

New Deal Realty LLC v 684 Owners Corp.
2022 NY Slip Op 32022(U)
June 27, 2022
Supreme Court, New York County
Docket Number: Index No. 654899/2021
Judge: Arlene Bluth
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

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

<p>PRESENT: <u>HON. ARLENE BLUTH</u></p> <p style="text-align: center;"><i>Justice</i></p> <p>-----X</p> <p>NEW DEAL REALTY LLC</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">- v -</p> <p>684 OWNERS CORP.,</p> <p style="text-align: center;">Defendant.</p> <p>-----X</p>	<p>PART 14</p> <p>INDEX NO. <u>654899/2021</u></p> <p>MOTION DATE <u>06/23/2022</u></p> <p>MOTION SEQ. NO. <u>002</u></p> <p style="text-align: center;">DECISION + ORDER ON MOTION</p>
--	--

The following e-filed documents, listed by NYSCEF document number (Motion 002) 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64
were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

The motion, brought by order to show cause, to compel defendant to accept payment of past due rent is granted as described below.

Background

Plaintiff is the commercial tenant at a property owned by defendant. Plaintiff subleases the subject space to two commercial retail businesses. It admits it stopped paying the rent and received a notice of default dated July 21, 2021 in which defendant claimed plaintiff owed over \$300,000. It commenced this action seeking a Yellowstone injunction.

Previously, this Court denied plaintiff's motion for a Yellowstone injunction. The First Department reversed this Court's decision and found that plaintiff was not required to prove its ability to cure (here, to pay the rent owed) (*New Deal Realty LLC v 684 Owners Corp.*, 204 AD3d 447, 164 NYS3d 432 (Mem) [1st Dept 2022]). Now, plaintiff moves to compel defendant

to accept the money plaintiff owes as a result of the July 21, 2021 notice. It claims that counsel for defendant refused to respond to requests for where plaintiff should send the money.

In opposition, defendant claims that it has no obligation to accept any funds because the cure period ended on October 13, 2021. It insists that because the cure period lapsed and this Court denied the initial motion for a Yellowstone injunction, the lease was effectively cancelled as of October 28, 2021. It argues that plaintiff has failed to pay rent to defendant since early 2020.

In reply, plaintiff emphasizes that the First Department expressly rejected all of defendant's arguments made before it and argues that defendant previously argued that a Yellowstone injunction cannot revive the lease because the cure period had expired.

Although the Court permitted plaintiff to file a reply and defendant to file a sur-reply, the Court did not consider the sur-reply because it was not filed by the deadline.

Discussion

The Court grants the motion. The First Department expressly found that "even if plaintiff is ultimately found to be in breach of the lease, Yellowstone relief allows it to cure the defect and retain its tenancy" (*id.* at 448). That means, of course, that plaintiff has the ability to cure the defect by paying the amount in the July 21, 2021 notice of default. Plaintiff contends it wants to pay that amount and simply wants the information for where it should send the money.

Defendant's position that the cure period lapsed is untenable. Under that view, the First Department's decision would be rendered academic and plaintiff would not have a chance to cure a default for which it obtained a Yellowstone injunction. In this Court's view, it is immaterial whether the cure period lapsed because plaintiff ultimately got a Yellowstone

injunction. In other words, the entire appeal would be pointless if plaintiff could not now seek to cure and retain its tenancy. And, as plaintiff points out, defendant's argument was apparently rejected by the First Department (*id.* ["We have considered the parties' other arguments and find them unavailing."]).

The Court denies the relief requested by plaintiff for legal fees in connection with this motion as its moving papers did not offer substantive arguments in support of this demand.

Accordingly, it is hereby


ORDERED that the motion by plaintiff is granted to the extent it sought to compel defendant, its agents, servants, attorneys or employees to accept plaintiff's payment of the past due rent as stated in the Notice of Default dated July 21, 2021; and it is further

ORDERED that defendant shall provide plaintiff with bank account information for where the money plaintiff seeks to transfer should be wired or deposited on or before July 6, 2022, and, if that information is not given, then plaintiff shall deposit the money into court by July 13, 2022 and shall provide defendant's attorneys information relating to the deposit (so defendant can start the process of withdrawing it) by July 14, 2022; and it is further

ORDERED that the branch of the motion by plaintiff for legal fees is denied.

Given that plaintiff seems to want to pay the amount due and defendant never uploaded an answer, it is unclear what remains of this matter. If after the payment the case becomes moot, the parties should inform the Court so the conference time can be given to another case and this case can be marked "disposed". Otherwise, the next conference is on October 18, 2022 at 11

a.m. The parties shall e-file an update about discovery by October 11, 2022; the failure to do so will result in an adjournment of the conference.

<u>6/27/2022</u> DATE					 ARLENE BLUTH, J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					OTHER
					REFERENCE