DCH LEX Propco GP LLC v YS 541 Lexington Holdings LLC
2023 NY Slip Op 34296(U)
December 4, 2023
Supreme Court, New York County
Docket Number: Index No. 654836/2023
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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DCH LEX PROPCO GP LLC,DCH LEX OPCO GP LLC,DCH LEX PROPCO LP, DCH LEX OPCO LP, DREF IV LEX GP LLC,DREF IV LEX II LLC

Plaintiff,

- v -

YS 541 LEXINGTON HOLDINGS LLC,

Defendant.

INDEX NO. 654836/2023

MOTION DATE 10/02/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33

were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR.

Upon the foregoing documents, DCH LEX Propco GP LLC, DCH LEX Opco LLC, DCH Lex Propco LP, DCH Lex Opco LP, DREF IV Lex GP, LLC, and DREF IV LEX II LLC's (collectively, the **Plaintiff Movants**) motion for preliminary injunction must be granted (*Nobu Next Door, LLC v Fine Arts Hous., Inc.*, 4 NY3d 839, 840 [2005]).

By way of background, this is a case about the Maxwell Hotel (the **Hotel**) and three loans secured by the Hotel. To wit, in May 2018, Loan Capital Credit REIT LLC (**Loancore**) entered into the following loan agreements with DCH Lex Propco Sub LP (**Propco**) and DCH Lex Opco Sub LP (**Opco**, and collectively with Propco, the **Borrowers**): (i) a Building Loan Agreement (the **Building Loan**; NYSCEF Doc. No. 6), dated May 9, 2018, by and between the Borrowers and Loancore pursuant to which Loancore agreed to loan Propco $9,440,000 as lease and retail conversion advances, (ii) a Project Loan Agreement (the **Project Loan**; NYSCEF Doc. No. 7),

dated May 9, 2018 by and between the Borrowers and Loancore pursuant to which Loancore agreed to loan Propco for $20,560,000, as (x) debt service, (y) severance, and (z) lease termination payment advances and (iii) an Acquisition Loan Agreement (the **Acquisition Loan**, and together with the Building and Project Loan, the **Loan Agreements**; NYSCEF Doc. No. 7) dated May 9, 2018 by and between the Borrowers and Loancore pursuant to which Loancore agreed to loan Propco $140,000,000 as to (v) repay and discharge existing loans, (w) fund certain subaccounts, (x) pay certain accrued costs, (y) use as working capital and (z) pay transaction costs. The Loan Agreements are secured by the Hotel, which Propco owns and Opco is the operating tenant.

Litigation between the parties has been ongoing in two different forums – Delaware and New York. Pursuant to a bench decision, previously, the Delaware Court granted injunctive relief preventing the defendant from using the limited power of attorney in the loan documents to pledge the partnership interests of the borrower parties and effectively convert the mortgage debt to mezzanine level debt (obligating parties which never signed the loan agreement) in attempt to divest the owners of their equity and prevent them from exercising their equity rights of redemption by circumventing foreclosure (NYSCEF Doc. No. 27 at 4). Ultimately, the Delaware court stayed the Delaware action in favor of the New York action (because the loan documents provide for New York law and that lawsuits should be brought in New York) and provided for a 90 day lift of the injunction to give the movants time to obtain an injunction from this Court (NYSCEF Doc. No. 17 at 11).

The party seeking a preliminary injunction must (i) demonstrate a probability of success on the merits, (ii) danger of irreparable injury in the absence of an injunction, and (iii) a balance of equities in its favor (*Nobu Next Door, LLC*, 4 NY3d at 840).

As the Delaware court correctly observed, the critical issue is whether the limited power of attorney granted under Section 8.2.3(b) gives the power to execute documents on behalf of non-signatory plaintiffs. Significantly, Section 8.2.3(b) only includes the "Borrowers". Reading the Loan Agreements as a whole further undermines the defendant's position that the limited power of attorney granted under Section 8.2.3(b) would extend beyond the Borrowers because the loan documents impose very specific obligations on both the borrower GP and tenant GP entities – *i.e.*, the "SPE parties." Indeed, Section 9.2 contemplates that either the "constituent members" of the Borrowers (these are limited partnerships not LLCs) or "guarantors" may be needed to effectuate severance of the loans into a mezzanine structure. This too is strong evidence that the parties knew how to impose obligations on parties other than the Borrowers. Thus, the Delaware Court held that Section 8.2.3(b) does not appear to swallow upstream partner entities that did not execute the loan documents and the Plaintiff Movants therefore have demonstrated a likelihood of success on the merits. This Court agrees with the conclusion.

The Plaintiff Movants likewise demonstrate that they would suffer irreparable harm should a preliminary injunction not be in place. The Plaintiff Movants have established that, absent a preliminary injunction, the defendant plans to use a power of attorney to bind them to agreements which in effect, would allow the defendants to seize the limited partnership interests of the plaintiffs and convey them to a third party (and cut of the equity of redemption without

foreclosure). As noted in the Delaware court, it is unclear what legal redress plaintiffs would have once such actions are taken. As such, the Plaintiff Movants satisfy the irreparable harm requirement.

As to the balancing of the equities requirement, as discussed above, the Plaintiff Movants will suffer irreparable harm without an injunction. In contrast, it is unclear what damage will be done to the defendant should an injunction be in place while the case continues given the pending foreclosure action and the receiver which has been appointed (and the fact that a hearing on the summary judgment motion in the foreclosure action is scheduled for early January). As such, a balancing of equities favors granting the motion.

The court has considered the defendant's remaining arguments and finds them unavailing.

Accordingly, it is hereby ORDERED that the motion for a preliminary injunction to prohibit the defendants from pledging the equity of the Plaintiff Movants to secure a new mezzanine loan for its down benefit; and it is further

ORDERED that the undertaking is fixed in the sum of $2,500,000, which sum Plaintiff Movants shall post no later than December 22, 2023.

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12/04/2023
DATE

ANDREW BORROK, J.S.C.

CHECK ONE: [ ] CASE DISPOSED [X] NON-FINAL DISPOSITION
[X] GRANTED [ ] DENIED [ ] GRANTED IN PART [ ] OTHER

654836/2023 DCH LEX PROPCO GP LLC ET AL vs. YS 541 LEXINGTON HOLDINGS LLC
Motion No. 001