

**Hotel 237, LLC v G.M. Canmar Residence Corp.**

2022 NY Slip Op 31506(U)

May 6, 2022

Supreme Court, New York County

Docket Number: Index No. 657772/2019

Judge: Debra James

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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. DEBRA JAMES PART 59

Justice

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HOTEL 237, LLC,

Plaintiff,

- v -

G.M. CANMAR RESIDENCE CORP.,

Defendant.

-----X

INDEX NO. 657772/2019

MOTION DATE 05/04/2022

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79

were read on this motion to/for PENDENTE LITE

ORDER

Upon the foregoing documents, it is

ORDERED that, to the extent that it seeks use and occupancy pendente lite, the motion of defendant is granted; and it is further

ORDERED that plaintiff Hotel 237, LLC shall make the following payments of use and occupancy to defendant G.M. Canmar Residence Corp.: a) commencing with the month of June 2022 and each month thereafter during the pendency of the above-captioned action, plaintiff Hotel 237, LLC shall pay use and occupancy as and when due at the base rent reserved in the Lease dated January 1, 2010, as amended on January 4, 2010; and b) plaintiff Hotel 237, LLC shall pay to defendant G.M. Canmar Residence Corp. use and

occupancy at the base rent reserved in the Lease dated January 1, 2010, as amended on January 4, 2010, from December 1, 2019 through May 31, 2022, which payments of past use and occupancy pursuant to this sub-paragraph (b) shall be made within sixty (60) days after service of a copy of this order with notice of entry; and it is further,

ORDERED that with respect to the foregoing relief, this Order shall be severed, entered, and is effective, forthwith; and it is further

ORDERED that, plaintiff's cross motion, to the extent that it seeks a protective order and sanctions is denied; and it is further

ORDERED that defendant's motion, to the extent that it seeks to compel discovery, is resolved in accordance with accords reached by counselors for both parties at the virtual preliminary conference held in lieu of oral argument; and it is further

ORDERED that counsel shall submit a proposed preliminary discovery compliance conference order that sets forth such accords, which proposed preliminary order shall be transmitted to [SFC-Part59@nycourts.gov](mailto:SFC-Part59@nycourts.gov) and to [SFC-Part59-Clerk@nycourts.gov](mailto:SFC-Part59-Clerk@nycourts.gov) and posted on NYSCEF no later than May 18, 2022; and it is further

ORDERED that such "submit order" shall include a directive that counsel transmit to SFC-Part59@nycourts.gov and to SFC-Part59-Clerk@nycourts.gov and post on NYSCEF a proposed discovery compliance conference order or competing proposed discovery compliance conference order(s) at least two days before August 18, 2022, 11 AM, on which date counsel shall appear via Microsoft Teams, unless such appearance be waived by the court.

#### DECISION

To the extent that defendant seeks to compel plaintiff to appear for depositions, a preliminary conference must be (and has now been) held. See 22 NYCRR § 202.8(f) and Rules of the Justices of New York County Supreme Court, Civil Branch, III.5(a). Moreover, as set forth in the Rules of the undersigned, "Motions to compel compliance with discovery order or discovery demands are generally disfavored by this court." In that regard, as to plaintiff's motion for a protective order and sanctions, neither is warranted.

As for defendant's motion seeking an order directing plaintiff to pay past and ongoing use and occupancy pendente lite, the court has further deliberated and determined that the application of the preliminary injunction standard to such request would be improper. This court finds that an order

directing plaintiff to pay past and ongoing use and occupancy pendente lite to defendant is the proper exercise of this court's broad discretion in such regard. See 43<sup>rd</sup> Street Deli, Inc. v Paramount Leasehold, L.P., 107 AD3d 501 (1<sup>st</sup> Dept 2013).

*Debra A. James*

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5/6/2022

DATE

DEBRA JAMES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE