

Benefit St. Partners Operating Partnership, L.P. v 96 Wythe Acquisition LLC
2020 NY Slip Op 32515(U)
July 29, 2020
Supreme Court, New York County
Docket Number: 653396/2019
Judge: Barry Ostrager
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**SUPREME COURT OF THE STATE OF NEW
YORK NEW YORK COUNTY**

PRESENT: HON. BARRY R. OSTRAGER PART IAS MOTION 61EFM

Justice

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BENEFIT STREET PARTNERS OPERATING PARTNERSHIP, L.P.,

Plaintiff,

- v -

96 WYTHE ACQUISITION LLC, TOBY MOSKOVITS, YECHIEL
MICHAEL LICHTENSTEIN, RENT A UNIT NY INC., ADVANCED
PLUMBING MECHANICAL & SPRINKLERS CORP., MA2 FLAGS
CONTRACTING CORP., ROCK GROUP NY CORP., CRIMINAL
COURT OF THE CITY OF NEW YORK, NEW YORK STATE
DEPARTMENT OF TAXATION AND FINANCE, ENVIRONMENTAL
CONTROL BOARD OF THE CITY OF NEW YORK, and JOHN DOE
#1 THROUGH JOHN DOE #50,

Defendants.

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HON. BARRY R. OSTRAGER

INDEX NO.	653396/2019
MOTION DATE	
MOTION SEQ. NO.	008

DECISION + ORDER ON MOTION

Before the Court is an Order to Show Cause filed by the court-appointed Receiver Constantino Sagonas for leave to retain Jeffrey L. Saltiel, Esq., as general counsel and to stay plaintiff's pending motion (seq. 007) to remove Mr. Sagonas as the Receiver so Mr. Saltiel may prepare opposition papers. Mr. Sagonas seeks to retain Mr. Saltiel for two purposes: (1) as his general counsel to defend the Receiver against any claims brought against him and to enforce the order appointing him as Receiver in all regards, including but not limited to arbitrations and proceedings; and (2) to prosecute suits, by summary proceedings or civil actions in the Civil Court, County of Kings, or by actions in the Supreme Court, to recover possession for defaults under agreements, for the collection of rents and license fees appurtenant to the realty herein, and/or to recover possession through removal of any tenant or occupant from the realty through summary proceedings or civil actions commenced in the Civil Court of the County of Kings, or the Supreme Court.

In this motion, Sagonas also asks that he be permitted to pay Mr. Saltiel at the rate of \$350.00 per hour from funds he collects from the hotel property he is managing based on his Order of Appointment. Due to the unavailability of all counsel on the originally scheduled return date of July 31 for this Order to Show Cause, the Court has agreed to determine this motion on submission, including the hotly contested issue of a briefing schedule for plaintiff's motion to remove the Receiver (seq. 007). Plaintiff has vigorously opposed this motion; defendants have submitted no papers, even though the deadline for opposition has passed.

The motion is supported by an Affidavit from Mr. Sagonas (NYSCEF Doc. No. 238). There he explains that, while he has significant background in hotel management, he does not have "sufficient knowledge of landlord/tenant or receivership law to navigate the court system, or the multiplicity of orders issued by the Courts and the Governor in regards to tenants, occupants and rental payments during this COVID pandemic." He adds that plaintiff has repeatedly made "specious allegations" against him in voluminous motions that Sagonas cannot adequately respond to on his own. Mr. Sagonas recounts some of the work he has done in this case as Receiver, despite the challenges posed by the pandemic, and he asserts that plaintiff's allegations regarding the Receiver's purported failure to perform his duties are untrue. Mr. Saltiel also submits an Affirmation recounting his substantial experience representing receivers and in the field of landlord/tenant law, and he asserts that the circumstances here support the request by Mr. Sagonas to retain counsel (NYSCEF Doc. No. 239).

In opposition, plaintiff's counsel urges the Court to deny the motion, claiming that Mr. Sagonas should not be able to use revenue from The Williamsburg Hotel, which is plaintiff's collateral, to pay legal fees. Using strong language, he reiterates plaintiff's position that Mr. Sagonas "has done nothing" to comply with the Court's Order appointing the Receiver. And

while plaintiff acknowledges that the Order of Appointment allows the Receiver to seek leave to retain counsel to commence proceedings against third parties to collect rent and other monies owed to the hotel and to remove defaulting parties from possession, the Order does not allow for the Receiver's retention of personal counsel. In particular, plaintiff objects to the Receiver's retention of counsel to oppose plaintiff's pending motion to remove the Receiver. If the Receiver wishes to oppose the motion, he need only prepare an affidavit setting forth the facts as to what he has done; he need not argue the law.

The Court finds that Mr. Sagonas may retain Mr. Saltiel at the hourly rate of \$350.00 in connection with the second prong of his Order to Show Cause to, among the other duties noted, commence actions and proceedings to collect rent and other monies allegedly owed to the Hotel and remove parties from possession, as plaintiff's do not dispute that the original Order of Appointment grants that type of authority and benefits all involved. Of course, any fees must be reviewed and approved by the Court before they are paid.

The request to retain counsel to defend Mr. Sagonas from attempts by plaintiff to replace the Receiver (the first prong of this Order to Show Cause) and in other proceedings is a bit more problematic. Plaintiff correctly notes that a similar application was denied by this Court without prejudice when nothing was pending that required an immediate response from the Receiver. Now, however, a motion by plaintiff to remove the Receiver is pending (seq. 007), and it accuses the Receiver of wrongdoing in the strongest terms.

In light of the tenor of plaintiff's attacks on the Receiver, the Court finds it appropriate for Mr. Sagonas to retain Mr. Saltiel for the limited purpose of assisting Mr. Sagonas in preparing opposition to plaintiff's pending motion to remove the Receiver in this case (seq. 007), with any fees incurred subject to review and approval by the Court before any payment is made.

That opposition shall be efiled by August 17, 2020. Any reply shall be efiled by August 24, 2020. Plaintiff shall notify the Court via efiled letter when the motion has been fully submitted, at which time the Court will advise all interested parties via Court Notice whether the motion will be decided on the papers or scheduled for oral argument. Should Mr. Sagonas have an immediate need for representation by Mr. Saltiel on any similar matter in the future, a letter requesting a conference should be filed. This decision is not intended to grant Mr. Saltiel broad authority to act in this action, nor any authority at all to act in other actions beyond those specified in the second prong of this Order to Show Cause.

Accordingly, it is hereby

ORDERED that the motion by the Receiver is granted in part on the terms and conditions set forth herein and otherwise denied. This decision constitutes the Order of this Court supplementing the Order of Appointment (NYSCEF Doc. No. 155).

Dated: July 29, 2020


 BARRY R. OSTRAGER, J.S.C.

CHECK ONE:

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CASE DISPOSED

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NON-FINAL DISPOSITION

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GRANTED

☐

DENIED

☒

GRANTED IN PART

☐

OTHER

APPLICATION:

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SETTLE ORDER

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SUBMIT ORDER

CHECK IF APPROPRIATE:

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INCLUDES TRANSFER/REASSIGN

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE