

**Brookes v 157th St. Assoc., LLC**

2024 NY Slip Op 32571(U)

July 25, 2024

Supreme Court, New York County

Docket Number: Index No. 160664/2020

Judge: Mary V. Rosado

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. MARY V. ROSADO PART **33M**

*Justice*

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COLIN BROOKES, CELIA HATTON, RAVENNA LIPCHIK,  
KAREN POLESHUCK, MAX JACOB, ISAAC HAYWARD

Plaintiffs,

INDEX NO. 160664/2020

MOTION DATE 11/06/2023

MOTION SEQ. NO. 003

- v -

157TH STREET ASSOCIATES, LLC,

Defendant.

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 148, 149

were read on this motion to/for REARGUMENT/RECONSIDERATION.

Upon the foregoing documents, and after oral argument which took place on March 26, 2024, Defendant 157th Street Associates, LLC’s (“Defendant”), motion for leave to reargue the Court’s Supplemental Decision and Order dated September 18, 2023 (NYSCEF Doc. 143) is granted. Upon reargument, Defendant’s motion for prospective use and occupancy is granted, and Plaintiffs Karen Poleshuck (“Poleshuck”), Michael Jacob (“Jacob”), and Isaac Hayward (“Hayward”) are ordered to post a bond to cover their potential liability for past use and occupancy.

**I. Background and Procedural History**

By Decision and Order filed May 2, 2023 (Mot. Seq. 002) the Court, *inter alia*, granted Defendant’s motion for use and occupancy (NYSCEF Doc. 140). Recognizing that the amount owed in use and occupancy may have increased since Defendant first moved for use and occupancy on July 26, 2022 and that certain tenants have vacated the premises, the Court directed Defendant to file an updated ledger regarding the use and occupancy owed by each Plaintiff as of the date of the Mot. Seq. 002 Decision and Order (*Id.*).

On May 9, 2023 Defendant filed an affidavit of Konstantinos Kapelonis (“Kapelonis”), Defendant’s Managing Member, which stated that Plaintiffs Poleshuck, Jacob and Hayward remain in possession of their apartments (NYSCEF Doc. 128). Regarding Poleshuck, Kapelonis stated that her last executed lease, which expired on June 30, 2021, was for a monthly rent of \$2,450.00, and that Poleshuck had not paid rent since April 2022 (*Id.*). Regarding Jacob, Kapelonis stated that his last executed lease, which expired on June 30, 2022, was for a monthly rent of \$2,550.00, and that Jacob had not paid rent for the months of January 2022 through October 2022 (*Id.*). Finally, with respect to Hayward, Kapelonis stated that his last executed lease, which expired on June 30, 2020, was for a monthly rent of \$2,200.00, and that Hayward had not paid rent since December 2020 (*Id.*). On May 9, 2023 Defendant submitted a Rent Ledger corroborating the monthly payments asserted by Kapelonis and showing that Poleshuck owed rental arrears in the amount of \$31,850.00, Jacob owed arrears in the amount of \$27,950.00, and Hayward owed arrears in the amount of \$63,800.00 (NYSCEF Doc. 129).

On September 18, 2023 the Court issued a Supplemental Decision and Order ordering Poleshuck, Jacob and Hayward to pay Defendant ongoing use and occupancy *pendente lite* at the monthly rates set by their last executed leases until their apartments were properly surrendered or this matter has been discontinued, whichever comes sooner (NYSCEF Doc. 143 at 3-4).

On November 5, 2023 Defendant brought the instant motion to reargue the Court’s September 18, 2023 Supplemental Decision and Order on the ground that the Court overlooked the award of past use and occupancy included in the Mot. Seq. 002 Decision and Order filed May 2, 2023 (NYCEF Doc. 136).

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## II. Discussion

### a. Leave to Reargue is Granted

Pursuant to CPLR § 2221(d), a motion for reargument should be granted where the Court overlooks or misapprehends issues of fact or law (*Smith v City of Buffalo*, 997 NYS2d 563, 564 [2014]). Here, the Court agrees with Defendant that certain issues of fact were overlooked. Specifically, in its Supplemental Decision and Order dated September 18, 2023, the Court awarded Defendants use and occupancy from Plaintiffs Karen Poleshuck, Michael Jacob and Isaac Hayward *pendente lite*, and overlooked the intention of the Court's Decision and Order on Mot. Seq. 002 filed May 2, 2023, to consider past use and occupancy upon submission of Defendant's Rent Ledger (NYSCEF Doc. 140).

### b. Defendant's Motion for Use and Occupancy

Upon reargument, the Court's September 18, 2023 Order remains unchanged with respect to prospective use and occupancy and Defendant is awarded ongoing use and occupancy *pendente lite* from Plaintiff Poleshuck at a rate of \$2,450.00 per month; from Plaintiff Jacob at a rate of \$2,550.00 per month; and from Plaintiff Hayward at a rate of \$2,200.00 per month, beginning October 1, 2023. Additionally, Plaintiffs Poleshuck, Jacob and Hayward are ordered to post a bond to cover their potential liability for past use and occupancy from July 2022 (the date Defendant first moved for use and occupancy) through September 2023 (the date of the Court's initial Supplemental Decision and Order on Mot. Seq. 002).

While Poleshuck, Jacob and Hayward dispute the amount of arrears claimed by Defendant (NYSCEF Docs. 142), it is well settled that "a dispute concerning the amount of rent owed is no reason to allow a tenant to occupy the landlord's real property gratis" (*Levinson v 390 W. End Assoc., L.L.C.*, 22 AD3d 397, 403 [1st Dept 2005]).

In support of the instant motion, Defendant has provided an updated rent ledger showing that for the period between July 2022 and September 2023, Poleshuck owes rental arrears in the sum of \$26,950.00, Jacob owes rental arrears in the sum of \$10,200.00 and Hayward owes rental arrears in the sum of \$28,600.00 (NYSCEF Doc. 144). As such, Poleshuck is ordered to post a bond in the sum of \$26,950.00, Jacob is ordered to post a bond in the sum of \$10,200.00 and Hayward is ordered to post a bond in the sum of \$28,600.00.

Accordingly, it is hereby,

ORDERED that Defendant 157th Street Associates, LLC's motion for leave to reargue the Court's Supplemental Decision and Order dated September 18, 2023 is granted; and it is further

ORDERED that upon reargument, Defendant 157th Street Associates, LLC's motion for prospective use and occupancy is granted, and Plaintiffs Karen Poleshuck, Michael Jacob, and Isaac Hayward are each ordered to post a bond to cover their potential liability for past use and occupancy; and it is further

ORDERED that Plaintiff Karen Poleshuck shall pay to Defendant 157th Street Associates, LLC ongoing use and occupancy *pendente lite* at a rate of \$2,450.00 per month from October 1, 2023, until Apartment 4A is properly surrendered or this matter has been discontinued, whichever comes sooner; and it is further

ORDERED that Plaintiff Karen Poleshuck shall post a bond in the amount of \$26,950.00 as security for potential liability for rental arrears from July 2022 through September 2023; and it is further

*[The remainder of this page is intentionally left blank]*

ORDERED that Plaintiff Michael Jacob shall pay to Defendant 157th Street Associates, LLC ongoing use and occupancy *pendente lite* at a rate of \$2,550.00 per month from October 1, 2023, until Apartment 5E is properly surrendered or this matter has been discontinued, whichever comes sooner; and it is further

ORDERED that Plaintiff Michael Jacob shall post a bond in the amount of \$10,200.00 as security for potential liability for rental arrears from July 2022 through September 2023; and it is further

ORDERED that Plaintiff Isaac Hayward shall pay to Defendant 157th Street Associates, LLC ongoing use and occupancy *pendente lite* at a rate of \$2,200.00 per month from October 1, 2023, until Apartment 6EE is properly surrendered or this matter has been discontinued, whichever comes sooner; and it is further

ORDERED that Plaintiff Isaac Hayward shall post a bond in the amount of \$28,600.00 as security for potential liability for rental arrears from July 2022 through September 2023; and it is further

ORDERED that the parties are directed to submit a proposed Compliance Conference Order to the Court on or before September 10, 2024 via e-mail to [SFC-Part33-Clerk@nycourts.gov](mailto:SFC-Part33-Clerk@nycourts.gov). If the parties are unable to agree to a proposed Compliance Conference Order, the parties are directed to appear for an in-person compliance conference with the Court on September 11, 2024 at 9:30 a.m. in 60 Centre Street, Room 442, New York, New York; and it is further

ORDERED that within 10 days of entry, counsel for Defendant 157th Street Associates, LLC shall serve a copy of this Decision and Order, with notice of entry, upon all parties to this action; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

7/25/2024  
DATE

Mary V Rosado JSC  
HON. MARY V. ROSADO, 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