

Brick Row Capital LLC v 338 W. 46th St. Realty, LLC
2021 NY Slip Op 31775(U)
May 21, 2021
Supreme Court, New York County
Docket Number: 850051/2019
Judge: Francis A. Kahn III
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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY****PRESENT: HON. FRANCIS A. KAHN, III****PART****IAS MOTION 32***Justice*

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INDEX NO.850051/2019

BRICK ROW CAPITAL LLC,

MOTION DATE

Plaintiff,

MOTION SEQ. NO.004

- v -

338 WEST 46TH STREET REALTY, LLC, SEONG LEE,
HAIKYUNG LEE AS EXECUTRIX OF ESTATE OF SIU
ANTHONY LEE, DECEASED, NEW YORK CITY
DEPARTMENT OF TRANSPORTATION, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD, NEW YORK
STATE DEPARTMENT OF TAXATION AND FINANCE,
NEW YORK CITY DEPARTMENT OF FINANCE, JOHN
DOE #1 THROUGH JOHN DOE #20,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 100, 101, 102, 103,
104, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120

were read on this motion to/for

APPROVE/SETTLE ACCOUNTING

Upon the foregoing documents, the motion and cross-motion are determined as follows:

In this action Plaintiff seeks to foreclose on a mortgage on commercial real property located at 338 West 46th Street, New York, New York. The mortgage was given by Defendant 338 West 46th Street Realty, LLC ("338 West") to secure a note containing a promise to repay \$1,660,000.00.

By order dated January 6, 2020, Jageshwar Sharma, Esq. was appointed as the receiver for the premises at Plaintiff's specific request.

Now, the receiver moves to be relieved, to confirm his account, to awarding his commissions and to discharge his bond. Plaintiff cross-moved for an order appointing a successor receiver. Both motions are unopposed.

The receiver's account is approved, and commissions are set at the requested amount of \$5,369.14 which the receiver may take from any monies left on hand. If there are no monies, Plaintiff shall pay said amount within 30 days of e-filing of this order.

Further, the receiver is directed to turn over any remaining monies to the successor receiver and the receiver's bond/undertaking is discharged.

The cross-motion for the appointment of a successor receiver is granted without opposition and it is

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

ORDERED that, at Movant's specific request, **Harvey L. Greenberg, Esq., 232 Madison Avenue – Ste. 909, New York, New York 10016**, 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 property mentioned in the complaint, known by the street addresses as 1917 Adam Clayton Powell Jr. Blvd., 120 W 116th St., 110 W. 116th St., and 110th St. Nicholas Ave., New York, New York 10026; 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 him and shall execute to the People of the State of New York and file with the Clerk of the Court an undertaking in the sum of **\$200,000.00** 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 \$1,000.00, except that in an emergency, if funds need to be expended in excess of \$1,000 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 attorn 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

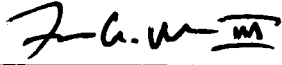
ORDERED that the Temporary Receiver after paying the expenses of the management and care of the said premises as above provided retain the balance of the monies which may come into his hands until the sale of the said premises under the judgment to be entered in this action and/or until further Order 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 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 shall not appoint an attorney, managing agent, appraiser, auctioneer or accountant without prior order of this Court, and that the receiver shall apply to the court and file a separate application for appointment of a managing agent, attorney or other managing services pursuant to 36.1 of the Uniform Court Rules.

All parties are to appear for a virtual conference via Microsoft Teams on **June 23, 2021 at 11:20 a.m.** Part Clerk Tamika Wright (tswright@nycourts.gov) will forward the appearing parties an invitation to the conference via email.

<u>5/21/2021</u>			
DATE		FRANCIS A. KAHN, III, A.J.S.C.	
CHECK ONE:	☐ CASE DISPOSED	☒ NON-FINAL DISPOSITION	HON. FRANCIS A. KAHN III J.S.C.
	☒ GRANTED ☐ DENIED	☐ GRANTED IN PART ☐ OTHER	
APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☒ FIDUCIARY APPOINTMENT ☐ REFERENCE	