellowstone injunction is proper to preserve the status quo and avoid the forfeiture of plaintiff's valuable

interest in the leasehold, prior to the adjudication of the parties' rights. (see *Marathon Outdoor v Patent Constr. Sys. Div. of Harsco Corp.*, 306 AD2d 254, 255 [2d Dept 2003].) The court further notes that the law does not favor the forfeiture of leaseholds. (225 E. 36th St. Garage Corp. v 221 E. 36th Owners Corp., 211 AD2d 420, 422 [1st Dept 1995].)

In the matter at hand, the plaintiff has satisfied the requirements for obtaining Yellowstone relief. It is clear that the lease for the subject premises is a commercial one. Further, plaintiff received a notice of default and sought a temporary restraining order, which was granted. Moreover, plaintiff avers that it has the ability to cure the default. Indeed, plaintiff states that it has deposited the amount of the outstanding rent in its attorney's escrow account.

Turning to the branch of the application for contempt, in order to find one in civil contempt, a lawful judicial order expressing an unequivocal mandate must have been in effect and disobeyed, the party to be held in contempt must have had knowledge of the order and prejudice to the rights of a party to the litigation must be demonstrated. (see Judiciary Law § 753[A][3]; *Galanos v Galanos*, 46 AD3d 507, 508 [2d Dept 2007]; *Sterngass v Town Bd. Of Town of Clarkstown*, 27 AD3d 550, 551 [2d Dept 2006]; *Rienzi v Rienzi*, 23 AD3d 447, 449 [2d Dept 2005].) The movant bears the burden of proving the contempt by clear and convincing evidence. (*Riverside Capital Advisers, Inc. v First Secured Capital Corp.*, 43 AD3d 1023, 1024 [2d Dept 2007].)

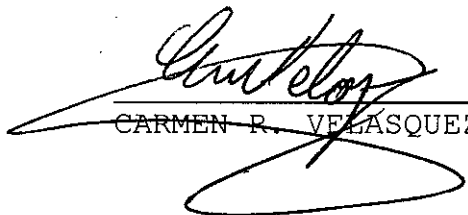
At bar, defendant Harry Tran avers in his affidavit that the defendants made all the repairs as required by the court to the extent feasible. Defendants have also annexed photographs to their opposition papers demonstrating that repairs were made to the premises.

Accordingly, this Order to Show Cause by the plaintiff is granted to the extent that defendants are enjoined from terminating the commercial lease of the plaintiffs regarding the subject premises located at 79-11 Parsons Boulevard, Fresh Meadows, N.Y., 11366 pending the outcome of this litigation.

The foregoing relief is conditioned upon the plaintiff paying all use and occupancy due and owing in the sum of \$25,473.64 plus the monthly rent of \$6,368.41 for each month thereafter.

The branch of the Order to Show Order to Show Cause for contempt is denied.

Dated: December 06, 2018


CARMEN R. VELASQUEZ, J.S.C.

FILED
DEC 18 2018
COUNTY CLERK
QUEENS COUNTY