

Pare Rests. LLC v Nassau Brewing Co. Master Tenant LLC
2023 NY Slip Op 31530(U)
April 20, 2023
Supreme Court, New York County
Docket Number: Index No. 652791/2021
Judge: Laurence L. Love
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: <u>HON. LAURENCE L. LOVE</u> <i>Justice</i> -----X PARE RESTAURANTS LLC, ZACHARY GOLDSTEIN, Plaintiff, - v - NASSAU BREWING COMPANY MASTER TENANT LLC, BGO MORTGAGE LENDING LLC, Defendant. -----X	PART 63M INDEX NO. <u>652791/2021</u> MOTION DATE <u>05/05/2022, 05/24/2022</u> MOTION SEQ. NO. <u>003 004</u> DECISION + ORDER ON MOTION
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The following e-filed documents, listed by NYSCEF document number (Motion 003) 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107

were read on this motion to/for POST JUDGMENT OTHER.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 108, 109, 110, 111, 112

were read on this motion to/for SEAL.

Upon the foregoing documents, plaintiff's motion seeking an Order holding defendant Nassau Brewing Company Master Tenant LLC ("Landlord") in contempt and directing it to produce documents responsive to a CPLR Article 52 post-judgment subpoena, Landlord's cross-motion for a protective order limiting the scope of the subpoena duces tecum and Landlord's motion seeking an Order sealing certain documents e-filed as NYSCEF Document No. 106, are decided as follows:

In an Order dated September 9, 2021, this Court granted plaintiff's motion seeking a default judgment against Landlord upon a finding that "On or about July 22, 2019, Landlord and Tenant entered into the Lease, pursuant to which Landlord would lease to Tenant approximately 4,344 rentable square feet on the ground floor plus approximately 100 square feet of storage closet space in the building located at 620 Franklin Avenue (a/k/a 945 Bergen Street), Brooklyn, NY 11216 (the "Premises") for an original term of ten (10) years. Said lease was personally guaranteed by

Zachary Goldstein. Upon execution of the lease, Tenant paid \$21,000.00 for the first month's rent and \$168,000.00 for the security deposit. Pursuant to the lease, the Premises were to be delivered to the Tenant upon completion of certain work consisting of (1) completing a hallway within the Premises; (2) installing one exhaust duct to be used for the exhaust of gas fired cooking; (3) all utilities stubbed to the Premises; and (4) installing a new HVAC unit. Landlord failed to complete said work in the eighteen months following said lease. By a letter dated January 14, 2021, Tenant terminated the Lease and demanded the return of all sums paid. Said sums have not been paid by Landlord." Plaintiff was granted a judgment in the amount of \$189,000.00 against defendant Nassau Brewing Company Master Tenant, LLC and a declaration that the subject lease was terminated. On September 27, 2021, the Court entered a Judgment, in Judgment Creditors' favor and against Judgment Debtor, in the amount of \$201,585.30. Thereafter, this Court denied a motion seeking to vacate said default on December 16, 2021.

On December 23, 2021, plaintiff served a Subpoena upon Landlord seeking documents relevant to enforcement of the judgment, including Judgment Debtor's assets, monies owed to Judgment Debtor, bank accounts, leasing of real estate, and ownership of other entities. In a response to said demand, Landlord produced a Balance Sheet as of December 31, 2019, Profit and Loss statement for the year 2020, Balance Sheet as of December 31, 2020, Profit and Loss Statement for the first quarter of 2021, Balance sheet as of March 31, 2021, and a Memorandum of Amended and Restated Master Lease Agreement between Landlord, and its master landlord, "Nassau Brewing Company Landlord, LLC ("NBC Landlord"). Plaintiff asserts that as of the filing of this motion, no further information has been received.

As detailed in Landlord's opposition and cross-motion, subsequent to the filing of the instant motion, on April 26, 2022, allegedly consisting of an additional 43 pages of documents,

identifying Fabian Friedland, the managing member of Crow Master Holdings, LLC, as being in possession of Nassau Brewing's bank statements, identifying the source of the \$2.28 million pre-paid rent payment to NBC Landlord and the source and date for the \$2.8 million dollar investment in NBC Landlord, and providing the address and legal description of the building reflected in its Balance Sheets and valued at \$907,206. However, said documents were not submitted for Court review

Landlord further seeks a protective order pursuant to CPLR § 5240 limiting the production to the responses provided. Pursuant to CPLR § 5240, "The court may at any time, on its own initiative or the motion of any interested person, and upon such notice as it may require, make an order denying, limiting, conditioning, regulating, extending or modifying the use of any enforcement procedure." As Landlord has not submitted any documents for Court review, Landlord has failed to establish a basis for a protective order and has failed to establish that it properly responded to plaintiff's subpoena.

Landlord also moves by Order to Show Cause, sealing NYSCEF Document No. 106, which consists of portions of the Nassau Brewing Company Master Tenant, LLC Second Amended and Restated operating Agreement, which was provided to plaintiff pursuant to a confidentiality agreement.

Pursuant to Section 216.1 of the Uniform Rules for Trial Court, the Court may seal a filing "upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interest of the public as well as of the parties." (22 NYCRR § 216.1(a)). The parties' stipulation to sealing documents, or their designation of documents exchanged during discovery as "confidential," does not, in of itself, constitute a compelling reason to justify sealing. *Maxim, Inc. v. Feifer*, 145 A.D.3d 516, 517 (1st

Dep't 2016). Movant fails to detail any reason for sealing of said document. As such, the motion must be denied.

ORDERED that defendant's cross-motion is DENIED in its entirety; and it is further

ORDERED that defendant's motion seeking to seal NYSCEF Document No. 106 is DENIED and the temporary restraining order sealing same is vacated; and it is further

ORDERED that plaintiff's motion is GRANTED to the following extent:

Defendant shall produce the following documents within sixty (60) days of service of a copy of this Order, together with Notice of Entry:

1. All of defendant's bank statements for the period of September 2021 through the present.
2. A statement of all accounts receivable and other monies owned by defendant.
3. A statement of defendant's interest in any mortgage, mechanics lien or other lien on real property.
4. A statement of all sold, conveyed, assigned, or otherwise transferred property, real or personal, from September 2021 to present belonging to defendant.

<u>4/20/2023</u> DATE	 LAURENCE L. LOVE, J.S.C.	
CHECK ONE:	☒ CASE DISPOSED	☐ NON-FINAL DISPOSITION
APPLICATION:	☐ GRANTED ☐ DENIED	☒ GRANTED IN PART ☐ OTHER
CHECK IF APPROPRIATE:	☐ SETTLE ORDER	☐ SUBMIT ORDER
	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT ☐ REFERENCE