

Creif Lender LLC v Lucky of 195 Madison St. Roofing & Contr. Inc.
2023 NY Slip Op 30485(U)
February 15, 2023
Supreme Court, New York County
Docket Number: Index No. 850028/2018
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

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CREIF LENDER LLC, AS ASSIGNEE OF CREIF 109, LLC,

Plaintiff,

- v -

LUCKY OF 195 MADISON STREET ROOFING &
CONTRACTING INC., ALLAN JAMES STEVE, SR
TAING, BANCO POPULAR NORTH AMERICA, THE
PEOPLE OF THE STATE OF NEW YORK, NEW YORK
STATE DEPARTMENT OF TAXATION AND FINANCE,
JOHN DOE,

Defendant.

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INDEX NO. 850028/2018

MOTION DATE 02/14/2023

MOTION SEQ. NO. 008

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 008) 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240

were read on this motion to/for APPROVE/SETTLE ACCOUNTING.

The receiver’s motion to permit her to spend sums in excess of \$5,000 is granted.

Background

In this commercial foreclosure matter, the receiver moves for an order permitting her to expend more than \$5,000 (the order appointing her requires her to make a motion under these circumstances). Here, she seeks to spend much more.

The receiver claims she needs authority to spend substantial sums to obtain a revised certificate of occupancy for the property located at 164 Orchard Street and to appoint an electrical contractor to do related work at this same property. The receiver explains that there is a stop work order on this property and observes that the certificate of occupancy (which dates

from July 3, 1962) does not permit residential occupancy on the second through sixth floors. Instead, these floors were to remain vacant (NYSCEF Doc. No. 95 [certificate of occupancy]).

The receiver points out that the building was subdivided and now contains numerous residential apartments on these floors. She claims that in order to address the stop work order on the property and the certificate of occupancy issues, she previously hired an architect to create plans to address these problems. The architect drew up plans to modify the units so that they meet the applicable regulations, including those related to light and air as well as minimum room dimensions. She explains that work will be required at another property at issue (189 Orchard Street) but she intends to seek funds for that work at some point in the future.

The receiver also points out that the defendant Lucky refused to permit the work to be done and so she is unable to collect rent from two apartments (because there is no valid certificate of occupancy).

In opposition, defendant Lucky claims that this motion is only about recovering rent from two tenants who have refused to pay. It argues that the lack of a certificate of occupancy has not caused any problems over the years and no violations have ever been issued in connection with this issue. Lucky argues there is no reason to permit a massive and substantial renovation project under these circumstances. It questions the receiver's motivations and insists that she wants to maximize her commission.

Discussion

The Court grants the motion. The fact is that there is no dispute that the building at issue in this motion lacks a valid certificate of occupancy for its current use. A receiver is an individual appointed by the Court to act on behalf of the Court. In this situation, it is her job to supervise the property and her duty to operate the property legally. Accordingly, the Court

cannot conceive of a situation in which a receiver should (as defendant Lucky appears to suggest) actively ignore the fact that a building does not comply with the law. That the property owner chose not to comply with the law for decades and got away with it is beside the point. The property is no longer “under the radar” and must comply with all legal requirements.

As the receiver correctly pointed out, the complications that can arise from not having the proper certificate of occupancy are endless. It can potentially form the basis of a tenant’s claim that he or she does not have to pay rent and it certainly can raise issues about the receiver’s ethical responsibilities. Instead of recognizing that the receiver is finally doing something that Lucky should have done years and years ago, Lucky makes bizarre and unsupported attacks about the receiver’s motivation. Speculative arguments cannot form a basis to deny the instant motion.

Suggestions that the receiver should enter into discussions about less expensive options would only cause more delay. While defendant clearly had no interest in making sure its properties comply with applicable regulations, some of which help ensure the safety of tenants, the receiver does not have that luxury. She must manage the properties so that they comply with all laws. The Court recognizes that the instant project may be costly; but this is work that Lucky should have already done. Instead, Lucky collected rent for decades with an invalid certificate of occupancy and argues that the Court-appointed receiver should do the same. This the Court cannot allow the building to operate in defiance of applicable laws and regulations; the receiver must follow the law.

Accordingly, it is hereby

ORDERED that the receiver’s motion is granted in its entirety and she may expend more than \$5,000 to make improvements and substantial repairs in order to obtain a revised certificate

of occupancy to allow residential use for the second through sixth floors at 164 Orchard Street and that she may appoint York Electrical Contractors, Inc. to perform required alterations to obtain the revised certificate of occupancy.

2/15/2023

DATE



ARLENE P. BLUTH, 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