

**One Plaza LLC v Board of Mgrs. of Park Circle  
Condominium**

2023 NY Slip Op 32532(U)

July 11, 2023

Supreme Court, Kings County

Docket Number: Index No. 500968/2020

Judge: Devin P. Cohen

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**Supreme Court of the State of New York  
County of Kings**

**Index Number** 500968/2020  
Seqs. 003 and 004

Part 91

**DECISION/ORDER**

ONE PLAZA LLC,

Recitation, as required by CPLR §2219 (a), of the paper considered in the review of this Motion

Plaintiff,

**Papers Numbered**

against

Notice of Motion and Affidavits Annexed . . . .	<u>1-2</u>
Order to Show Cause and Affidavits Annexed . . . .	<u>      </u>
Answering Affidavits . . . . .	<u>2-3</u>
Replying Affidavits . . . . .	<u>5</u>
Exhibits . . . . .	<u>      </u>
Other . . . . .	<u>      </u>

BOARD OF MANAGERS OF PARK CIRCLE CONDOMINIUM,  
Defendants.

Upon the foregoing papers, plaintiff’s motion to hold the defendant in contempt (Seq. 003) and defendant’s motion to vacate the preliminary injunction issued on January 12, 2022 (Seq. 004) are decided as follows:

**Procedural History and Factual Background**

Plaintiff brought the instant action by Summons and Verified Complaint on January 14, 2020. Defendant initiated a separate foreclosure proceeding, bearing Index Number 527946/2021, predicated on unpaid common charges, in November 2021. The plaintiff defaulted in that foreclosure proceeding, and Justice Robin K. Shears appointed a temporary receiver, Cassandra Hyppolite, for the property on May 24, 2022.

In the instant action, this court issued a preliminary injunction on January 12, 2022, which enjoined the defendant from ingress and egress into plaintiff’s parking garage, located at 346 Coney Island Avenue, Brooklyn, NY. On September 20, 2022, the temporary receiver appointed by Justice Shears entered into a one-year lease agreement with the defendant. That lease permits the defendant to access the common areas through the garage in exchange for a fee

of \$950 per month. As of January 20, 2023, plaintiff had paid defendant all outstanding fees forming the basis of the foreclosure action, and the defendant provided the plaintiff with a limited release. The temporary receiver was then discharged on February 2, 2023.

### Analysis

CPLR 6401 states that the powers of a temporary receiver are limited to those enumerated in the appointing order (*Daro Indus., Inc. v RAS Enterprises, Inc.*, 44 NY2d 969, 970 [1978]). Here, Justice Shears' order empowers the temporary receiver to, *inter alia*, "rent or lease any part of the premises for terms not exceeding one (1) year or such longer terms as may be required by the City and State of New York" (Shears, J., appointing order).

Each of the motions before the court turns on the question of whether the lease entered into by the temporary receiver is valid. The plaintiff argues that the temporary receiver's authority to let the premises to the defendants ended on January 20, 2023, when the receiver was discharged. Plaintiff extends this reasoning to contend that the lease somehow became void on that same date, and therefore, that defendant's rights of ingress and egress have been terminated.

Currently before the court is a valid lease, which was negotiated for by parties with authority, and which represents agreement upon all essential terms (*see Mur-Mil Caterers, Inc. v Werner*, 166 AD2d 565, 566 [2d Dept 1990]). The lease is limited in time and in its scope, partially limiting plaintiff's control over the garage for a fixed period in exchange for monthly payments. The lease agreement also served to resolve an on-going dispute. There is no precedent to support the proposition that a contract entered into by an agent with specific authority is voidable solely because the contracting agent is later relieved or discharged. Here, "the acts of the receiver, an officer of the court acting under an order of the court, should not be nullified except for grave and sufficient reason" (*Judah v Cold Stream Golf Club Corporation*,

240 AD 893, 893 [2d Dept 1933]). Plaintiff must identify some other grounds for voiding the contract and fails to do so.

Plaintiff further argues that the limited release that the defendant tendered to the plaintiff in the foreclosure action releases the plaintiff from any lease that may exist between it and the defendant. The limited release states in relevant part that “[the Board] . . . in consideration of the sum of [\$242,324.86] . . . releases and discharges One Plaza LLC . . . from all . . . covenants, contracts, controversies, agreements, promises . . . solely in connection with the foreclosure action [Index No. 527946/2021]. This limited release does not apply, release, or discharge any of the claims and/or rights of action that have been or ever may be asserted in the action . . . *One Plaza LLC v Board of Managers Park Circle Condominium*, Index No. 500968/2020.” This release is limited by its terms to only those contracts connected with the foreclosure action. The lease, though entered into by the temporary receiver appointed in the foreclosure action, does not concern the foreclosure action but rather deals with issues of ingress and egress which are the subject of the instant litigation. The release, therefore, does not serve to invalidate the lease.

Considering the validity of the lease, plaintiff’s motion for contempt is denied—the defendant is a bona fide lessee of the property and is permitted to use the property in accordance with the terms of the lease. The defendant’s motion, pursuant to CPLR 6314, to vacate the preliminary injunction issued on January 12, 2022, is granted. That vacatur is without prejudice to any future applications for relief necessary to protect the equitable rights of any party.

### **Conclusion**

Plaintiff’s motion (Seq. 003) is denied.

Defendant’s motion (Seq. 004) is granted.

This constitutes the decision and order of the court.

July 11, 2023  
**DATE**



**DEVIN P. COHEN**  
Justice of the Supreme Court

[This decision resolves motion sequences 003 and 004 in the action captioned *One Plaza LLC v Board of Managers of Park Circle Condominium*, Index Number 500968/2020.]