

Creif Lender LLC v Lucky of 195 Madison St. Roofing & Contr. Inc.
2019 NY Slip Op 33764(U)
December 20, 2019
Supreme Court, New York County
Docket Number: 850028/2018
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 32

Justice

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INDEX NO. 850028/2018

CREIF LENDER LLC, AS ASSIGNEE OF CREIF 109, LLC,

MOTION DATE 12/19/2019

Plaintiff,

MOTION SEQ. NO. 001

- v -

LUCKY OF 195 MADISON STREET ROOFING &
CONTRACTING INC., ALLAN STEVE, SRUN TAING,
BANCO POPULAR NORTH AMERICA, THE PEOPLE OF
THE STATE OF NEW YORK, NEW YORK STATE
DEPARTMENT OF TAXATION AND FINANCE, JOHN DOE

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52

were read on this motion to/for

APPOINT RECEIVER

The motion, brought by order to show cause, for the appointment of a receiver is granted.

Background

Plaintiff claims that it entered into a series of mortgages with defendant Lucky of 195 Madison Street Roofing & Contracting, Inc. ("Borrower") that totaled \$15 million. These loans are secured by four properties located in Manhattan's Lower East Side and Chinatown and are in default. Plaintiff claims a receiver is necessary to maintain these building because there are numerous violations issued by the Department of Buildings. Plaintiff also points out that the consolidated mortgage provides that it is automatically entitled to a receiver without notice.

In opposition, the Borrower claims that it never agreed to enter into these mortgages. Rather, the Borrower argues that it is the victim of an elaborate fraud perpetrated by individuals

who pretended to be the CEO of Borrower. The Borrower claims that documents were falsified, that a criminal case is pending concerning the alleged fraud and that it would be inappropriate for the Court to appoint a receiver under these circumstances.

Discussion

The Court grants the motion. As an initial matter, the Borrower raised similar claims about the invalidity of the instant mortgages before a different Supreme Court justice in this county. That judge dismissed the Borrower's causes of action against plaintiff for *inter alia* quiet title and declaratory relief (NYSCEF Doc. No. 31). Therefore, this Court finds that appointing a receiver is appropriate because a Court has already rejected the Borrower's fraud claims and plaintiff is clearly entitled to the appointment of a receiver under the terms of the consolidated mortgage (*see* NYSCEF Doc. No. 34, § 29). Moreover, the instant motion is not a finding on the merits—it is simply an appointment to maintain the status quo of these buildings.

And to the extent that the Borrower claims that a criminal case is pending regarding the purported fraud, that does not prevent the appointment of a receiver.

Accordingly, it is hereby

ORDERED that the motion for the appointment of a Temporary Receiver is granted; and it is further

ORDERED that Elaine Shay, 800 Third Avenue, Suite 2800, New York, NY 10022 (212)-520-2690, Elaine@EShayEsq.com, is hereby appointed with the usual powers and directions of a Temporary Receiver for the benefit of Plaintiff of all the rents and profits now due and unpaid or become due during the pendency of this action and issuing out the mortgaged

properties mentioned in the complaint, by the street addresses known as 35 Market Street, New York, NY; 37 Market Street, New York NY; 164 Orchard Street New York, NY; 189 Market Street, New York, NY; and it is further

ORDERED that the Temporary Receiver is authorized to take charge and enter into possession of the property; and it is further

ORDERED that before entering her/his duties, the Temporary Receiver shall be sworn to fairly and faithfully discharge the duties committed to her and shall file with the Clerk of this Court an undertaking in the sum of \$750,000.00, conditioned for the faithful discharge of the duties of Temporary Receiver; and it is further

ORDERED that the Temporary Receiver is hereby directed to demand, collect and receive from the occupants, tenants and licensees in possession of said premises, or other persons liable therefor, inclusive of the mortgagor, all the rents and license fees thereof now due or unpaid or hereafter that become fixed or due and the Temporary Receiver is authorized to institute and carry on all legal proceedings necessary for the protection of said premises or to recover possession of the whole, or any part thereof, and apply to this Court to fix reasonable rental value and license fee value and to compel the tenants and occupants to attorn to the Temporary Receiver; and it is further

ORDERED that the Temporary Receiver may institute and prosecute suits for the collection of rent, license fees and other charges now due or hereafter to become due and fixed, and summary proceedings for the removal of any tenants or licensees or other persons therefrom; and it is further

ORDERED, that pursuant to the General Obligation Law section 7-105, anybody holding

any deposits or advances of rental as security under any lease or license agreement affecting space in the premises affected by this action shall turn same over to said Temporary Receiver within five (5) days after said Temporary Receiver shall be qualified; and thereupon the said Temporary Receiver shall hold such security subject to such disposition thereof as shall be provided in an Order of the Court to be made and entered in this action; and it is further.

ORDERED, that anybody in possession of same shall turn over to said Temporary Receiver all rent lists, orders, unexpired and expired leases, agreements, correspondence, notices and registration statements relating to rental spaces or facilities in the premises; and it is further,

ORDERED, that notwithstanding anything to the contrary contained in this order, the Temporary Receiver shall not, without the further, prior order of this Court, upon prior notice to the plaintiff, make improvements or substantial repairs to the property at a cost in excess of \$5,000.00, *except* that in an emergency, if funds need to be expended in excess of \$5,000 or would otherwise require Court intervention, no Court approval will be necessary if counsel for plaintiff agrees in writing that the receiver may make such disbursement; and it is further

ORDERED that the Temporary Receiver shall deposit all monies received by her/him into any FDIC-insured bank where she has an account for this purpose and such account shall show the name of this action and the Temporary Receiver shall furnish plaintiff's attorneys with monthly statements of the receipts and expenditures of the Receivership together with a photocopy of the monthly statements received from said depository and no withdrawals shall be made therefrom except as directed by the Court or on a draft or check signed by the Temporary Receiver; and it is further

ORDERED that the Temporary Receiver is authorized from time to time to rent and lease any part of the premises for terms not exceeding one (1) year or such longer terms as may be required by applicable laws or regulations; to keep the premises insured against loss by damage or fire; to pay the taxes, assessments, water rates, sewer rates, vault rents, salaries of employees, supplies and other charges; to comply with all lawful requirements of any municipal department or other authority of the municipality in which the mortgaged premises are situated and to procure such fire, liability and other insurance as may be reasonably necessary; and it is further

ORDERED, that the tenants, licensees or other persons in possession of said premises attend to the Temporary Receiver and pay over to the Temporary Receiver all rents, license fees, and other charges of such premises now due and unpaid or that may hereafter become due; and that the defendants be enjoined and restrained from collecting the rents, license fees and other charges of said premises from interfering in any manner with the property or its possession; and from transferring, removing or in any way disturbing and of the occupants or employees; and that all tenants, occupants, employees and licensees of the premises and other persons liable for the rents be and hereby are enjoined and restrained from paying any rent or license fees or other charges for such premises to the defendants, their agents, servants or attorneys; and it is further

ORDERED that the Temporary Receiver is prohibited from incurring obligations in excess of the monies in her hands without further Order of this Court or written consent of Plaintiff's attorney and plaintiff may advance money, which can be recouped in this litigation; and it is further

ORDERED, that the Owner turn over to the Temporary Receiver all rents collected from and after the date of this Order; and it is further

ORDERED, that all persons now and hereafter in possession of said premises, or any part thereof, and not holding such possession under valid and existing leases or tendencies, do forthwith surrender such possession to the Temporary Receiver, subject to emergency laws, if any, and it is further

ORDERED, that the Temporary Receiver after paying the expenses of the management and care of the said premises as above provided retain the balance of the monies which may come into her hands until the sale of the said premises under the judgment to be entered in this action and/or until further Order of this Court, and it is further

ORDERED that the Temporary Receiver, or any party hereto, may at any time, on proper notice to all parties who have appeared in this action, apply to the Court for further and other instructions or powers necessary to enable the Temporary Receiver to properly fulfill her duties or for interim fee payments; and it is further

ORDERED that the appointed receiver named herein shall comply with Section 35a of the Judiciary Law, Sections 6401-6404 of the CPLR, Section 1325 of RPAPL and Rule 36 of the Chief Judge; and it is further

ORDERED that notwithstanding any other provision of this order, the Temporary Receiver is directed to initially appoint Marin Management Corp., 157 East 25th Street, New York, NY 10010 (212) 213-0123 as the managing agent for the property (according to the Borrower, Marin is currently managing the property and according to Marin, it is on the "approved" list); however, the receiver may bring on a motion to change managing agents at any time if she deems it appropriate; and it is further

ORDERED that the Temporary Receiver shall not appoint an appraiser, auctioneer or accountant without prior order of this Court, but *may* appoint a landlord/tenant attorney for the collection of rent, license fees and other charges now due or hereafter to become due and fixed, or for summary proceedings for the removal of any tenants or licensees or other persons therefrom, without further order of this Court.

Next Conference: March 3, 2020 at 2:15 p.m.

12.20.19

DATE

HON. ARLENE P. BLUTH

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>			