

**YS 541 Lexington Holdings LLC v DCH Lex Propco  
Sub LP**

2023 NY Slip Op 33529(U)

October 5, 2023

Supreme Court, New York County

Docket Number: Index No. 653461/2022

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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YS 541 LEXINGTON HOLDINGS LLC,

Plaintiff,

- v -

DCH LEX PROPCO SUB LP, DCH LEX OPCO SUB LP,  
DUNE REAL ESTATE FUND IV LP, AYNSLEY CAPITAL,  
L.P., STATE OF NEW YORK DEPARTMENT OF  
TAXATION AND FINANCE, NEW YORK CITY  
DEPARTMENT OF FINANCE, NEW YORK CITY  
ENVIRONMENTAL CONTROL BOARD, THE NEW YORK  
CITY WATER BOARD, JOHN DOES 1-100

Defendant.

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INDEX NO. 653461/2022

MOTION DATE N/A, N/A

MOTION SEQ. NO. 001 002

**DECISION + ORDER ON  
MOTION**

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64

were read on this motion to/for APPOINT - FIDUCIARY.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 65, 66, 68, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80

were read on this motion to/for APPOINT - FIDUCIARY.

The Plaintiff Lender’s motion (Mtn Seq. No. 2) is granted.

Pursuant to NY Real Property Law, § 254(10), a mortgagee is entitled to the appointment of a receiver of rents and profits of the premises covered by the mortgage:

Mortgagee entitled to appointment of receiver. A covenant “that the holder of this mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver,” must be construed as meaning that the mortgagee, his heirs, successors or assigns, in any action to foreclose the mortgage, shall be entitled, without notice and without regard to adequacy of any security of the debt, to the appointment of a receiver of the rents and profits of the premises covered by the mortgage; and the rents and profits in the event of any default or defaults in paying the principal, interest, taxes, water rents, assessments or premiums of

insurance, are assigned to the holder of the mortgage as further security for the payment of the indebtedness.

It is undisputed that the hotel at issue is closed, currently is not receiving any rent, has not repaid its mortgage when due, has not paid its real estate taxes, and had a building façade violation.

The Plaintiff Lender seeks the appointment of a receiver so that the receiver can negotiate a temporary lease with the City of New York for temporary housing. In support of its application, the Plaintiff Lender adduces an affidavit of Tomer Posner, who is the Director of Development of Yellow Stone Real Estate Investments LLC, an affiliate of the Plaintiff Lender which holds three loans made to the Defendants. In Mr. Posner's affidavit, Mr. Posner indicates that many hotels that closed during the COVID-19 pandemic have now reopened as conventional transient hotels or as temporary shelters to house the waves of asylum seekers arriving in New York which has generated significant cash flow for the hotels' owners.

In their opposition papers, the Defendants argue that the appointment of a receiver to negotiate a new lease for temporary housing (which they argue is a different use) is simply not authorized by the statute and would otherwise frustrate their efforts to reopen the hotel as a high-end luxury hotel. As relevant, in support of their position, they adduce an affidavit of Andrew Zabler, the founder and CEO of the Sydell Group, which Mr. Zabler indicates is an award-winning hotel development, management and branding company. According to Mr. Zabler, the Defendants have engaged the Sydell Group and Roman and Williams, a design firm with significant hospitality experience and a track record of creating one-of-a-kind food and beverage and hospitality experiences (including the NoMad Lond, four Freehand hotels, three Ace Hotels and

the Standard Hotel Meatpacking District) to reposition and renovate the hotel. According to Mr.

Zobler:

Sydell believes that operating the Hotel as temporary migrant housing poses significant reputational risk of the Hotel's reputation as a high-end luxury hotel prior to its closure. The operating of the Hotel for such use will substantially tarnish the Hotel's perception and ultimate repositioning, far outweighing any potential benefits. Importantly, I am not aware of any luxury hotel that is currently providing temporary housing on behalf of New York City (NYSCEF Doc. No. 72 ¶ 10).

In addition, the Defendants adduces certain distribution and marketing materials for the Hotel's repositioning and reopening created by Sydell and the affidavit of Thomas Kinslow, a Managing Director of Dune Real Estate Partners.

According to Mr. Kinslow, Dune Partners is an SEC-registered investment advisor and the investment manager to Dune Real Estate Fund IV LP. In his affidavit, Mr. Kinslow explains that Dune is a beneficial owner of the Defendants and has extensive experience with luxury hotels including the Mark Hotel NYC, the Standard Hotel Meatpacking District, Ace Hotel NYC, and the Four Seasons Resort Orland at Walt Disney World. He further explains that Dune explored a number of different options for the property and concluded that reopening the property as a luxury-hotel was its best potential use noting, among other things, the extensive renovation conducted at the Waldorf Astoria Hotel located directly across the street from the hotel at issue in this case. In his opinion, based on this hotel's proximity to the Waldorf, he believes that the redevelopment of the Waldorf presents significant opportunities. Mr. Kinslow also indicates that (i) Dune has engaged Hodges Ward Elliot, a real estate capital markets advisor to advise on raising financing and (ii) since the Hotel closing \$39,036,456 has been paid in new capital which includes \$25.3 million for severance and closure costs and \$13.7 million to pay costs and expenses necessary to support the property after the Plaintiff Lender declined to fund protective

advances. With respect to the façade, Mr. Kinslow indicates that (i) it has been an issue since January, 2022 and that the Plaintiff Lender has chosen not take any action to remedy the issue and (ii) the Defendants are in the process of repairing the façade and have spent \$1.3 million of the estimated \$2.2 million required to complete the repairs. The Defendants also adduce an agreement with the Motel Trades Council, AFL-CIO for the potential reopening of the property as a hotel in the future (NYSCEF Doc. No. 76).

All that being said, the Defendants are simply not correct that the statute does not authorize the appointment of a receiver to attempt to negotiate appropriate rent for the property. Nor does the statute provide the Defendants a basis for a blanket objection to the appointment of a receiver of rents based on a not yet negotiated or proposed lease. When, as and if any such lease is negotiated, the receiver shall proffer such proposed lease to this Court seeking authority to enter into any such proposed lease. Both the Plaintiff Lender and the Defendants may adduce expert affidavits as to such proposed lease and the Court shall consider such expert opinions at that time.

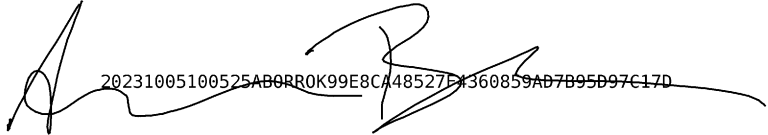
Accordingly, each party shall submit a proposed receiver to this Court for this Court's consideration no later than October 13, 2023 by email to the Part 53 email address ([sfc-part53@nycourts.gov](mailto:sfc-part53@nycourts.gov)) and by uploading the curriculum vitae of such proposed receiver to NYSCEF.<sup>1</sup>

For the avoidance of doubt, the plaintiff's motion (Mtn. Seq. No. 1) is granted solely to the extent set forth herein.

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<sup>1</sup> The Court notes that the Plaintiff Lender has proposed John D. Bailey.  
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Motion No. 001 002

It is hereby ORDERED that the motions are granted.



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10/5/2023

DATE

ANDREW BORROK, 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