

Brick Moon Capital LLC v 100 Orchard St., LLC

2022 NY Slip Op 30707(U)

March 1, 2022

Supreme Court, New York County

Docket Number: Index No. 850010/2022

Judge: Francis A. Kahn III

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This opinion is uncorrected and not selected for official publication.

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At IAS Part 32 of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse located at ~~60~~ Centre Street, New York, New York, on the 1 day of MARCH, 2022.

PRESENT:
HON. FRANCIS A. KAHN III
HON. _____ **J.S.G.C.**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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BRICK MOON CAPITAL LLC,

Plaintiff,

Index No.: 850010/2022

-against-

ORDER TO APPOINT RECEIVER

100 ORCHARD STREET, LLC a/k/a 100 ORCHARD ST., LLC, RANDY SETTENBRINO a/k/a RANDY S. SETTENBRINO, BOARD OF MANAGERS OF 100 ORCHARD STREET CONDOMINIUM, BIL-MAN ASSET MANAGEMENT LLC, NOUVEAU ELEVATOR INDUSTRIES, INC., ELI IDI a/k/a ELIYAHU IDI, BLUE MOON HOTEL NYC, INC., CRIMINAL COURT OF THE CITY OF NEW YORK, CITY OF NEW YORK ENVIRONMENTAL CONTROL BOARD and JOHN DOE #”1” through JOHN DOE #”20”, said persons or parties being fictitious and unknown to plaintiff, the persons or parties intended to be the tenants, occupants, persons or corporations, if any, having or claiming an interest in or lien upon the premises described in the complaint,

Foreclosure of:
Commercial Condominium
Units 1 and 2 located at
100 Orchard Street
New York, New York
Block: 409
Lots: 1101 1102

Defendants.

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~~The Plaintiff having commenced this action to foreclose a mortgage encumbering real property located in the County and State of New York, and~~ Upon reading and filing the Summons *filed January 18, 2022* and Verified Complaint, the Affidavit of Eric C. Roth sworn to January 28, 2022, the Affirmation of James E. Cantanno, Esq., dated January 28, 2022, and the exhibits annexed with proof of commencement of this action and service of process upon the borrower;

NOW, upon the application of Teitelbaum Gallagher, attorneys for the Plaintiff, it is:

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J.S.C.

ORDERED, that ROBERTA ASHKUN, ESQ. of 400 EAST 70TH ST, APT 2105,

New York, New York (Tel. No.: 917-275-1688), (Email: RA@ASHKUNLAW.COM), be and is hereby appointed, with the usual powers and directions Temporary Receiver for the benefit of the Plaintiff of all rents and profits now due and unpaid, or to become due during the pendency of this action, and issuing out of the mortgaged premises mentioned in the complaint, more particularly and commonly described in Schedule "A" annexed hereto and known as and by Commercial Condominium Units 1 and 2 in the 100 Orchard Street Condominium located at 100 Orchard Street, New York, New York (New York County, Block 409, Lot 1101 and Lot 1102) (the "Premises" or the "Mortgaged Premises"); and it is further

ORDERED, that the Receiver is authorized to forthwith take charge and enter into possession of the Premises; and it is further

ORDERED, that before entering upon his/her duties, said Temporary Receiver shall be sworn to fairly and faithfully discharge the duties committed to him/her and shall execute to the People of the State of New York and file with the Clerk of this Court an undertaking in the penal sum of \$344,393.46, conditioned for the faithful discharge of his/her duties as such Temporary Receiver; and it is further

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ORDERED, that said Receiver be and is hereby directed to demand, collect and receive from the occupants, tenants and licensees in possession of the Premises, or other persons liable therefore, inclusive of the mortgagor, all the rents and license fees thereof now due and unpaid or hereafter to become fixed or due, and that said Temporary Receiver be and hereby is authorized to institute and carry on all legal proceedings necessary for the protection of the Premises or to recover possession of the whole, or any part thereof, and/or apply to the Court to fix reasonable

rental value and license fee value and to compel the tenants and occupant(s) to attorn to the Receiver; and it is further

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

ORDERED, that pursuant to the provisions of the General Obligations 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 have qualified; and thereupon the said Temporary Receiver shall hold such security subject to such disposition thereof as shall be provided in an Order of this 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 space or facilities in the Premises; and it is further

ORDERED, that notwithstanding anything to the contrary contained in this order, the receiver shall not, without the further prior order of this Court, upon proper notice to plaintiff, make improvements or substantial repairs to the property at a cost in excess of \$1,000.00; and it is

ORDERED, that said Temporary Receiver forthwith deposit all monies received by him/her at the time he/she receives same in his/her own name as Temporary Receiver in AN FDIC INSURED BANK IN NYC 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 countersigned by the surety on his/her undertaking; the receiver shall furnish the Plaintiff's attorneys with monthly statements of the

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receipts and expenditures of the Receivership, together with a photocopy of the monthly statements received from said depository; and it is further

ORDERED, that said Temporary Receiver is hereby authorized from time to time to rent or lease any part of said Premises for terms not exceeding ^{two} ~~one~~ year, or such longer terms as may be required by the City and State of New York; to keep said Premises insured against loss by damage or fire; to pay the taxes, assessments, water rates, sewer rents, vault rents, salaries of employees, supplies and other charges; to comply with all the lawful requirements of any municipal department or other authority of the municipality in which the mortgaged premises are situated; and to procure such fire, plate glass, 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 said Temporary Receiver and pay over to said 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 and from interfering in any manner with the property or its possession; and from transferring, removing or in any way disturbing any 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 Receiver is prohibited from incurring obligations in excess of the monies in his/her hands without further order of this Court or written consent of the Plaintiff's attorney; and it is further

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

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

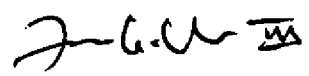
ORDERED, that the Receiver after paying the expenses of the management and care of the said Premises as above provided, retain the balance of the monies which may come into his/her hands until the sale of the said Premises under the judgment to be entered in this action and/or until further Order of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

ORDERED, that said Receiver, or any party hereto, may at any time, apply to this Court for further or other instructions or powers necessary to enable said Receiver to properly fulfill his/her duties; and it is further

ORDERED, that the appointee named herein shall comply with Section 35a of the Judiciary Law, Sections 6401-6404 of the CPLR, Section 1325 of the RPAPL and Rule 36 of the Chief Judge.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS ORDER TO THE CONTRARY, THE RECEIVER SHALL NOT APPOINT AN ATTORNEY, AGENT, APPRAISER, AUCTIONEER OR ACCOUNTANT WITHOUT PRIOR ORDER OF THIS COURT.

ENTER


HON. FRANCIS A. KAHN III
J.S.C.