

**Hart & Pulaski St. Lender LLC v Quincy Bedford I
LLC**

2021 NY Slip Op 32179(U)

October 28, 2021

Supreme Court, Kings County

Docket Number: Index No. 509175/19

Judge: Lawrence S. Knipel

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part Comm 6 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 28th day of October, 2021.

P R E S E N T:

HON. LAWRENCE KNIPEL,

Justice.

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HART and PULASKI STREET LENDER LLC,

Plaintiff,

- against -

Index No. 509175/19

QUINCY BEDFORD I LLC, 55 PULASKI REALTY LLC, LEIZER KLAR, if he be living, and if he be dead, his Executors, Administrators, Heirs at Law, Next of Kin, Distributees, Legatees, Devisees, Grantees, Assignees, Judgment Creditors, Receivers, Trustees in bankruptcy, Trustees, Committees, Lienors and Successors in Interest and his Husband's, Wife's or Widow's, Executors, Administrators, Heirs at Law, Next of Kin, Distributees, Legatees, Devisees, Grantees, Assignees, Judgment Creditors, Receivers, Trustees in bankruptcy, Trustees, Committees, Lienors And Successors in Interest, if any, and all persons claiming by, through and under any of them, all of whom and whose names are unknown to plaintiff, STATE OF NEW YORK, THE UNITED STATES OF AMERICA, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, THE PEOPLE OF THE STATE OF NEW YORK, NEW YORK CITY DEPARTMENT OF FINANCE, JOSEPH TALMAN, BARON SAKIEF, CHRISTIAN VILLALBA, DEAN PELLE, SHARIEF NESBITT, LEAH EHRENTHAL, ELCHNON EHRENTHAL, SHLOMA JACOBOWITZ, SHAINDEL FRIED, DAVID FRIED,

Defendants.

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<u>The following e-filed papers read herein:</u>	<u>NYSCEF Doc Nos.</u>
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed _____	<u>120-127</u>
Opposing Affidavits (Affirmations) _____	<u>147-153</u>
Reply Affidavits (Affirmations) _____	<u>154-155</u>

Upon the foregoing papers in this action to foreclose a commercial mortgage on the properties at 22 Hart Street in Brooklyn (Block 1770, Lot 18) and 55 Pulaski Street in Brooklyn (Block 1770, Lot 67) (Properties), the court-appointed temporary receiver, Gregory LaSpina, Esq. (Receiver) moves (in motion sequence [mot. seq.] four) for an order: (1) holding defendant Leizer Klar (Klar) in contempt of court, pursuant to Section 753 of the New York Judiciary Law, for his failure to comply with this court’s July 17, 2019 order appointing the Receiver, and (2) appointing Adam Kalish, Esq. as landlord-tenant counsel for the Receiver.

By a July 17, 2019 order, the court (Vaughan, J.) granted plaintiff’s motion for the appointment of a Receiver to collect all rents and profits of the Properties because the “mortgage contains a clause authorizing the appointment of a receiver for all rents and profits of said premises, without notice, in the event of a foreclosure . . .” and plaintiff demonstrated that a Receiver was necessary to protect the Properties (*see* NYSCEF Doc No. 124). Specifically, the July 17, 2019 order appointed Gregory LaSpina, Esq. of Borchert & LaSpina, P.C., as temporary Receiver “with the usual powers and direction, as temporary receiver for the benefit of the Plaintiff of all the rents and profits now due and

to become due during the pendency of this action and issuing out of the mortgaged premises

...” The July 17, 2019 order further provided that:

“the Temporary Receiver be and is hereby directed to demand, collect and receive from the occupants, tenants, and licensees in possession of the Premises, or others liable therefor, inclusive of the mortgagor, all rents and license fees thereof to become fixed and due, now due and unpaid, and hereafter to become due and that the Temporary Receiver be and is hereby authorized to institute and carry on all legal proceedings necessary for the protection of the Premises and/or to recover possession of the whole, or any part thereof, and/or apply to the Court to fix reasonable rental value and licensee fee value of the Premises and/or to compel the tenants and occupants of the Premises to attorn to the Temporary Receiver . . .”

The order further provides “that the owner of the Premises and any other person or entity in possession thereof turn over to the Temporary Receiver all rents collected from the Premises from and after the date of this Order.”

The Receiver now moves for an order holding defendant Klar in contempt for his failure to comply with the July 17, 2019 order and appointing Adam Kalish, Esq. as landlord-tenant counsel for the Receiver. The Receiver attested that on February 5, 2021, he served a Notice to Attorn on defendants and, upon information and belief, Klar “has instructed tenants not to attorn to me, has collected the rents directly from certain tenants, and has failed to turn over any rents to me, as Receiver, as required by the Receiver Order.”

The Receiver further attests that “[i]n order to preserve the income, condition and viability of the Premises, as is my duty to the Court, I respectfully submit that it is essential that I

be permitted to retain and employ a landlord-tenant counsel to assist me with the issues at the Premises.”

The Receiver also submits an affidavit from Barton Schwartz (Schwartz), the managing agent for the Receiver, who attested that “[s]ome of the tenants at the Hart Street Property have informed me that Klar has instructed them not to pay rent to me or the Receiver and they have paid rent directly to Klar” and “[i]nitially, Klar told the tenants that this receivership is illegitimate and then he falsely told the tenants that this action has been resolved.” Schwartz further attests that “I believe that all units of the Pulaski Street Property are occupied by tenants . . .” and “[n]one of the tenants at the Pulaski Street Property have paid rent to me or the Receiver.”

Defendant Klar, in opposition, submits an affidavit attesting that he is the “sole member” of the corporate defendant borrowers, Quiney Bedford I LLC and 55 Pulaski Realty LLC. Klar asserts that “I’m submitting this affidavit in opposition to Receiver’s Motion to hold me in Contempt for non-compliance with the court Order *that I had no knowledge about*” (emphasis added). Klar attests that “[i]f I knew about the existence of the Order at issue I would cooperate with the Receiver and provide all that was required from me to be in compliance with the court order.” Klar claims that he “was never served with the Motion to appoint receiver” and “I had no knowledge that a receiver was appointed until my attorney notified me about the current motion.” Klar also attests that he suffered multiple hardships due to the COVID-19 pandemic, including not having access to his office until the end of May 2021 and the loss of his father.

The Receiver, in reply, submits an affidavit asserting that “Klar clearly had notice of the Motion [to appoint a Receiver] since his attorneys called me to request an adjournment of the Motion and submitted the Opposition to the Motion.” The Receiver also notes that “Klar does not deny that he was previously improperly collecting rents and continues to improperly collect rents due to me as Receiver.” The Receiver argues that “Klar’s alleged ignorance regarding this action and the Receiver Order are insufficient to justify his continued noncompliance with the Receiver Order.” The Receiver also notes that “Klar fails to provide any valid basis to deny the portion of the Motion seeking to employ a landlord-tenant counsel to assist me with the issues at the Premises.”

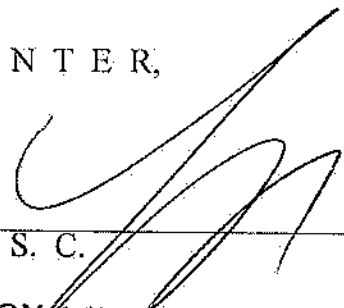
Under the circumstances presented here, where Klar attests that he had no knowledge of the appointment of the Receiver, claims that he had no access to his office during the COVID-19 pandemic and indicates his willingness to fully cooperate with the Receiver going forward, a contempt order is not warranted. However, that branch of the Receiver’s motion seeking a contempt order against Klar is denied without prejudice to renewal if Klar fails to comply with the July 17, 2019 order from this date forward. That branch of the Receiver’s motion seeking authority to appoint Adam Kalish, Esq. as landlord-tenant counsel for the Receiver is granted without opposition. Accordingly, it is

ORDERED that the Receiver’s motion (mot. seq. four) is only granted to the extent that: (1) Klar is hereby directed to turn over any and all rents collected by him since the entry of the July 17, 2019 Receiver Order; (2) Klar is hereby directed to cease any and all interference with the Receiver’s attempts to collect rents at the Premises or sanctions will

be imposed for contempt; and (3) Adam Kalish, Esq. is hereby appointed as landlord-tenant counsel for the Receiver; the motion is otherwise denied with leave to renew upon Klar's continued failure to comply with the July 17, 2019 order and this decision and order.

This constitutes the decision and order of the court.

E N T E R,



J. S. C.

HON. LAWRENCE KNIPEL
ADMINISTRATIVE JUDGE