

Ali Baba Hotel Corp. v Prose

2024 NY Slip Op 33224(U)

September 12, 2024

Supreme Court, New York County

Docket Number: Index No. 150993/2022

Judge: Nancy M. Bannon

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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. NANCY M. BANNON PART 61M

Justice

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ALI BABA HOTEL CORP. d/b/a AMSTERDAM COURT
HOTEL and EAST SIDE INN LLC d/b/a THE MARCEL AT
GRAMERCY,

Plaintiffs,

- v -

ALEXANDER PROSE, REHAN KAPADIA, BELLA
MANDOKI, CARLOS CARRILLO, and THALIA HERRERA,

Defendants.

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INDEX NO. 150993/2022
MOTION DATE 09/16/2024
MOTION SEQ. NO. 013

**DECISION, ORDER +
JUDGMENT ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 013) 409, 410, 411, 412, 413, 414, 415, 416, 417, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428

were read on this motion to/for CONTEMPT.

In this action, alleging, *inter alia*, breach of contract and nuisance, the court, by decision and order dated July 8, 2024, directed each of the defendants, Alexander Prose, Rehan Kapadia, Bella Mandoki, Thalia Herrera and Carlos Carrillo, to pay to plaintiff East Side Inn LLC d/b/a The Marcel at Gramercy Hotel (“Marcel Hotel”), \$3,700.00 per month, on the first of each month, as and for use and occupancy of their respective units at the Marcel Hotel, commencing on August 1, 2024, and continuing each month until this matter is disposed by trial, motion, settlement or eviction or until a further order of the court. NYSCEF Doc. 374 (the “Prior Order”) at 13. In so doing, the court expressly warned the defendants that “failure to comply with a court-ordered use and occupancy directive will result in ejection from the premises.” *Id.* No payment was made.

The plaintiffs, Marcel Hotel and Ali Baba Hotel Corp. d/b/a Amsterdam Court Hotel (“Amsterdam Hotel”), now move by order to show cause to punish the defendants for contempt for failure to pay the use and occupancy ordered by the court. The plaintiffs seek an order of ejection and judgment of possession in their favor, a money judgment in the amount of the defendants’ use and occupancy arrears, and an award of their attorneys’ fees incurred in

connection with this motion. The defendants oppose the motion. The motion is granted to the extent provided herein.

In support of the motion the plaintiffs submit, *inter alia*, the court's Prior Order with notice of entry and affidavits of service for each of the defendants; email notices, dated July 11, 2024, sent to each of the defendants to provide them the details necessary for payment of the court-ordered use and occupancy; and the affirmation of Ana Lopez, the hotel manager for Marcel Hotel, who avers that each of the defendants have, to date, failed to pay any of the use and occupancy directed by the court. In opposition, the defendants do not dispute that they received the Prior Order, were aware of their obligation to pay court-ordered use and occupancy, and that they have refused to comply with the Prior Order by failing to pay any of said use and occupancy to date. Nor do the defendants offer any explanation, justification, or excuse for ignoring the court's use and occupancy directive. Rather, they argue that ejectment is not an available remedy for failure to pay court-ordered use and occupancy, and that, prior to any ejectment, they must be served a predicate notice of termination, which has not been done. Neither of these arguments is availing.

As noted in the Prior Order, it is well settled that any party asserting an interest in real property, as a condition for asserting its rights in the litigation, "must comply with the court's directions to maintain the status quo" or lose any interest it may have in the property. 61 West 62nd Owners Corp. v Harkness Apartment Owners Corp., 202 AD2d 345, 346 (1st Dept. 1994), citing 313 West 57 Rest. Corp. v 313 West 57th Assocs., 186 AD2d 466 (1st Dept. 1992); see also Park Terrace Gardens, Inc. v Penkovsky, 100 AD3d 577 (1st Dept. 2012). That is, "[a] failure to comply with [a court-ordered use and occupancy] directive[] will result in ejectment and an award of a judgment of possession to plaintiffs." Marbru Assocs. v White, 206 AD3d 562, 563 (1st Dept. 2022), citing Park Terrace Gardens, Inc. v Penkovsky, *supra* and Rose Assocs. v Johnson, 247 AD2d 222, 223 (1st Dept. 1998) (tenant's failure to pay court-ordered use and occupancy "was a violation of a condition to her right to remain in the apartment, permitting defendant [landlord] to apply for appropriate relief, e.g., a money judgment, or eviction, or both") (internal quotation marks omitted). Further, given the Prior Order's express warning that "failure to comply with a court-ordered use and occupancy directive will result in ejectment from the premises[.]" no additional notice is necessary as a predicate to ejectment. See 769 E. LLC v Ofori, 226 AD3d 464, 466 (1st Dept. 2024) (notice of termination not required as predicate to ejectment where defendant tenant had actual notice of plaintiff's intent to terminate his tenancy through prior legal proceedings); E. 82 LLC v O'Gormley, 295 AD2d 173, 174 (1st Dept. 2002)

(same). Therefore, based upon the defendants' willful refusal to pay court-ordered use and occupancy, the plaintiffs are entitled to an order of ejectment and judgment of possession in their favor.¹

In light of the court's ruling herein, the sixth cause of action in the plaintiffs' amended complaint, which is alleged solely by plaintiff Marcel Hotel against defendants Alexander Prose, Rehan Kapadia, and Bella Mandoki, and which seeks a permanent injunction preventing said defendants from engaging in any further nuisance acts while residing at the Marcel Hotel, is dismissed as moot. As such, and accounting for the court's Prior Order, the only cause of action that remains for trial is the fifth cause of action seeking monetary damages for nuisance, which is also alleged solely by Marcel Hotel against defendants Prose, Kapadia, and Mandoki.

Any relief not expressly granted herein is denied.

Accordingly, upon the foregoing papers and this court's prior orders, it is

ORDERED that the plaintiffs' motion is granted to the extent it seeks an order of ejectment and judgment of possession in their favor, and the motion is otherwise denied; and it is further

ORDERED and ADJUDGED that the plaintiffs, Ali Baba Hotel Corp d/b/a Amsterdam Court Hotel and East Side Inn LLC d/b/a The Marcel at Gramercy, are entitled to immediate possession of the real property consisting of Unit 1101, Unit 814, Unit 1103, Unit 1003, and Unit 704 at the Marcel Hotel at Gramercy, located at 321 Third Avenue, New York, New York, 10010, as against the defendants, Alexander Prose, Rehan Kapadia, Bella Mandoki, Carlos Carrillo, and Thalia Herrera, and the Sheriff or Marshall of the City of New York, County of New York, upon receipt of a certified copy of this Order and Judgment and payment of proper fees, is directed to place plaintiff in possession accordingly; and it is further

¹ At the oral argument of the motion on September 5, 2024, defendant Alexander Prose appeared by counsel and several other defendants appeared unrepresented. All defendants conceded that no use and occupancy was paid and several of the defendants conceded that they do not reside at the Marcel Hotel. As such, the court adjourned the motion for the defendants to discuss a settlement with the plaintiffs. No such settlement has been filed.

ORDERED and ADJUDGED that immediately upon entry of this Order and Judgment, the plaintiffs, Ali Baba Hotel Corp d/b/a Amsterdam Court Hotel and East Side Inn LLC d/b/a The Marcel at Gramercy, may exercise all acts of ownership and possession of the real property consisting of Unit 1101, Unit 814, Unit 1103, Unit 1003, and Unit 704 at the Marcel Hotel at Gramercy, located at 321 Third Avenue, New York, New York, 10010, including entry thereto, as against the defendants, Alexander Prose, Rehan Kapadia, Bella Mandoki, Carlos Carrillo, and Thalia Herrera; and it is further

ORDERED and ADJUDGED that the Sheriff of the City of New York, County of New York, or any duly appointed City Marshal, is hereby directed and authorized, upon receipt of a certified copy of this Decision, Order, and Judgment, to take all necessary steps, including but not limited to the entry into the premises at the real property consisting of Unit 1101, Unit 814, Unit 1103, Unit 1003, and Unit 704 at the Marcel Hotel at Gramercy, located at 321 Third Avenue, New York, New York, 10010, to effect the removal and ejection of defendant Alexander Prose from Unit 1101, defendant Rehan Kapadia from Unit 814, defendant Bella Mandoki from Unit 1103, defendant Carlos Carrillo from Unit 1003, and defendant Thalia Herrera from Unit 704, and every person holding possession or the same or any part thereof under the defendants, Alexander Prose, Rehan Kapadia, Bella Mandoki, Carlos Carrillo, and Thalia Herrera, and adversely to the plaintiffs, Ali Baba Hotel Corp d/b/a Amsterdam Court Hotel and East Side Inn LLC d/b/a The Marcel at Gramercy, as the current owners of the premises, and the plaintiffs shall be let into possession of said premises at the real property consisting of Unit 1101, Unit 814, Unit 1103, Unit 1003, and Unit 704 at the Marcel Hotel at Gramercy, located at 321 Third Avenue, New York, New York, 10010, and this Decision, Order, and Judgment be executed by the Sheriff of the City of New York, County of New York, or any duly appointed City Marshal, as though it were an execution for the delivery of possession of said premises; and it is further

ORDERED that the sixth cause of action in the plaintiffs' amended complaint is dismissed; and it is further

ORDERED that the plaintiffs shall serve a copy of this Decision, Order, and Judgment with notice of entry upon the defendants, Alexander Prose, Rehan Kapadia, Bella Mandoki, Carlos Carrillo, and Thalia Herrera, by regular first-class mail, within 15 days of its entry; and it is further

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision, Order, and Judgment of the court.

Nancy M. Bannon
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9/12/2024
DATE

NANCY M. BANNON, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART

OTHER