

US Bank N.A. v Northern Blvd. 4818, LLC
2019 NY Slip Op 32572(U)
July 11, 2019
Supreme Court, Queens County
Docket Number: 706013/19
Judge: Leonard Livote
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SHORT FORM ORDER

NEW YORK STATE SUPREME COURT - QUEENS COUNTY

Present: Honorable Leonard Livote
Acting Supreme Court Justice

IAS TERM, PART 33

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US BANK NATIONAL ASSOCIATION, AS
TRUSTEE, SUCCESSOR-IN-INTEREST TO
BANK OF AMERICA, N.A., et al.

Index No: 706013/19

Plaintiff,

-- against --

Motion Date: 05/14/19

NORTHERN BLVD. 4818, LLC,
Defendants.

Seq. No: 1

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The following papers numbered 1 to 4 read on this motion by plaintiff for an Order:

1. Preliminarily enjoining and restraining the Defendant, its agents, servants, attorneys and/or employees and all persons known and unknown acting on its behalf or in concert with it, in any manner or means jointly and severally from taking any action to terminate that certain Amended and Restated Ground Lease, as amended, between Defendant's predecessor-in-interest, 48-18 Properties, L.L.C., as landlord, and FC Northern Associates II, LLC, successor-in-interest to FC Northern Associates, L.P., as tenant, dated as of October 1, 1996 as may be further amended (the "Ground Lease") for the premises known as and located at 48-18 Northern Boulevard, Long Island City, Queens County, New York 11101 (the "Premises");

2. Preliminarily enjoining and restraining the Defendant, its agents, servants, attorneys and/or employees and all persons known and unknown acting on its behalf or in concert with it, in any manner or means jointly and severally from taking any action to institute any proceeding in connection with: terminating the Ground Lease, enforcing any remedy upon the alleged default contained in the Notice of Default and Demand from Defendant dated March 20, 2019 (the "Notice of Default") and interfering in any manner with U.S. Bank National Association, as Trustee, successor-in-interest to Bank of America, N.A., as Trutee, Sucessor by merger to LaSalle Bank National Association, as Trustee, for the Registered Holders of Bear Stearns Commercial Mortgage Securities Inc., Commercial Mortgage Pass-Through Certificates, 2007-PWR16, acting by and through its special

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QUEENS COUNTY

servicer, C-III Asset Management LLC's ("Plaintiff") collateral of the Ground Lease on the Premises; and

3. Staying and tolling the expiration of the cure period set forth in the Notice of Default as its pertains to the Ground Lease and the Premises.

	<u>PAPERS NUMBERED</u>
Notice of Motion, Affirmation, Affidavits and Exhibits.....	EF 48-51
Cross Motion, Affirmation, Affidavits and Exhibits.....	
Answering Affirmations, Affidavits and Exhibits.....	EF 53-67, 82-87
Reply Affirmations, Affidavits and Exhibits.....	
Other.....	

Upon the foregoing papers, the motion is granted.

"A Yellowstone injunction maintains the status quo so that a commercial tenant, when confronted by a threat of termination of its lease, may protect its investment in the leasehold by obtaining a stay tolling the cure period so that upon an adverse determination on the merits the tenant may cure the default and avoid a forfeiture" (*Graubard Mollen Horowitz Pomeranz & Shapiro v 600 Third Ave. Assoc.*, 93 NY2d 508, 514 [1999]).

The party requesting a Yellowstone injunction must demonstrate 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" (*225 E. 36th St. Garage Corp. v. 221 E. 36th Owners Corp.*, 211 A.D.2d 420, 421, 621 N.Y.S.2d 302).

In considering Yellowstone injunctions, courts generally accept far less than the showing normally required for the grant of preliminary injunctive relief (*Trump on the Ocean, LLC v Ash*, 81 AD3d 713, 716 [2d Dept 2011]).

In the instant case, plaintiff has established its entitlement to a Yellowstone injunction. Accordingly, the motion is granted and it is,

Ordered, that the Defendant, its agents, servants, attorneys

and/or employees and all persons known and unknown acting on its behalf or in concert with it, are enjoined and restrained in any manner or means jointly and severally from taking any action to terminate that certain Amended and Restated Ground Lease, as amended, between Defendant's predecessor-in-interest, 48-18 Properties, L.L.C., as landlord, and FC Northern Associates II, LLC, successor-in-interest to FC Northern Associates, L.P., as tenant, dated as of October 1, 1996 as may be further amended (the "Ground Lease") for the premises known as and located at 48-18 Northern Boulevard, Long Island City, Queens County, New York 11101 (the "Premises") pending further order of the Court; and it is further,

Ordered, that the Defendant, its agents, servants, attorneys and/or employees and all persons known and unknown acting on its behalf or in concert with it, are enjoined and restrained in any manner or means jointly and severally from taking any action to institute any proceeding in connection with: terminating the Ground Lease, enforcing any remedy upon the alleged default contained in the Notice of Default and Demand from Defendant dated March 20, 2019 (the "Notice of Default") and interfering in any manner with U.S. Bank National Association, as Trustee, successor-in-interest to Bank of America, N.A., as Trutee, Sucessor by merger to LaSalle Bank National Association, as Trustee, for the Registered Holders of Bear Stearns Commercial Mortgage Securities Inc., Commercial Mortgage Pass-Through Certificates, 2007-PWR16, acting by and through its special servicer, C-III Asset Management LLC's ("Plaintiff") collateral of the Ground Lease on the Premises pending further Order of the Court; and it is further,

Ordered, that the expiration of the cure period set forth in the Notice of Default as its pertains to the Ground Lease and the Premises is stayed and tolled pending further Order of the Court; and it is further,

Ordered, that an undertaking is fixed in the sum of \$250,000.00 conditioned that the plaintiff, if it is finally determined that he was not entitled to an injunction, will pay to the defendant all damages and costs which may be sustained by reason of this injunction.

This constitutes the Order of the Court.

Dated: July 11, 2019

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Leonard Livote, A.J.S.C. FILED
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